

LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

Municipal Councils.

THEIR POWERS AND JURISDICTION—BY-LAWS.

The drainage clause of the Municipal Act contains a number of important provisions applicable to cases, when, in order to obtain a sufficient and satisfactory outlet, it becomes necessary to continue drainage works from one municipality to another. The formalities precedent and subsequent to the passing of the necessary by-law should be strictly observed and followed. Negligence of such observance and the overlooking of important particulars have in time past given rise to bitter disputes between adjoining municipalities, resulting in litigation almost unlimited and involving vast expense to the several municipalities concerned in general and to the parties interested in or affected by the construction of the drainage works in particular—apparently the engineer appointed by the municipality undertaking the drainage works, is, in the first instance, to be the judge as to the necessity for continuing the drain into an adjoining municipality. He must so continue the drain, if he think it necessary in order to find sufficient fall to carry off the water, as no municipality or officer thereof has any power to drain water on the land of any owner and leave it there against the will of such owner.

If the engineer does not consider it necessary to continue the drain into an adjoining municipality, but finds that lands or roads therein will be benefitted he shall charge the lands to be benefitted, and the corporation, person or company whose road or roads are improved, with such proportion of the cost of the work as he may deem just. The engineer shall determine and report to the council by which he is employed, whether the drainage works shall be constructed and maintained solely at the expense of such municipality, or at the expense of both municipalities, and, if the latter, in what proportion. Sec. 579 makes it the duty of the municipality in which the drainage is commenced to serve the head of the council of the municipality into which the same is to be continued, or whose lands and roads are to be benefitted with a copy of the report, places, specifications, assessments and estimates of the engineer, and, unless appealed from as is in the Municipal Act provided, they shall be binding on the council of the latter municipality. The service, it will be observed, must be made on the head of the municipality into which the drain is to be continued, or whose lands and roads will be benefitted or improved thereby, and not on the head and clerk, as in the case of

the notice mentioned in sec. 571 of the said Act—"It is a condition precedent to the acquisition by one municipality of jurisdiction over lands situate in another, that a petition signed by a majority of the owners of the property to be benefitted situate in the municipality undertaking the work should first be presented."

A by-law should then be passed by the superior municipality (or the municipality in which the drainage works are commenced) in the form laid down in the said Act, with such changes and alterations as the circumstances of the case render necessary, providing for the construction of the drainage works, and the levying and collecting of that proportion of the cost chargeable against the lands and roads in such superior municipality.

The council of the inferior municipality must, within four months from the day of delivery to the head of such municipality of the report, etc., of the engineer, pass a by-law to raise such sums as may be mentioned in the report, or, in case of appeal, such sums as is awarded by the arbitrators in the same manner and with such other provisions as would have been proper if a majority of owners of the lands to be taxed had petitioned as provided in sec. 569 of the said Act. There seems to be no express remedy provided, if, in case after the money or proportion of the cost chargeable against the minor municipality has been raised and paid over by such minor municipality to the superior municipality if it is found that the drainage work has been improperly or insufficiently executed. But, if the work is not performed at all, the money so paid over may be recovered, as on a failure of consideration. Sec. 581 gives the minor municipality the right to appeal from the report of the engineer within twenty days from the day on which the same was served on the head of such municipality, this right is confined, however, to the report of the engineer. The sufficiency of the by-law and the petition on which it is founded can be left to the action of the courts on a proper application,—a written notice of appeal must, within the time above limited, be served on the head of the corporation from which the report was received.

If through misapprehension or mistake, the council served with the report, etc., fail to appeal therefrom within the twenty days, the judge of the county court of the county within which the municipality lies, may, upon application made at any time before drainage works have been commenced, or the contract let for the same, or the debentures actually issued under the by-law, after the said twenty days have expired, by order grant permission to appeal upon such terms and conditions as to costs otherwise, as he deems just and reasonable within a time to be limited by him.

RE OSTROM AND THE CORPORATION OF THE TOWNSHIP OF SIDNEY.

Sec. 584 of the Municipal Act, enacts, that no council shall pass a by-law for

establishing a public highway, until written or printed notices of the intended by-law have been posted up one month previously in six of the most public places in the neighborhood of such road.

The defendant corporation on the 29th of July, 1887, published notices of their intention to pass a by-law on the 29th of August, 1887, to open a road across nine lots in the first concession of the township. On that day the council met and passed a by-law, establishing a road across four only of the lots mentioned in the notice. The date of putting up the notice was recited in the by-law, and was admitted by the affidavits filed by the defendants in chancery, cause to the motion to quash the by-law. The by-law was moved against on several among others. 1st. That notice of intention to pass it was not given one month previous to the passing thereof; 2nd. That the notices posted up and published were on intention to establish and open up a longer and entirely different road from that described in the by-law; 3rd. That the by-law was passed to serve the private interests of some property holders in the locality, and not in good faith for the general benefit of the public. Nothing had been done under the by-law. It was held that the giving of the prescribed notice is a condition precedent to the right of the council to pass such a by-law. That the month is to be computed exclusive of the first and last days, and therefore that a notice on the 29th of July of intention to pass a by-law on the 29th of August was insufficient.

RE LUSKEY AND THE CORPORATION OF THE TOWNSHIP OF ROMNEY.

During the construction of a certain drain in the township of Romney, known as the "tunnel" drain, it was found that stone portals were needed for the work, and that the outlet to the lake had to be deepened, and other extras and alterations were discovered to be necessary which had not been provided for by the original by-law, under which the said drain was constructed. A by-law was passed by the council of the said township, to raise the sum of \$2,000 by assessment of owners of property benefitted, to complete the said drain and defray the cost of the extras and alterations found by the engineer to be necessary. This was an application to quash the last-mentioned by-law, on the ground that it was not a by-law amending a drainage by-law under section 573 of the Consolidated Municipal Act, 1892, "in order to fully carry out the intention thereof," but rather a new by-law which had not been passed with all the necessary formalities provided by the drainage clauses of the Municipal Act. It was held that the by-law attacked was an amending by-law, under section 573 of the Consolidated Municipal Act, 1892, and that the township council had power to pass it under that section.