

MUNICIPAL DEPARTMENT

LEGAL DECISIONS AFFECTING MUNICIPALITIES.

KELLY VS. CITY OF WINNIPEG.—Recently Mr. Justice Bain delivered judgment in the case of Kelly vs. City of Winnipeg on the application made to him for an interlocutory injunction to restrain the city from carrying out the resolution concerning a minimum rate of wages on city contracts. The plaintiff in the suit was Thomas Kelly, a contractor, of Winnipeg, who sued on behalf of himself and all other ratepayers. In June, 1895, a resolution was passed by the city council as follows: "That in future a clause be inserted in all contracts passed through or let by the council, to the effect that contractors on city works should not pay their laborers or other employees a less rate of wages than 17 1-2 cents per hour, and that rate shall be the minimum rate of wages for all laboring men to be employed on said contracts or on any new construction work undertaken to be done by the city, by the day."

The plaintiff submitted an injunction prohibiting the city from continuing to act on the resolution, or to pay men on new works any greater rate of wages than necessary to obtain suitable men, and to restrain the city from inserting in any contract any limitation on the minimum amount of wages to be paid by contractors doing work for the city.

His lordship dismissed the application for the interlocutory injunction. In delivering judgment he observed:

"It is necessary that the mayor and council of the city should have public works of various kinds done in the city, either by contractors or under the direction of their own officials; and it must be incident to and within the scope of the authority of the mayor and council to provide that those employed on such work be paid. The resolution in question, therefore, relates to an expenditure of money that is clearly within the authority of the mayor and council to make, and is not in itself illegal and ultra vires. The resolution is not questioned on any ground that could come under the head of fraud; and while it is urged that the mayor and council are in a sense trustees of the revenues of the city, it is necessary to remember that to describe them as trustees is not exhaustive of their powers and duties. If the court is to interfere in a matter like this, its jurisdiction would have to be based on the superintending power of a judicial character that experience has taught must be exercised in order to keep municipal and other corporations within the reasonable, as well as the legal, exercise of their powers.

"In his affidavit Mr. Kelly stated that in his belief the resolution was passed and has been acted on in the interests of the

working men, and on the argument it was urged that the council proposed to benefit the working men at the expense of the ratepayers in the hopes of influencing the votes of the working men; the motives of the council were not, however, referred to in the statement of claim. The objection raised was that the resolution committed the council to an unnecessary and extravagant expenditure of the city's funds. The average rate of wages paid to working men, Mr. Kelly says, is 15 cents an hour, and as all city work has to be completed to the satisfaction of the city's officials, he claims that the work can be done as well for this amount as 17 1/2 cents per hour. The courts may decide upon the reasonableness of resolutions and by-laws of governing bodies, and judge of them, whatever their purposes, by considering their nature and effect, but where, as in this case, the governing body is acting within the scope of its authority, and must of necessity exercise a discretion in carrying out its powers, it will be presumed until the contrary is shown, both that that governing body is the best judge of what is for the public benefit, and that it has exercised its discretion honestly and reasonably. In such a matter as deciding on the rate of wages to be paid men employed on city works, the mayor and council should be peculiarly the best judges, and a very clear case of unreasonableness would have to be made out before the court would interfere with their decision. No doubt the city could, as well as the contractors, hire men for less than 17 1/2 cents per hour, but in buying materials and supplies for the city service, and in hiring men to do its work, there are many other considerations besides mere cheapness that may legitimately influence the council, and they do not necessarily subject themselves to the interference of the court if, in hiring its workmen, it does not act on the principle that only such wages are to be paid as the law of supply and demand and the necessities of the men will compel them to accept. All who make affidavits in reply to Mr. Kelly's motion agree in stating it as their belief that 17 1/2 cents an hour is not more than a fair living wage for a competent working man in Winnipeg, and that it is in the interest of the city that laborers employed on city work be paid a fair living wage. Their reasons may or may not be convincing, but with the wisdom or unwisdom of the policy of the council, acting bona fide in a matter within the scope of its authority, it is for the ratepayers and not the court to decide upon. Nothing was adduced to show that the council are not acting in the best interests of the city, and the court will not assume that it is acting unreasonable in any legal sense if it insists that men engaged upon city work shall be paid a

fair living wage even although men might be hired to do the work at a lower rate. The resolution embodies not a hasty piece of legislation, but a policy deliberately adopted by the council in 1895 after an investigation into the facts. The provisions of this resolution have been acted upon by three successive councils, and the council of the present year proposes to act on them when the necessity arises. These councils have been elected by the ratepayers and no request has been made for a repeal of the resolution, and there has been no agitation or expression of opinion of the ratepayers against it. The council in carrying out the provision in question will be acting within the scope of its authority, and as far as the material before the court shows, in a bona fide manner, and the court would not be justified in interfering before the plaintiff has established his right at the hearing of the action."

The application for an injunction is dismissed; the question of costs reserved until the hearing.

SEWAGE DISPOSAL IN LONDON.

For years it has been maintained that the sewage of London, England, could be converted into a valuable fertilizer, and many systems have been experimented upon in this direction. But in the result it has been found better to take the "sludge" fifty miles out to sea and there "drown" it. The London county council maintained a fleet of six vessels for this purpose; they carry on each journey a load of nearly one thousand tons of sludge, and made last year more than two thousand trips, at a cost of upwards of £30,000. Now a new plan altogether is to be tried, and works are being pushed forward at Rotherhithe, where the method is to be tested. This new system aims at the conversion of the sludge into good burning furnace fuel, so that what is now so costly to throw away may be converted into a valuable commodity. The method is known as the "Henry process," and consists in drying the sludge—which contains ninety per cent. of moisture—on the surface of huge revolving hot air cylinders, scraping off the dry film formed, and pressing the residue into cakes ready for burning. It is also intended to grind some of the residue to a fine powder, and to sell it for fertilizing purposes. The experiment is an interesting one, and its results will be looked forward to anxiously, not only by the London County Council, but by the representatives of large towns and cities everywhere.

Mr. Thos. Tremblay, P.L.S. and C.E., has been appointed superintendent of the recently-acquired waterworks system at Sherbrooke, Que.

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