

Routine Business

Occupied the Attention of the Board of School Trustees Last Evening.

Flags to Be Flying on All the Schools by May the 24th.

The regular monthly meeting of the board of school trustees was held last evening in the council chamber in the city hall, when matters of ordinary importance came up for consideration. In fact the business transacted was of a rather light character, and productive of but little animated discussion.

There were present Chairman Dr. Lewis Hall and Trustees Brown, Drury, Mrs. Gordon Grant, Mrs. Helen Grant and McCandless, Superintendent Eaton and Assistant; Trustee Belyea being the absentee.

After the usual preliminaries a communication was received from L. Tait, principal of Victoria West school, asking for supplies for the Mission school, Victoria West. Referred to the supply committee with power to act.

Miss M. Williams, principal of the Girls' Central school, wrote directing attention to the necessity of improving the blinds in some of the divisions, and that cupboards be inaugurated in order that stationery, etc., may be conveniently stored. Attention was also directed to the unstable condition of the flagpole in the rear of the school. The principal also suggested that the telephone now used by the Boys' and Girls' schools and Collegiate Institute be placed in a more central position, Principal Paul's room being most convenient. The question of the blinds and cupboards was, on motion of Trustee McCandless, referred to the supply committee with power to act, while the telephone and flagpole matters were referred to the building and grounds committee.

Communications were received from Mrs. Pope on behalf of her daughter, and Mr. Brown, accepting appointments on the teaching staff. Received and filed.

Mr. Bailey, janitor of Hillside avenue school, wrote asking for an increase of salary. Referred to the committee of management.

The secretary reported that the actual enrollment of pupils in the city schools during the past month was 2,330; the actual average enrollment 2,050.00. The report took the usual course after which a communication was read from Miss Laura Tingler, asking that her name be retained in standing application for appointment on the teaching staff in the city. Received and filed.

Mr. H. Dallas Helmcken, M. P. P., wrote asking permission for Capt. Clive Phillips-Wolley's poems to be placed on sale in the public schools, in aid of the patriotic fund. Mr. Helmcken also offered to donate a flag to be placed at one of the schools.

Trustee McCandless, in speaking to the first portion of the communication, moved that this be received, and that Mr. Helmcken be authorized to place the poems on sale in the public schools. Mr. McCandless pointed out that while the object was a most admirable one, it would be imprudent to comply with the request.

Trustee Drury concurred with the preceding speaker, as did Trustee Brown, who directed attention to the fact that there was a rule in the regulations dealing with this matter. He personally had no objections for the teachers to sell the poems privately, but the money being carried the same gentleman's motion being carried the offer of Mr. Helmcken regarding the flag be accepted with thanks. Carried unanimously.

The finance committee recommended that a new writing machine be purchased for the secretary's office, as the present one was absolutely unfit for use. This provoked general favorable discussion, Trustee McCandless giving it as his opinion that an efficient machine could be secured for about \$20, while the present one was a high-price apparatus that could be obtained from several dealers at a substantial reduction. Referred to the supply committee with power to act.

The finance committee further recommended the payment of accounts amounting to \$208.80. Received and adopted.

Superintendent Eaton reported as follows:

Ladies and Gentlemen: I have the honor to report as follows:

The complaint that one of the trustees had collected a larger stationery fee than the regulations permit proves, as I expected it would, to be unfounded. It would be much fairer if parents who are dissatisfied would present their grievance first to the teacher, and, failing satisfaction there, then make their complaint in a formal way to the board. I think it would be well if trustees would keep rule 13, section 8, of their own regulations in mind when these petty complaints are made, and advise the complainants accordingly.

It may be of interest to you to know that, with the present term's attendance, if the maximum fee were to be collected, the full amount for the year would be \$400. But the amount actually collected will not exceed \$750. That is, the stationery supplies for all schools can be bought by the teachers for \$750, while if individual pupils bought their own supplies the aggregate cost would not be less than \$2,000. So that the present system, besides being better for the schools, is very much cheaper for the parents. On the other hand, if the trustees were to furnish all such supplies, as they do the chalk, the aggregate cost would not exceed \$400.

