The Colonist.

FRIDAY, SEPTEMBER 1, 1893.

WHERE ARE THE DRAINAGE COMMISSIONERS?

Every intelligent citizen who read the report of Wednesday evening's proceedings of the City Council must have been convinced that the construction of the surface drains should have been under the superintendence of the Sewer and Drainage Commissioners. It was then made plain to everyone that the City Councillors are altogether unfit to do the work. Why the management of the drains has been taken out of the hands of men of intelligence, integrity and independence and kept under the management of the City Councillors, who cannot tell the difference between a surface drain and a sewer, is not very difficult to understand. Nor is it hard to see why the contractor is not to employ "upon, about or in connection with the work, any person who is objected to by the standing committee on sewerage and drainage." The Commissioners are, we believe, still in office. They were appointed for a year; they were not dismissed; they did not resign, and they are not disqualified in any way from taking the oversight of the construction of the surface drains. We are quite sure that if the citizens were allowed a choice in the matter, the vast majority of them would rather entrust the supervision of the construction of the surface drains to Messrs. Turner, Earle and Teague than to the City Council, or any committee of its members. There are many obvious reasons why a work like sewer and drain construction should be placed in the hands of men who are not exposed to the temptations and embarrassments which hamper and beset members of the City Council. It is a matter of wonder to us that the majority of the Council did not insist upon the work being placed in the hands of the gentlemen we have named, or other gentlemen similarly qualified. The way in which the work is being mismanaged, is simply disgusting, and it would seem that the majority of the Council are quite unconscious that their management is phenomenally bad. We trust that the Mayor will explain to the ratepayers why this important work was not put under the oversight of competent Commissioners, but left in the hands of incompetent City Councillors, who, even if they were capable, ought not to have been entrusted with its management.

BEWILDERED COUNCILLORS.

The Mayor and some of the Councillors on Wednesday evening seemed at a loss to define the uses of a surface drain. We should think that, however ignorant they might be on the subject, they ought to know that a surface drain is not a sewer. When they asked the ratepayers for permission to borrow money "for the construction of certain surface drains," they could not have meant certain sewers, or an extension of the sewer system already constructed. We are very much afraid that His Worship the Mayor and the Councillors, who now wish to convert the surface drains into sewers, are not so stupid or so ignorant as they would like the public to believe. Had any ratepayer asked them before the vote on the Surface Drain by-law was taken if it was their intention to make the surface drains do duty as sewers, we venture to say that their answer would have been an emphatic negative, and perhaps the more impulsive among them would have added, "Do you think that we are such fools and so extravagant as to construct two sewers on the same street?"

It is quite certain that previous to the vote being taken neither the City Councillors nor the ratepayers had any idea of converting the surface drains into sewers. The perversion which is now advocated, and which has in part taken place, was evidently an afterthought, suggested, no doubt, by the exigencies of the aldermanic situation. The persons who wish to be accommodated by having their houses connected with the View street surface drain have votes and it is plainly difficult to deny voters who are or who may be supporters anything they may desire. The preservation of the public health, the comfort of the citizens, and the efficiency of the sewers are small matters compared with the advantages of having the Mayor and certain of the Councillors returned at the next municipal election.

It seems to us that the inquiry as to the precise nature and functions of surface drains is being made rather late in the day. The aldermen who took upon themselves to permit certain householders to connect with a surface drain should, we submit, have enquired of some competent sanitary engineer whether "sewer" and "surface drain" are convertible terms, whether a surface drain can properly be used as a sewer and whether a sewer which is part of a separate system can be safely used as a surface drain. A competent engineer would have given them information which would have prevented them from committing mischievous blunders and from making a public display of their ignorance and incompetence.

Even a little common sense would have been extremely useful in considering this question of sewers and surface drains. It might have occurred to them that there are times when a surface drain converted into a sewer must of a necessity be a nuisance to everyone in its neighborhood. Sewers, it is well known, are provided with contrivances to prevent the escape of noxious gases where they would do harm, and they can be flushed as often as is convenient or necessary. Surface drains have none of these devices. They are intended to carry off water and the comparatively harmless substances which water holds in solution or suspension. Noxious gases do not often accumulate in them, and there are times, like the present for instance, when many of them would be almost perfectly dry. At such times, if they were made to do duty as sewers, they would become the receptacle of decomposing filth, which would have to remain until the rains of autumn and winter carried it away, spreading, in the meantime, disease in every direction, besides making the atmosphere in their vicinity most offensive. Do we rate the aldermanic capacity too high when we assume that members of the City Council, if they put on their considering caps, would see that these results would follow permitting the surface drains to be used as sewers? There are aldermen who at times act as if they had little or no thinking power, but they are surely not a majority of that body. The Mayor, too, is considered intelligent, and he has the reputation of being honest. He must see that to use the surface drains as sewers is not only breaking faith with the ratepayers in the most flagrant manner, but committing an exceedingly stupid and mischievous blunder.

