

debts to the vote of the electors. Now, did this act compel a municipality before contracting a debt with the government for the purchase of a government work, to pass a by-law authorising that to be done? I do not think by the passing of that statute the former power of buying from, and contracting a debt to, the government was entirely taken away; at all events, that provision did not extend to county councils with whom we now have to deal, and the enactment applying that prohibition to county councils was first introduced in the Municipal Institutions Act of 22 Vic. cap. 99, sec. 223, from which it is consolidated as sec. 224 of cap. 54 of Con. Stat. of U. C. Though thus introduced for the first time so as to apply to by-laws of county councils contracting debts in any one year exceeding \$20,000, in the same statute as well as the consolidated act, the provision that the councils may contract debts to her Majesty for the purchase of roads, harbours, &c., is likewise contained. These provisions being now all contained in the same statute must have force, one cannot properly over-ride or displace the other. The right to contract the debt to her Majesty in the purchase of the roads, exists independent of any by-law under the provision of the statute. The right to execute bonds, deeds, covenants, and other securities, for the payment of the price of such works, also exists in the same way. So far, therefore, it appears to me the right of the municipality to enter into an agreement with the government to pay \$72,500 for these roads, and to execute bonds (debentures) or other securities for the payment thereof, is sustained by the very words of the 226th section of the Municipal Institutions Act; and the resolution which the county council has adopted does not, as far as I can see, contravene any of the stipulations of that clause of the statute, but is rather in accordance with it. If the provincial government think proper to accept bonds or debentures without the passing of any by-law authorising their issue, or providing any rate or sinking fund for paying them off, they may do so; but the government would probably feel that it would be more satisfactory to have some special rate fixed by a by-law, to be levied annually, to pay the amount within a given period, which by-law could not afterwards be repealed until the debentures were paid.

Whether such a by-law could be passed without the assent of the ratepayers it is not necessary now to determine. The fact, however, that at the close of the first paragraph of the 226th section of the Municipal Act, it is stated that the by-laws to be passed under that section shall be valid, although no special or other rate per annum shall be settled or imposed to be levied in each year, as provided by the three *last preceding sections* of the act, would seem to imply that section 224 did not extend to these by-laws. Only one of those sections, the 23rd, provides for the fixing of the annual or special rate: the 224th being the one which requires the submitting the by-law to the assent of the electors, when the debt to be contracted exceeds \$20,000, does not refer in any way to such rate, nor does the 225th section. If it was intended that the 23rd section should still apply to a by-law to be passed under the 226th, why is reference made to it at all as one of the *three preceding sections*?

There is much room to argue that none of the three sections relating to by-laws for *creating debts* extend to by-laws made for the purchase of public works, except in the manner and to the extent pointed out in the second paragraph of the 226th section.

As to the Kingston road purchased by the municipality, extending into the county of Ontario about three quarters of a mile, the statute (Con. Stat. Canada, cap. 28, sec. 76) authorising the sale of these works, specially provides that they may be sold to a municipal council, whether they be within the limits of the municipality or not.

Rule discharged.

CORRESPONDENCE.

County Courts—Original Judgment Rolls as Evidence.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—With reference to the judgment reported in this present July number of the *Law Journal*, in *Patterson v. Todd*, is a *subpœna duces tecum* from a Superior Court, requiring the production by the clerk of an Inferior Court of a record of his Court, to be regarded as “*higher authority*.” If not, why should the clerk of an Inferior Court be placed in the position of refusing obedience to a writ running in the Queen’s name, which charges a penalty for disobedience to Her commands. See rule 31 (Reg. Gen. T. T. 1856) H. C. & P. Act, 611.

Yours, &c.,

COUNTY COURT.

[Rule 31 reads as follows: “No subpœna for the production of an original record, or of an original memorial from any registry office, shall be issued, unless a rule of court, or the order of a judge, shall be produced to the officer issuing the same, and filed with him and unless the writ shall be made conformable to the description of the document mentioned in such rule or order.” The “higher authority” intended by the Court of Queen’s Bench, is evidently the judge of the County Court. Why, in the absence of such a decision as *Patterson v. Clark*, a clerk who in good faith obeyed the writ of a Superior Court, commanding him to produce the rolls of his Court at a Court being held in the same building, and in good faith obeyed the writ, “acted improperly and deserved censure” we are at a loss to understand. He was we think, under the circumstances, in the absence of authority to the contrary, warranted in looking upon the