

## LEGAL DEPARTMENT.

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## Municipal Councils—Their Powers and Jurisdiction—By-Laws.

In a few more words we will finish our discussion of by-laws passed by municipal councils, pursuant to authority to do so, conferred on them by the drainage clauses of the Municipal Act. After a drain has been constructed by one municipality, and in order to obtain an outlet, continued into an adjoining municipality or municipalities, it shall be preserved, maintained and kept in repair by each municipality interested, in the proportion determined by the engineer or arbitrators, as the case may be, or until otherwise lawfully determined by the engineer or arbitrators under the formalities prescribed by the act. The duty to repair, under the section 583, is not confined to drains running from one municipality as another, but applies as well to drains constructed by a municipality wholly within its own limits. Any municipality, neglecting or refusing to preserve, maintain or keep in repair such ditch or drain, when liable to do so, upon reasonable notice in writing being given by any person interested, can be compelled by mandamus to perform its duty, and shall be liable to pay damages to any person whose property is injured by reason of such neglect or refusal. If in order to enable it to carry off the water it was originally intended to carry off, it is found necessary to deepen, widen or extend such ditch or drain, the work shall be deemed a work of preservation, maintenance or keeping in repair, provided the cost of the extension does not exceed the sum of \$200, and where the expense exceeds this sum, proceedings shall be taken, under the provisions of section 585. In the case of *Begg vs. the township of Southwold*, a by-law had been passed, providing for the raising of the unpaid portion of the expense of cleaning out and repairing a drain, and being otherwise good on its face, was objected to on the ground that the resolution and by-law authorized the cleaning and repairing only of the drain, but that in performing the work the drain had actually been deepened, which, it was contended, could only be done by petition, under section 569. It appeared that the deepening, if done at all, which was doubtful, was done accidentally and not by design, under these circumstances an application to quash the by-law was refused, and it was questioned whether the municipality had not power to do such work without petition, including the deepening, as might be incidental to maintaining the drain in an efficient state. Section 585 of the act is worthy of notice, as indicating under what circumstances the petition, mentioned in section 569, can be dispensed with before the passage by the council of a drainage

by-law. The council might pass such a by-law without such petition, and undertake and complete the alterations and improvements or extension specified in the report of an engineer appointed by the council of the municipality or of any of the municipalities whose duty it is to maintain and preserve the drain, in any case where such council shall deem it expedient to do so, when the drain has been constructed under the authority mentioned in the said section 585, in order to better maintain the drain or to prevent damage to adjacent lands.

A similar duty to maintain and keep in repair a drain not continued into any other municipality is imposed on the municipality, by which the drain has been constructed by section 586, at the expense of the lots, parts of lots and roads agreed upon and shown in the by-law, when finally passed. This duty on the part of the municipality is an absolute one, and and its neglect will expose the municipality to a liability in damages at the suit of any party aggrieved.

Section 588 makes provision for the removal of obstructions from ditches or drains and for the appointment of an officer to attend to the work. Every municipal council having drains under its jurisdiction should by by-law appoint an officer of this kind, as the continuance of obstructions in a ditch or drain frequently gives rise to the necessity of cleaning out the whole drain.

## Legal Decisions.

RE ROBINSON AND CITY OF ST. THOMAS.