ABOUT THE SIZE OF IT.

The Toronto Telegram tries to console the British Columbia sealers with the reflection that, badly as they have been treated by the arbitrators, they fare better under their award than they would if Canada were either independent or an integral part of the United States. It says:

Maybe the British Columbian sealer is not as well off as he would like to be, but a more favorable award is the only conceivable thing that could have improved his position.

He is better off than he would be if Canada were independent, for then United States gun boats would have chased him out of Behring Sea, and that would have been the end of it.

And if Canada were a part of the United States British Columbia would not be allowed to disturb the monopoly of the Alaska Fur Seal Company. The award gives the sealers more than they could enjoy either as citizens of an independent Canada or of the United States.

If there is not much comfort in this for British Columbia sealers, there is food for reflection. There are a few Canadians who believe that their country would be better off in many respects than it is now if it were independent, but they must see that, situated as Canada is, its independence would be merely nominal. In all important matters it would have to submit to the dictation of the United States or suffer the consequences. If a dispute arose and became serious, it would have to accept the terms offered by its big neighbor or receive the treatment that Siam had to put up with the other day at the hands of France. If any sealer happens to be an annexationist, he will have only to compare his own situation now and before the arbitration was held with that of an American sealer to be convinced that he is much better off, as far as sealing is concerned, than if he were a citizen of the United States. He would then receive no compensation for injury done him by the assertion of the claim of the United States to exclusive jurisdiction over Behring Sea. He would have to bear his losses as best he could, and continue to wear, as patiently as his temper would allow, the yoke of the Alaska Commercial Company. There would be no compensation and no consolation for him.

AN ENCOURAGING OUTLOOK.

The prevailing depression has put nearly every one out of heart. Most people when they contemplate the present state of things are discouraged, and they see little to hope for in the immediate future. Is this gloomy state of mind warranted by the outlook in this Province? We do not think it is. We confess that we cannot see why the British Columbian who sees clearly what is going on around him should remain in the blues, or should join the croakers in their dismal jeremiads.

Business is dull now, not because the Province is not prosperous, or because its resources are not being worked and developed, but because we are affected by the stringency that prevails in the neighboring republic. At home, matters are going on well, and there is every reason to be hopeful. We are at the end of a most successful fishing season on the Fraser. The draught of fishes has been almost miraculous. The pack is one of the largest, if not the very largest, ever put up in the Province, and there has been, besides, an extensive and lively trade with the East in fresh salmon. This, the most melancholy will have to admit, is satisfactory. The sealers have been more successful than was expected. The fares which the schooners have brought home and those which are still to come will bring money and money's worth to the country.

The price of coal is low, it is true, but the output for this year will, on the whole, be beyond the average. The development of the Kootenay district is progressing steadily. The prospectors find much to encourage them. There is every reason to believe that the country is as rich in the precious metals as the most sanguine predicted that it would be, and deposits of other and very valuable minerals have been discovered.

The harvest is a good one, and a greater area of land is under cultivation than ever before. Attention is being paid to the raising of fruit. Tree planting has been going on briskly, and a start has at last been given to this neglected industry. The stream of immigration, if not very large, is continuous, and there is every prospect of large and valuable additions being made to the population of the Province.

A considerable number of men are employed in the logging camps and saw mills. The export of timber will be large, and there is good reason to believe that the United States market will soon be opened to British Columbia timber.

Then progress is being made in giving the Province the means of intercommunication it so badly needs. The Nelson and Fort Sheppard Railway is well under way. The construction of the Nakusp and Slocan Railway has been commenced. The Sidney and Victoria Railway will, before long, be an accomplished fact. The Fraser River Valley will, in a short time, have the railway accommodation which it has been waiting for, and which will do so much to make its resources available.

There is, in all this, not only no cause to be discouraged, but every reason to look to the future with hope and cheerfulness. There can be no doubt that British Columbia is doing well now and that she will do better in the near future. When the cloud of depression that lowers over part of the continent dissipates, which it is sure to do soon, this Province will, we are satisfied, progress as it has never progressed before.