Respectfully submitted,
FRANK H. EATON,
City Superintendent.

Trustee Brown explained how the subject came up, a parent having spoken to him regarding it, and he considered that

it was only right that such questions be referred to the school board.

Superintendent Eaton remarked that the teachers felt aggrieved when complaints were made to the board which placed them under suspicion, even though it was ultimately ascertained that such were absolutely unfounded.

Trustee McCandless thought that the complainants should first refer the subject to the teachers, and if no satisfaction was obtained, then to bring it before the attention of the board. The explanation was received and filed.

On behalf of the building and grounds committee, Trustee Brown read a communication from J. H. Lawson for the use of the vacant lot adjoining the Kingston street school for playground purposes, for the period of five years, with the privilege of purchasing the property, the price to be the city's valuation, amounting to \$1,050. The board would be required to defray the tax charges and interest at 5 per cent.

Trustee Brown pointed out the most favorable nature of the offer and the conditions. It was equivalent to a five years' lease, while the annual cost for interest and taxes would amount to about \$75. That these grounds were necessary was patent to every one.

Trustee Drury advocated looking into the question well before taking some definite step; "a per cent. interest was certainly no snap." The board should also provide for the future, and it may be that a new building might some day be required on the site. He favored laying the communication on the table.

Trustee Brown replied that the present building will in all probability exist for all time, and whether the lot is secured permanently or temporarily, any extra buildings deemed necessary will have to be erected on it. Something must certainly be done in this matter. The present offer was immeasurably more favorable than the previous one, and any improvements erected on the lot would, in accordance with this proposal, redound to the benefit of the board.

Trustee McCandless favored looking into the matter further before taking action, and the communication was finally tabled, with the understanding that Mr. Lawson be notified that the matter would come up before the board at a future date for mature consideration.

Tenders for flagpoles were also submitted through Trustee Brown, and referred to the building and grounds committee, with power to act.

Trustee Brown, on behalf of the building and grounds committee, reported progress, and asked for an extension of time to consider the feasibility and conditions of renting grounds adjacent to the Victoria West school for play ground purposes.

Trustee McCandless's motion to allow Miss Watson of the Collegiate Institute permission to collect from the young ladies practicing for the competition for Capt. Wolley's flag, in order to defray the expense of hiring a piano, evoked considerable discussion, inasmuch as the chairman remarked that he would have to rule it out of order as 48 hours' notice was not given. The chairman cited his authority from the regulations, but the section dealing with this matter was suspended, and the motion carried.

Trustee Mrs. Helen Grant offered to donate a flag to one of the schools, which was accepted with thanks.

Mr. John Piercy's offer of a flag was also accepted with thanks, as was that of Trustee McCandless, who casually remarked that it would be a good idea to have all the flags flying at the schools on May 24th.

Chairman Hall's resolution to ask the city council to allow the board the use of the rooms formerly occupied by the fire department staff in preference to the present apartment was carried with little discussion, although Trustee Brown divided the board as to the propriety of the expense of refitting before committing themselves to any definite action.

After some further discussion of a private character the board adjourned.

A WARDNER ENGINEER

Tells How Prisoners Were Treated by United States Soldiers.

Washington, March 12.—L. J. Simpkins, electrical engineer at St. Wap, Idaho, testified in the Cour d'Alene investigation to-day. He said he did not participate in the riot, but soon after that time he was arrested by United States troops who went about the streets arresting those persons pointed out by Bunkerhill mine spotters. Two spectators on the streets who stopped to see the soldiers and their prisoners were promptly arrested and put in with the other prisoners. One of the prisoners, a Swede, was taken with a fit, whereupon a negro soldier struck him senseless with the butt of his gun. The corporal of the guard came, and turning over the fallen man, said: "I guess you fixed that fellow all right." Simpkins said one of the prisoners was robbed of \$90.

