LEGAL DEPATMENT.

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Municipal Corporations.

THEIR POWERS AND JURISDICTION.—ARBITRATIONS.

Section 385 and following sections of the Consolidated Municipal Act, 1892, make provision for the settlement of disputes of a municipal character by arbitration. The mode of appointing arbitrators and the method of proceedure when they have been appointed is fully set out in the said sections. A resort to this means of arranging the difficulties of municipalities will often be found, comparatively speaking, inexpensive. Section 385 provides that the appointment of all arbitrators shall be in writing under the hand of the parties appointing them, or in the case of a corporation, under the corporate seal, and authenticated in like manner as a by-law. In this connection a practical hint may not be out of place. Decided cases show the great difficulty which either party may often have in obtaining the possession of the appointment of his opponent's arbitrator when he wishes to make the submission a rule of court in order to facilitate its enforcement, and the delay, expense and inconvenience to which this difficuity may subject him. A method, it is suggested, may be found to remedy this difficulty. If each party took the precaution, at the time of the reference, of requesting the other party to make the appointment of of his arbitrator in duplicate, and if they mutually agree to furnish each other with one of the duplicate parts, and not a mere copy, there seems no reason why, on producing the appointment of his own arbitrator and the duplicate original of his opponent's arbitrator, and properly verifying both of them, the object of either party to make the submission to a rule of court may not be accomplished. There should in strictness be a by-law authorizing the appointment of the arbitrator for the corporation, or the affixing of the seal to the appointment or a by-law leaving the appointment to the head of the council. The appointment when properly authorized should not only be under the seal of the corporation, but be signed by the head of the corporation and by the clerk of the corporation. Such is the mode of authenticating a by-law as laid down in section 288 of the said act. Section 386, provides that the head of a municipal corporation may appoint the arbitrator on behalf of his corporation, if authorized by a by-law of the council thereof, so to do. As a rule, an arbitrator, to represent a municipal council, must be appointed by that council; the exception is when the council, by by-law deputes that power to the head of the council. In cases where an arbitration is directed by the Con Mun. Act, either party may appoint an arbitrator, and give notice thereof in writing to the other party, calling upon such party to appoint an arbitrator on behalf of the party to whom such notice is given. A notice to a corporation must be given to the head of the corporation. The notice referred to must be in writing. It should state the object of the arbitration, name the arbitrator appointed by the party giving the notice, and call upon the other party to name his arbitrator. It should be express and absolute. In a case where a party had given notice to a railway company that it was his intention to appoint a certain other party as arbitrator, and that, if they failed for 14 days to appoint one, he would appoint him to act for both parties, and such other party did so act, the court refused to enforce the award. Within seven days from the appointment of the last named of the two arbitrators, the two arbitrators appointed by or for the parties, shall appoint in writing a third arbitrator. It is a common error to look upon a third arbitrator as an umpire; the difference between a third arbitrator and an umpire, is that the former is appointed before the arbitration proceeds, and the latter after the arbitrators have entered upon the reference, and are unable to agree. By way of illustration: A by-law to close up and grant to a company a portion of a street which provided for arbitration by the mayor and by two persons, one appointed by the company and one by the applicant, was held invalid.

Legal Decisions.

WILSON VS. CORPORATION OF INGERSOLL.

A by-law to regulate the proceedings of a town council required that every by-law should receive three readings, but that no by-law for raising money or which had a tendency to increase the burdens of the people should be finally passed on the day, on which it was introduced, except by a two-third vote of the whole council. A by-law to fix the number of tavern licenses and which therefore required such two-thirds vote, was read three times on the same day and declared passed, but did not receive the required two-thirds vote. A special meeting was then called for the following evening, when the by-law was merely read a third time, when it received the required two-thirds vote.

It was held that the by-law was bad, for having been defeated when first introduced by reason of not having received a two-thirds vote, it was not validated by merely reading it a third time at the subsequent meeting. The by-law did not show, as required by the Liquor License Act, the year to which it was to be applicable.

RE MERRITT AND THE CORPORATION OF TORONTO.

In this case it was held that section 495, sub-section 2, of the Municipal Act, R. S. O., Chap. 184, which empowers any city, etc., to pass by-laws for the licensing, regulating and governing of auctioneers and other persons, selling or putting up for sale goods, wares, and effects for public auction, and for fixing the sum for every such license, and the time which it shall be in force, is only for the purpose of raising a revenue, and does not confer any right of prohibition so long as the applicant is willing to pay the sum fixed for the license, where, therefore, the city refused to license the plaintiff as an auctioneer on the ground that he was a person of a notoriously bad character and ill-repute, A mondamus was granted, compelling them to issue to him such license.

RE CHAMBERS AND THE CORPORATION OF BURFORD.

A by-law recites that certain land thereinafter described had been used as a public road for thirty years, and on which public money had been expended and statute labor performed, and was a continuation of a public road, and that it was in the interest of the public, that the same should be clearly established by by-law. The by-law then enacted that the land, describing it as commencing at the north-east angle of lot number 7, in the 11th concession of the township of Burford, where a stone has been planted; then south 16 degrees 10 minutes; East 34 chains and 4 links to a stake; then north 78 degrees 10 minutes; west, 34 chains 4 links to the north-west angle of lot number 6 in the said 11th concession; then westerly in a straight line 1 chain to the place of beginning, containing 3 2-5 of an acre, is established as a common and public highway.

It was held that there was no uncertainty in the description of the land taken. One of the courses was given as 24 chains and 4 links; but as a parallel course was correctly given and the error appeared so obvious as not to be calculated to mislead, it was held not to be a ground of objection. Where there was no weekly paper published in the township but only one bi-monthly the statute does not render it obligatory to use such paper for publication of the by-law.

IN RE MARTIN AND COUNTY OF SIMCOE.

Public Schools—54 V., C. 55, 55, 82, 96—Boundaries of School Sections—Action of Township Council—Appeal—Time—County Council—Jurisdiction By-Law—Appointment of Arbitrators — Award — Confirmation — Waiver—Evidence of.

In the absence of satisfactory evidence of waiver of the objection by all persons interested, a county council has no jurisdiction under sub-section 3 of section 82 of the Public Schools Act, 54 Vic., chap. 55, to appoint arbitrators to hear an appeal from the action or refusal to act of a township council, and to determine or alter the boundaries of school sections, unless a notice of appeal has been duly given within the time mentioned in sub-section 1.

Where a by-law of the county council, appointing arbitrators, was passed pursuant to a notice of appeal, in the form of a