SPORTS AND PASTIMES

AQUATIC.

CANOEISTS ON A CRUISE.

A. E. and E. M. Haynes, of the Victoria Canoe club, who have during the past two weeks been making a cruise of the Sound in Peterboro canoes, write from Seattle: "Arrived here O K.; paddled from Friday harbor to Anacortes and down through the sloughs to Everett, calling in at numerous small towns; after leaving Fairhaven we encountered some dense fogs, but had a most enjoyable trip, hope to reach Victoria about Thursday evening."

THE REGATTA.

The race on Saturday week between the V.A.C. and J.B.A.A. in 40 foot Siwash canoes promises to be an interesting as well as keenly contested event, and members of both clubs are working hard for victory. The single and tandem races as well as the upset race will without doubt call forth a great many of the canoeists.

THE J. B. A. A. REGATTA.

The following programme has been decided upon for next Saturday's regatta (September 2):

1. First heat, four-oared, club.
2. Single canoe, open.
3. Second heat, four-oared, club.
4. Tandem race, open.
5. Navy.
6. Final heat, four oared, club.
7. Upset race, 100 yards, open.
8. Junior scull, club.
9. Four paddle canoe, open.
10. Senior scull, club.
11. Thirteen-paddle canoe, J.B.A.A. vs. V. C. C.
12. Swimming, 100 yards, club.

Course—Four-oared races will be rowed from Coffin Island to club house, wind and weather permitting. Sculling races will start at club house to Coffin Island and return. Canoe races from club house, around Beaver rock buoy and return. Rob Roy canoes barred in upset race. Entries are to be made to the Boating committee before Monday evening next, 28th instant. An informal dance will be held in the evening of regatta day.

THE JABBERWOCK TROPHY.

KINGSTON, Ontario, Aug. 24.—The races for the Jabberwock trophy of the American Canoe association were called at 2:30 this afternoon. The stiff breeze of the morning had veered from the southwest to southeast and it was impossible to carry much canvass. The contest was between members of the central division, and the following five members were in the race: Enoch Ashton, jr., Troy; C. E. Cragg, Port Henry; C. G. Belman, Amsterdam; W. H. Blake, Troy, and L. C. Woodworth, Gouverneur. The start was an uneven one, Cragg and Blake colliding just as the signal was given, and to add to the excitement both upset shortly after crossing the line. Having cruising canoes they were unable to right them and had to be rescued by skiffs. Ashton had a good lead on the first lap, but tried to make the free run wing and wing and keeled clean over, with his centerboard up. He quickly righted, however, and by excellent sailing recovered his lost lead and came in first, Belman following. Woodworth broke his lee board and had to withdraw.

The time was as follows: Aston, 44 minutes 59 seconds; Belman, 48 minutes. Belman did some excellent work in the race, as he was handicapped, only carrying fifty-three square feet of sail, while Aston had eighty-five feet.

The wind was dying out in the latter part of the afternoon, and the judges called up the paddling upset race. This contest caused a good deal of amusement. The men to enter were: George P. Douglas, of Newark, N.J.; Vincent Pelletier, of Montreal, and A. H. O'Brien, of Toronto. The start was made paddling, and at a given signal all jumped into the water, turned their boats completely over, crawled into their canoes and paddled to the finish. Douglas won first in 2:40, O'Brien second in 2:42, Pelletier did not finish.

The members of the central division of the Amateur Canoe Association met at headquarters this afternoon. Commodore C. V. Winnie, of Albany, presided, and E. J. Sipple, of Albany, took the minutes of the meeting. The following officers were elected for the ensuing year; Vice-commodore, W. C Witherbe, of Port Henry; rear commodore, C. C. Bellman, of Amsterdam; purser, C. E. Craig, of Port Henry; executive committee, C. V. Winnie and W. R. Huntington.

THE CHALLENGER COMING.

LONDON, Aug. 24.—Lord Dunraven's cutter, the Valkyrie, challenger for the America's cup, sailed from Southampton for the United States early yesterday morning.

CRICKET.

VICTORIA C. C. V. ROYAL ARTHUR.

This match was played at Caledonia Park yesterday, and resulted in a win for the club on the first innings, the score being 103 to 64. For the club, Wallis contributed 42, Barff 19 and Paterson 10, the three being the only ones to get into double figures. For the flagship, Napier scored 15, Dr. Brown 14 and Lieut. the Hon. J. P. Hanley 10.

The Seized Haytian Republic.

