

honesty of one D., the plaintiffs' secretary and treasurer, alleging that D. had received certain moneys of the plaintiffs, and fraudulently and dishonestly appropriated the same to his own use. The policy was granted on the faith of the truth of the answers to the questions contained in the guarantee proposal, by one of which it was stated that all moneys would be drawn out from the bank where they were deposited, only by the authority of the Board of Education. The course of dealing here was for the Board to give D. orders for the payment of all accounts, and D. then drew his own cheques for the amounts, the order not being attached thereto nor were they countersigned by any of the board, and there was nothing to prevent D. drawing out as he did the moneys for his own purposes.

Held, that the terms of the guarantee in this respect had not been complied with.

Another of the answers stated that D's cash and securities would be examined and verified by the auditors as required by the statute. It appeared that Paris was not an incorporated town withdrawn from the county.

Held, that the audit should have been by the county auditors, and not by the town auditors as was the case here, and therefore that, in this respect also, the guarantee had not been complied with.

Held also, that the evidence shewed that there had been no proper audit in fact.

There was also a question raised in this case as to the amount of default for which defendants could be liable, and as to the appropriation of certain payments made by D.

Robinson, Q. C., for the plaintiffs.

Fleming (of Brampton) for the defendants.

VACATION COURT.

VASHAN v. CORPORATION OF EAST HAWKESBURY.

Municipal corporation—By-law closing up road—Application to quash—Proof of by-law—Private way—Notice—Compensation—Councillor—Interest of.

On an application to quash a township by-law closing up a road, the applicant's

affidavit stated that he applied to the township clerk for a certified copy of the by-law, and that in compliance therewith he received the following: "By-law, No. 188, for stopping up and closing the road, &c. Passed 3rd December, 1877;" and after giving its enacting clause stated, "verified—a true copy."

M. MANEELY,
Township Clerk.
[Township Seal.]

"Made at, &c., this 17th
day of Jan., 1878."

Held, by *Osler*, J., that there was sufficient proof of the by-law under sec. 322 of the Municipal Act.

One of the objections was that the road was a private way over one C's farm, and therefore not within the jurisdiction of the council.

Held, that this objection was not now open to the applicant, as it appeared that he had himself treated it as a public highway, and had had C. convicted several times for obstructing it as such.

Another objection was the want of notice, and due publication of the intention to pass the by-law.

Held, on the evidence that this objection was not tenable.

Held, also, following *McArthur* and *Corporation of Southwold*, 3 App. 298, that the deprivation of the use of the road to the applicant, if the by-law had that effect, was a subject for compensation, which need not be provided for in the by-law.

The only persons really interested in the maintenance or closing up of this road were the applicant and C., who was instrumental in having the by-law passed. The township council consisted of five members, of whom C. was one, the concurrent votes of three of whom was necessary to the passing of a by-law. In this case the by-law received three votes, but one of such votes was C's.

Held, that the by-law could not be upheld, for that C's interest in its passage, which was apart from that of the public, disentitled him from voting.

McMichael, Q.C., for the applicant.
Robinson, Q.C., *contra*.