One of Simpkins's recitals caused something of a sensation. He said he was taken from the "bull-pen" by a squad of four soldiers and marched to an open enclosure where he was placed with his back against a building. The soldiers stepped back and cocked their guns, apparently making ready to shoot him. At this point, he said, a high official of the Bunkerhill mine appeared, and said they had evidence enough to hang the witness or send him up for many years, but if he could tell who blew up the mill he would be turned loose. Simpkins said he protested that he did not know who the guilty parties were, and the effort to get evidence from him was finally given up.

Witness stated that at another time, while in the "bull-pen," a party came to him and said he was authorized by an official to offer him \$10,000 to implicate two persons in blowing up the mill. This party said it did not matter much who were implicated, but the names of certain miners and the county assessor were given, in which the latter declined for the purpose, witness said, of hanging them or getting them out of the country. He said he afterwards learned that the assessor had trouble with the Bunkerhill mine over their assessment.

Witness detailed an interview with an army officer, in which the latter declined to permit a priest to be summoned to one of the prisoners who was dying, and also refused to allow him to communicate with his partner as to the disposition of his property.

Douglas St. Extension

Action Against the British Columbia Electric Railway Dismissed With Costs.

Judgment Determined by Mr Justice Drake in the Supreme Court.

The following is the judgment of Mr. Justice Drake in the action of Yates and Corporation of Victoria vs. the British Columbia Electric Railway. The action was dismissed with costs:

This action is for a declaration that the defendants are bound to operate that portion of their tram line between the northern limits of the city and Hillside avenue, and for damages to Yates for not carrying him over such portion of the road, he suing as a ratepayer.

All the facts are agreed upon with the exception of the fact that the operation of this part of the road entailed a loss on the company, and therefore they closed it up to tram traffic. On this point Mr. Goward gave evidence which was uncontradicted.

The present defendants are successors to the original promoters, who made an agreement with the corporation on 20th November, 1888.

These gentlemen were incorporated as a joint stock company with limited liability, under the style of the National Electric Tramway & Lighting Company.

In 1890 the company obtained a charter from the provincial legislature authorizing them to construct tramways connecting certain of the country districts with the tram system of Victoria, and in pursuance of these powers they constructed a tramway from the then existing termination of their line on Douglas street, on the northern boundary of the city, along Saanich road towards North Saanich. This line was only continued a short distance to a point at the junction of the Saanich road and Telmide avenue, and traffic on portion of this line was discontinued on the 25th of April, 1898.

At the time the agreement before referred to was made between the promoters and the corporation, the northern limits of the city were extended to a point on Douglas street which is parallel with the southern boundary of lot 8 on the easterly side of said street.

On 23rd April, 1892, the territorial limits of the city were extended and included portion of the Saanich road, on which the company had laid their track in pursuance of their above mentioned charter.

On 26th December, 1893, the corporation passed a by-law renaming the portion of Saanich road so included as Douglas street extension.

On 13th of April, 1894, the company obtained a private act, 53, 1894, the consolidation and confirmation of their rights, powers and privileges, and to change the name of the company to that of the Victoria Electric Railway & Lighting Company, Limited.

The first section of the act ratifies the agreement of 20th November, 1888, and the corporation and company are thereby empowered to do whatever is necessary to give effect to the substance and intention of the provisions of the agreement; and they are respectively declared to have had power to do all acts necessary to give effect to the same, and the obligations created thereby, and that clause 4 of the Street By-law, 1888, shall be binding on the company so long as they shall exercise any of the powers or privileges of the company referred to in the agreement.

It is obvious that doubts existed as to the validity of the agreement, either on the ground that the corporation, or promoters, had no power to make it, or that some of the provisions were possibly ultra vires. If this view is correct, the corporation are bound to confirm the agreement, not extend or make a new one, or impose any other conditions or stipulations than such as are found in the act.