PORTLAND, Ore., Aug. 24.—The owners of the steamer Haytian Republic are becoming weary of her lying idle, and are considering the advisability of giving bonds to secure her release. She is held for landing Chinamen unlawfully, and should the case be decided in favor of the steamer, counsel for the Government proposes to carry the case to the Court of Appeals, which would tie up the steamer indefinitely. She is already under $15,000 bonds at Seattle, and the owners claim this should be enough to ensure her presence whenever and wherever the Government might want her; but the officials here think differently, and want an additional $40,000 security.

Save dollars in doctor's bills. Eseljay's Liver Lozenges. 25 cts. at druggists.

From the DAILY COLONIST, August 25.

THE CITY.

JAMES D. GILLIE, of Nicola, has been gazetted deputy-registrar of the County court of Yale, vice John Clapperton, resigned.

THE Slough Creek Mining Co. (foreign) has been duly registered, with a capital stock of $500,000, and Victoria as the principal place of business.

LEWIS LEWIS, a native of Wales, aged 82 years, who was recently admitted to the Old Folks' Home, died in that institution yesterday. The funeral takes place to-day.

THE Island Sentinel Printing & Publishing Co., Ltd., has been duly incorporated, with a capital stock of $10,000, and three trustees—H. McCutcheon, M. P. Gordon and James Vair.

THE two Raymond boys, whose family gave their name to Raymond's Crossing on the E. & N., where they live, recently distinguished themselves by clubbing a bear to death. Bruin made a poor fight.

THE 18th day of August has been, by proclamation of the Lieutenant-Governor, fixed as the date for the coming into effect of the Railway Aid Act, 1893, as it applies to the Nakusp & Slocan Railway Co.

No word has yet been secured as to the whereabouts of Mr. M. F. Bailey, who is missing from his home at 63 Meares street. His family would be very grateful for any information that will assist them in the search.

THE next fall assizes to be held in the Province will be on September 27, at Clinton, where there are now two prisoners awaiting trial. They are Oaklyn, charged with horse stealing, and Bambric, charged with criminal assault. The Kamloops fall assizes are set for October 2. The cases of Regina v. Blaine (two), incest, adjourned from the spring assizes, will be tried, and also three larceny cases—Regina v. Quoloo-Kutsa, Regina v. McAllister, alias Armstrong, and Regina v. Matlock.

MR. T. W. PATTERSON, who recently returned from the East, where he had gone to purchase rolling stock for the Victoria & Sidney railway, states that the first purchase will total in value $40,000 to $50,000. This includes two Kingston locomotives, the one a Mogul of 74,000 pounds, eighteen freight cars and three first-class passenger coaches, which are now being built by the Crossin Car company, of Cobourg. The rolling stock will be here as soon as the company is ready for it.

W. F. SARGENT, secretary of the Slough Creek Mining Co., Tacoma, writes that the statement made by telegraph in a Seattle paper that this company had shut down on account of lack of funds, is untrue. He states that a contract has been let to sink a working shaft and build a shaft house, and that the necessary machinery and other material has been ordered for this purpose. Mr. Sargent also states that the work of development of the company's property will be advanced as rapidly as possible.

THE sale has just been completed of one of the largest and most valuable ranches in the Okanagan country. It was the property of Major Dupont and Mr. J. D. Pemberton, of this city, and has been sold to Sir Arthur Stephney. The ranch contains some 1,332 acres, of which 600 to 700 are in wheat, the balance being grazing land. As a wheat farm it is known as one of the best in the upper country. The transfer of the property has been made, and Sir Arthur goes into possession at once. The price paid is not stated, but it is understood to be a good round sum.

REFERENCE having been made to some "Indian troubles" in Shuswap by Mainland correspondents, recently, a visit was paid yesterday to the Indian Office, where the facts in a nutshell were obtained. Two young women of the tribe, with a male companion who acted as procurer, were not long ago whipped, after a fair hearing and upon conviction, for immorality. The matter was entirely one of a "family" nature, such as are left for the chiefs to deal with. Subsequently the man who was whipped laid an information against the chief by whose instruction he had been punished, and had almost all the Indians of the tribe before the J. P., either as co-defendants or witnesses. The case ended ignominiously.