Judgment on motion by J. A. Robinson, a ratepayer of the city of St. Thomas, to quash by-law 653 of the city, on the ground that it is illegal as being in contravention of section 286 of the Municipal Act, 55 Vic. ch. 42, which is as follows:—No council shall have the power to give any person an exclusive right of exercising within the municipality any trade or calling, etc. The by-law in question recited that the Bell Telephone Company were desirous of preventing, as far as possible, for the term of five years, the erection by any other company of other lines in the city for the purpose of carrying on any telephone business. In accordance with the application of the company an agreement was entered into between the company and the council, which was ratified by the by-law, and the first section of which was as follows:—The city, as far as it has power to do so, covenant and agree that they will not, for a period of five years from date hereof, give to any person, firm or company other than the Bell Telephone Company of Canada (limited), any license or permission to use any of the public streets, lanes or alleys of the city for the purpose of building in, upon or under such streets, lanes or alleys, any poles, ducts or wires for the purpose of carrying on any telephone business. It was contended that this by-law gave the company an exclusive right. The learned chief justice, after adverting to the absence of authorities in this province, referred to the cases of *Norwich Gas Light Co. vs. Norwich City Gas Co.* 25 Conn. 18, and a case in 18 Ohio St. 262, both of which related to gas companies, and both of which decided against such a by-law as the present, and concluded his opinion as follows:—What then are the statutory powers conferred upon a municipality as respects telephones? Section 496, sub-section 39, of the Municipal Act is as follows: A municipality may pass by-laws for regulating the erection and maintenance of electric light,

telegraph and telephone poles and wires within their limits. Then to use the language of the learned judge in the case to which I now made reference (18 Ohio st. 262). If, under the general power here given, a single city council may bind its successors not to make or permit any further use of the streets for a similar purpose for a period of twenty-five years, why not for 100 years or in perpetuity? If so, we fail to discover it, either in express terms of the statute or as arising from a clear and necessary implication. By the very terms of the by law which was passed for the ratification of the agreement, it is expressly stated, as I have mentioned, that the company are also desirous of preventing as far as possible for the term of five years the erection by any other company of any other lines in the city for the purpose of carrying on any telephone business. It is manifest that, so far as the agreement was concerned, it was the object and intention of both parties that the Bell Telephone Company should have a monopoly for the next five years of the telephone business in the city of St. Thomas, and therefore it is entirely beyond the power of the municipality to enter into such an agreement. Order made quashing the by-law with costs.

VIVIAN VS. TOWNSHIP OF M'KIM.

Judgment on appeal by the plaintiff from the judgment of Robinson, J., the trial judge, dismissing the action, which was brought to recover a sum paid to the defendant for taxes under protest. The plaintiff appealed from his assessment to the court of revision, but did not receive from the clerk of the municipality any notice of the hearing of the appeal, and the appeal was heard in his absence and dismissed. The plaintiff contends that the court of revision acted without jurisdiction, the notice not having been given. The trial judge held that under sub-section 9 of section 64 of R. S. O., ch. 193, the Assessment Act, the clerk shall prepare a notice in the form following for each person with respect to whom a complaint has been made; a notice to a person complaining of his own assessment was not necessary. The chancellor on this point agreed with the trial judge. Meredith J., agreed in this with some doubt. The court held also that the plaintiff's only remedy was by appeal to the county judge. Appeal dismissed with costs.

ED.—The attention of municipal clerks is particularly drawn to this case, as for the time being, it settles a question which has hitherto been attended with much doubt and trouble.

A CELEBRATED BRIDGE CASE.

The case of the village of New Hamburg vs. the county of Waterloo, reported in February (page 27), in which the contest was as to the liability to maintain a bridge over the river Nith, which passes through the village of New Hamburg, was recently argued in the Supreme Court. The statute obliges the county to maintain bridges over streams more than 100 feet in width, and the sole question is whether or not said river is over that width. The trial judge found that it was; the Court of Queen's Bench reversed that judgment, and the Court of Appeal was equally divided. After counsel for respondent had concluded his arguments the court expressed the opinion that the appellant's counsel need not reply, but as one of their lordships wished to examine the authorities referred to on behalf of respondents, judgment was reserved. From this it would appear that the decision of the Court of Appeal would be sustained.

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Questions are often asked concerning the rights of public highway in towns and cities, and answers to some of them: "The streets belong to teams and vehicles, and pedestrians have no more business upon them than the teams would have on the sidewalks. The crossings at the street corners belong to pedestrians, who have the right of way there, by law, as against teams. Many drivers ignore the law and go dashing over sidewalks, endangering lives and limbs of pedestrians, without thinking they are violating the law. No vehicle or horse can, within the law, be driven rapidly over a crossing, nor can the driver obstruct the crossing.—Ex.