The latter part of the section merely says the agreement operative so long as the corporation are exercising their powers. The point taken by the corporation is that the company by this act and agreement are not permitted to abandon any portion of their line within the present city limits when once laid down and operated, but are bound to run cars at intervals of not more than thirty minutes under section 22 of the agreement; and that the schedule mentioned in the agreement "Douglas street to northern boundary of city limits," by the fact that at the time this act was passed the boundary had been extended so as to include portion of the tramway which had been constructed outside of the city limits, must be held to cover this additional portion of the line. In other words, that the agreement must be read so as to include the extended limits within its operation.

An act of parliament must be construed like any other document. The question at once arises, what was the contract the promoters and the company entered into? That contract was limited to the northern boundary of the city, as it existed in November, 1888; and the stipulations of the agreement only refer to tram lines laid down within the limits and over the streets mentioned in the schedule. The act of 1894 nowhere extends those limits, or makes any alteration in the terms and conditions of the agreement. On this point therefore my judgment must be against the view put forward by the corporation.

Mr. Taylor's contention that because at the time the agreement was confirmed, the city limits had been extended the confirmation must by implication alter and vary the agreement is not tenable. The agreement when made was within the powers of the contracting parties, and there is nothing in the act which either limits or extends the agreement.

As to the company's rights to construct tram lines over the streets mentioned as they then existed. And the further contention that when once a tram line has been constructed it may be operated for all time, and section 22 of the agreement is relied on. The agreement to construct and operate the tram line is merely permissive. No exclusive privilege is granted, the corporation have inserted clauses in the interest of the public to govern the line and its operation, but they must operate the street lines over any or all the streets mentioned in the schedule, but they are not compelled to; but the corporation now say once you have constructed any portion of your line, even though it was made under a charter of the provincial government, and not under your contract with us, we will not allow you to close it again. There is no such condition in the agreement or in the charter. The corporation rely on clause 22 of the agreement, and the true meaning of that section, if it could be extended to the line in question, is that while the company operate the line they must operate it according to that section. The construction contended for would be most unreasonable. It was held by A. L. Smith, L.J., in *Darson Local Board v. London & N. W. Ry.*, (1894) 2 Q.B. at p. 708, "If an act is enabling so as to impose an obligation to make a railway, it is impossible to impose an obligation to maintain; and at p. 712, "If the legislature was imposing the novel obligations upon a railway company to maintain its works for some period, some apt words would certainly be found in the act imposing that obligation, and yet the act is altogether silent upon the subject, though other words are now said to bear that meaning and are pressed into service to do duty for those which cannot be found." This language is very applicable to the present case. There is nothing to prevent the company, after it has laid a track down, to remove it for reasons satisfactory to themselves if they find it is inexpedient to continue to operate any particular portion of the line, and the language used in clause 22 does not impose on the company any bar in this direction.

I have not referred to the points raised by the defendants, that under no circumstances can Yates maintain this action, his position of a ratepayer not giving him any locus standi to enforce a contractual obligation entered into between the company and the corporation, because in my view the plaintiffs have failed in their action, which must be dismissed with costs.

14th March, 1900.

M. W. TYRWHITT DRAKE.

W. J. Taylor, Q.C., and J. M. Bradburn for the plaintiffs, and A. E. Phillips and G. H. Barnard for defendants.

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I have not referred to the points raised by the defendants, that under no circumstances can Yates maintain this action, his position of a ratepayer not giving him any locus standi to enforce a contractual obligation entered into between the company and the corporation, because in my view the plaintiffs have failed in their action, which must be dismissed with costs.

14th March, 1900.

M. W. TYRWHITT DRAKE.

W. J. Taylor, Q.C., and J. M. Bradburn for the plaintiffs, and A. E. Phillips and G. H. Barnard for defendants.

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