THEODORE M. ALLEN, of Philadelphia, was in the city yesterday, en route to California. He was accompanied by Mrs. Allen, Miss Parke, Mrs. Pleasants, Miss Stokes, S. Stokes, Samuel S. Allen, Dr. Charles Schafer and Mrs. Schafer, of Philadelphia, and W. D. Wilcox, of Washington. Mr. Allen is one of the well-known capitalists of the Quaker City, and with the party mentioned is on a summer tour from Montreal out over the C.P.R., with liberal stop overs at Banff, the Glacier and Field. They left by the Kingston last evening for Tacoma, whence they go to San Francisco and home again by the Southern Pacific. Mr. Allen has been in Victoria three times now, and says even yet he has not seen too much of the Coast and the magnificent mountain scenery of the C.P.R. Dr. Schafer is a naturalist of some reputation, and has an unusually good collection of specimens this season.

THE department of Indian affairs may possibly be heard from in connection with the performance of the "Tamanawas" or "torture dance" by the Quackahl Indians from Fort Rupert at Chicago on the 17th inst. When the Indians from this Province were permitted to go to the World's Fair, it was with the understanding that they were to illustrate the habits and mode of life of their fellow-countrymen, not the barbaric rites practised by their ancestors centuries ago, and which, the "Tamanawas" especially being mentioned, have long been prohibited by British law. In British Columbia the "torture dance" has not been enacted for years, 49 Victoria, Cap 43, Sec. 114, making it an offence punishable by imprisonment for from two to six months, either to participate in or encourage the dance. The undertaking was also given when the Indians left home that they would be well cared for during their absence, and the Indian department hold that in allowing the dance the spirit of the agreement has been violated both by George Hunt and the Fair authorities. Of course, the published accounts of the dance may be accepted as somewhat exaggerated, for British Columbia Indians are particularly happy in devising spectacular effects, and the flaring torchlight would facilitate the hideous illusions in which the "Tamanawas" abounds. The dance is too well-known here to require the elaborate descriptions with which a portion of the American press has regaled its readers; the tearing of strips from the quivering flesh is one item of the hideous ceremony, the object of which in olden times was to test the mettle of the young braves volunteering for battle.

If you are Bilious take BEECHAM'S PILLS

JUDGMENT RESERVED.

Argument of the Case of Coughlan & Mayo Against the City of Victoria.

A Question of Procedure Raised—Mr. Justice Walkem Reserves His Judgment.

John Coughlan and M. C. Mayo v. the City of Victoria, Antone Henderson, James Munroe Miller and James Baker. Argument of the plaintiffs' motion for an order restraining the city of Victoria from executing or further proceeding with the contract for the construction of the Spring Ridge surface drains with H. H. Macdonald & Co., on the ground that the motion of the Council in awarding the contract was illegal, and for an order restraining the defendant James Baker from acting, sitting or voting as an alderman of the City of Victoria until trial of the action.

Mr. E. V. Bodwell appeared for the plaintiff; Mr. D M. Eberts, Q.C., for the defendants, the City of Victoria; Hon. A. N. Richards, Q.C., and Mr. H. D. Helmcken, for the defendant James Baker.

The grounds of the motion to restrain the city of Victoria from executing the contract or further proceeding with it are that the motion of the Council in awarding the contract was illegal, as the resolution awarding the contract to H. H. Macdonald & Co. would not have been carried except for the votes of the defendants, Miller, Henderson, and Baker, and that each of these defendants was, at the time of voting, disqualified to act or vote as an alderman of the city of Victoria. The ground of the action against the defendant Baker was that he was disqualified from sitting, acting or voting by reason of his being indirectly interested in a contract with the city. The affidavits on which the motions were based were, shortly, to the effect that the plaintiffs, Coughlan & Mayo, the defendants, H. H. Macdonald & Co., and one Walkley had tendered for the construction of the Spring Ridge surface drains; that the tender of the plaintiff was the lowest, but that the contract had been awarded to the firm of H. H. Macdonald & Co. by the Council, and that this was done in the face of a report from the City Engineer, showing that the plaintiffs' tender was lowest; that the resolution had been carried by the Council on a division, by the votes of the defendants Miller, Henderson and Baker, and that the votes of these aldermen, being illegal by reason of their disqualification, the motion was, therefore, illegally carried, and the Council should be restrained from carrying it into effect. Prior to the motion being made to the court, the defendants Miller and Henderson resigned, therefore the case as against them was not proceeded with. Against the defendant Baker, it was alleged that the firm of which he was a member had sold bricks to the contractor for the Cook street surface drains, and was, therefore, indirectly interested in that contract, within the meaning of the section of the Municipal Act relating to disqualification. Affidavits were filed by the defendant Baker and by the different contractors denying any actual interest in the contract, but admitting that bricks had been sold by the firm of Baker Bros. to the contractor for the Cook street surface drain, and that about 5,000 bricks had been sold to H. H. Macdonald & Co. for use in the Spring Ridge surface drain. It was stated that this last sale had taken place without the knowledge of the defendant Baker, and that on his becoming aware of the transaction he directed that no further brick be sold to H. H. Macdonald & Co.

Mr. Bodwell: The injunction should be granted against the city on the ground that the resolution was illegal if the facts alleged are proved to the satisfaction of the Court, and that the city should be restrained from proceeding with the contract notwithstanding that the resolution has not been rescinded. Municipalities have been restrained from acting under illegal by-laws and resolution though these by-laws have not been repealed or quashed. The question of whether the by-law is properly brought before the Court by motion for an injunction instead of an application under *quo warranto* to declare the seat vacant is disposed of in the Judicature Act, since which this Court has power to grant an injunction wherever it shall appear to the Court to be just and convenient. This constitutes an extension of the power of the Court to intervene by injunction. (Aslatt v. the Corporation of Southampton, 10 Ch. D., Jessel, M.R., pp. 147.) By the section of the Municipal Act in question, sec. 32, upon a person becoming disqualified by reason of his having any interest in any contract, he "shall immediately be disqualified from continuing to be Mayor, Reeve, Alderman or Councillor," as the case may be. There is, therefore, no necessity for removing a disqualified person by *quo warranto* proceedings, since the section quoted constitutes the offence which causes the disqualification, an *ipse facto* removal from the position. (Chaplin v. Town of Woodstock, 16 Ont., R. 728.) Reason and convenience alike, therefore, place a remedy by injunction in cases like the present. The offending officer should be immediately stopped from exercising his functions as an Alderman, instead of permitting him to continue acting until he should be removed by *quo warranto* proceedings. Upon the question of whether the facts alleged show an indirect interest on the part of Ald. Baker in the contract, within the meaning of the Act, *vide* sec. 30, sub-sec. 10, which reads:

"Any person, otherwise duly qualified, entitled to vote at a municipal election, may be elected a Mayor or Alderman, or a Reeve or Councillor, of any municipality, unless he is disqualified for any one of the following reasons, viz: * * * * (10) Having by himself, or through his partner, or as a director in any incorporated company, any contract whatever or interest in any contract with or for the municipality, either directly or indirectly."

This is a more stringent provision than that of the similar section (77) in the Ontario Municipal Act (Vide Lord Esher in Nuttal v. Wilson, 22 Q. B. D 744, Whitley v. Barley, 21 Q. B. D. 154, Burgess v. Clarke, 14 Q B. D. 785, and Todd v. Robinson, *ibid*, 741.) It is not denied that immediately after the defendents, H. H. Macdonald & Co., had received the contract from the city, supported by the vote of Ald. Baker, the tender of the plaintiffs' being the lowest, notwithstanding, the firm of Baker Bros., of which Ald. Baker is a member, immediately made a sale of 5,000 bricks to H. H. Macdonald & Co. for the purpose of constructing the said surface drains, and it might not be an unfair inference that Ald. Baker's vote had been affected by his prospects of making such a sale to the contractors in question, or, at all events, if it did not affect him, the policy of the act was at once satisfied by the circumstances that it might have affected a man of less integrity of purpose.

Hon. A. N. Richards, for the defendant Baker: Without wishing to reply on any technical objection in opposing the present motion, and stating that we are indifferent as to the form in which it comes before the Court so long as the interests of my client are protected as sufficiently as they would be if the matter were properly proceeded with, we submit that the only mode of procedure by which the tenure of Ald. Baker's position at the Council of the city of Victoria can be attacked, is by proceeding by *quo warranto*. So long as Ald. Baker occupies a seat at the Council this Court had no power to prevent his exercising his duties in that position. By section 78 of the Municipal Act of 1892, the validity of all contested elections shall be tested in the manner there prescribed, by filing a petition, etc.

Walkem, J.: This is not a contested election; do you propose to contend that we are to be governed by the sections relating to such contests?

Mr. Richards—Not further than to point out that there is no other method provided of vacating the seat, and the common law method of *quo warranto* must be adopted. If this injunction were granted at all to prevent Ald. Baker from acting as alderman, the seat would still not be vacant and the inconvenience to the community would, therefore, be very great, as Mr. Baker would be prevented from acting in his official capacity and the Council would have no means of vacating the seat and providing for the election of another person in his stead. For this reason the Court should not interfere, as it would be neither just nor convenient. The question as to whether or not the transaction Ald. Baker had had with this contractor constitutes an indirect interest in the contract, as dealt with in the authorities, which we contend does not support any such proposition, (Royse v. Birley, L. R. 4, C. P. 296, Peddington v. Riddell, 4 Ont. P. R. 80, Le Fanvre v. Lankaster, 3 E. & B., 530, and other authorities mentioned at page 65 of the 5th edition, Harrison's Municipal Manual.) In all these cases the acts which were alleged to constitute disqualification made a much stronger case against the defendants than those alleged in the present case. Mr. Baker sold these brick in the ordinary course of business, and the contractors were bound to pay for them whether they suited the purposes of the contract or not. The contractor might, if he wished, employ them for any other purpose. If the proposition put forward were to be carried out to an extreme length, as is proposed in this case, it would prevent any alderman being a hardware merchant from selling a jack plane to a contractor who might have a contract for work with the city.

Mr. Bodwell, in reply, drew attention to the foot-note in Harrison's Municipal Manual, wherein the author stated, "Had the words been 'had any share or interest in, or be in any manner, directly or indirectly, concerned in any contract or bargain,' a wider interpretation would have to be given to the section." He contended that the wording of the Municipal Act is equivalent to going to the length of the words quoted as above, and that therefore the authorities stated by the defendants, which were cases based on a different section, having not such extensive length as the act here, do not govern in this case, but the Court must be governed by the decisions of English courts based upon a similar statute to our own.

The Court reserved judgment, promising to give a decision at as early a date as possible. It is not unlikely that the decision will be announced this afternoon.

DR. MILNE'S OPINION.

TO THE EDITOR:—It would appear from the discussion at the Council meeting last evening that the statement made that the Council are allowing surface drains to be utilized as a carrier of sewage is correct. Your remarks in Tuesday's issue I fully agree with—that if such be allowed to take place, and that surface drains are to be utilized for sewerage purposes proper, it will make the system of sewerage we have adopted a failure. It would seem that the course now adopted by our city aldermen is for this purpose. Some of the aldermen last evening were candid to admit that it was the intention to utilize the surface drains for making house connections and the carrying off of all kinds of sewage. One of the aldermen went further and stated that they are real sewers. If such be the case, is it not apparent that the Council are using the funds for another purpose than for which they were voted? The by-law on which the money was obtained for such purposes was for surface drains and not for sewerage proper. I further learn, by reading the report of the Council meeting last evening, that the View street sewer is to empty into the surface drain on Cook street, which is another absurdity. If the drain on View street be a sewer drain, why not let it empty into its proper channel, viz., the Cook street sewer. It will be noticed that we have two sets of sewers; on Cook street one now built for the carrying of sewage and one to be built 4 feet by 4 feet 9 inches (large enough to drive a coach and four through) which is to be used on the combined system. Thus, it is readily seen that the plan of sewerage as voted upon and adopted some years ago is becoming converted into something else. Never was it intended that there should be two drains on Cook street adjacent to one another, to be utilized for carrying sewerage, but this is what is now being done. Furthermore, when the by-laws for the surface drains were before the ratepayers it was understood generally, and by the by-law itself, that the money so voted would be utilized for that purpose. I notice that one of the aldermen thinks it would be hardship if the people were not allowed to connect with the surface drains. Does the same alderman think it a great hardship to the citizens who are not on the line of the surface drain utilized for sewerage, who have voted their money for a different purpose than that for which it is used? Or I might ask another question: can it be expected in future that those who are now accommodated with a sewerage system as now adopted on View street will vote for a proper system, either by the local improvement or any other plan?

I think not; when they can get their sewage taken away by the city and not by any other expense to themselves they will remain satisfied.

The course now pursued by the Council in reference to the surface drains is unfair to the ratepayers who have voted the money for a certain purpose, and is unsanitary to the general public if allowed to proceed. No one having the least knowledge of sanitary matters would allow water closets and cesspools to connect with a surface drain, no matter how perfect a drain of this character may be in construction. There are regulations and provisions necessary, by the way of flushing and ventilation, for the preservation of health, which are not provided in the construction of surface drains.

G. L. MILNE, M.D.

Victoria, Aug. 29.

A woman, whose own caused the household to shiver
Is now the most peaceful with whom you could dwell;
Her crankiness came from complaints of the liver,
And Eseljay' Lozenges made her quite well.

SEIZED SEALERS RETURN.

The "Minnie" Leads the Homeward Bound Procession With the "Ainoka" Not Far Behind.

Schooners "Annie C. Moore" and "Annie E. Paint" Captured—The Search Light Plays Its Part.

The British sealing schooner Minnie, Julius Moorehouse, master, arrived in port yesterday morning, having disobeyed the injunction of the commander of the Russian cruiser Jacoute to report to the British consular agent at Yokohama, and made all speed home. She reports the schooner Ainoka, which was dispossessed of her papers under similar circumstances and about the same time, as pursuing a similar policy, and due to arrive here at any hour, having left the Japanese coast eight days before the Minnie. The circumstances of both seizures have already been related in brief. In the case of the Minnie, both master and mate assert that when overhauled, on July 17, the vessel was about 49 miles off the south shore of Copper Island, in latitude 53° 49' north, and longitude 168° 43' east. The weather had not been favorable for an observation for six days, but the officers of the schooner are confident that they were not so far out of their reckoning as the Russian officers claimed.

In the temporary certificate given the Minnie when she was seized, to be forwarded to "Her Brittanic Majesty's authorities," the Russian captain fixes the scene of her detention as in latitude 54° 21' north, longitude 168° 38' east or 22 miles south of Copper island. The distance from shore was, he explains, estimated upon the speed of his ship and the time occupied in running out from shore. In this calculation it is quite possible that a mistake may have occurred, for Captain Moorehouse claims to have been told by the navigating officer of the Jacoute that the calculation of 22 miles was made at 8 a. m., whereas the schooner was not overtaken until an hour later, which would bring her well outside of the circle of the protective zone. The conviction or re-arrest of the vessel will therefore, in all probability, rest upon the substantiation of the facts as to her position when seized. In support of the schooner's testimony the evidence of the masters of the Libbie and Viva will be obtainable, for at the time of the capture these vessels were not more than five miles distant, in plain view, and, like the Minnie, standing out to the open sea.

Captain Moorehouse experienced no discourtesy at the hands of the Russian officers, who, after receiving the information from him that he was flying the British flag, "proposed to him, the said Julius Moorehouse, that he proceed to Yokohama, where he must present himself to Her Brittanic Majesty's Consular agent." The schooner's papers were retained by the cruiser to be forwarded to the British authorities; the sealskins in the hold were inspected but not disturbed.

After seeing the warship stand away, Captain Moorehouse decided to make for home instead of Yokohama, some of the rigging having been carried away and the schooner being otherwise in need of repair. He thought, too, that if the schooner was in trouble the men might just as well be landed at home as in a foreign port, to be sent home at the expense of the Government. The seizure of the Ainoka was not heard of until the homeward voyage was commenced, but from the Mary Ellen, Libbie and Volunteer, the latter of Seattle, the news was received that the Annie C. Moore, the Annie E. Paint and the George H. White had all been gathered in, the Moore with her catch being taken to Petropaulovsky. When last spoken the Mary Ellen had 1,600 skins, the Volunteer 25 and the Libbie 1,300; the Minnie experienced poor luck, securing a catch of but 509, which she is now discharging. She made but one call on the homeward run—at Pachena, where her Indian hunters were landed.

Confirmation of the seizure reports is obtained from Captain Shields of the Vera—the once celebrated Halcyon—who also is safe at home with 2,009 skins of his own and the twenty belonging to the Penelope, which were picked up with a boat's crew belonging to that vessel early in the season. The news of the seizure of the Paint and the Moore came to him in a roundabout way, without particulars. Not so the report of the Ainoka's misfortune, for he was on board that vessel the day after her encounter with the Russians, and then was advised that the intention was to report at Victoria, instead of Yokohama. The Ainoka was seized at night, the man-of-war picking her up with one of her electric searchlights while the schooner was lying at anchor with all on board, save the watchman, asleep.

Those on board the Vera are inclined to the belief that if the seizure of the Moore proves to be a fact it will be found that her boats getting too close inshore last season will be made the excuse for her present molestation. Both the Moore and the Paint when they sailed this spring had explicit orders from the owners to keep well outside the line of protection, and it is not likely that the captains would be foolish enough to disobey.

The Vera sailed for home on the 5th inst., and made good time across. She brings late reports of the Carlotta G. Cox, with 2,500 skins secured in Japanese waters, the Triumph with a catch of 2,061, and the Ocean Belle with an island water catch of 200 odd.

A third sealer arrived late last night and anchored off the entrance to the harbor. As neither captain nor crew came ashore, it was impossible to secure particulars of her cruise in time for publication in this issue.

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