

LEGAL DEPARTMENT.

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Municipal Corporations.

THEIR POWERS AND JURISDICTION.—
HIGHWAY.

If the work referred to in section 560 of the Consolidated Municipal Act, 1892, is not proceeded with during the favorable season by the township officers, then the commissioners appointed pursuant to the said section, shall undertake and finish it themselves. Where the commissioners do the work, some provision is necessary for payment. It is, therefore, provided by section 561 of the said act that the money shall be paid by the county treasurer on the order of the commissioner or commissioners. When so paid the money is to be retained by the county treasurer out of any money in his hands belonging to the township; if none, then the county council may levy against such township a rate sufficient to cover such advances in questions of this kind. The county council is, as it were, being made the arbitrator between townships in the same county. But where the townships interested are in different counties, the wardens of the counties are, by section 562 of the said act, made the arbitrators; their power as such arbitrators is to determine upon the amount which each township shall be required to expend, either in money or statute labor, or both, and the mode of expenditure. The initiative action rests upon the warden of the county in which the township that first made the application is situated. He is the convenor of the meeting. It is made his duty to notify the warden of the county and the county judge of the time and place of meeting. This he must do within eight days of the time of his receiving the application. Section 565 of the said act makes provision as to the manner in which county and township councils may deal with minerals on or under highways.

Minerals, so far as the municipalities are concerned, are by this section placed on the same footing as growing timber, as to either, the municipal corporation may now pass a by-law for sale. The deed of conveyance or lease to the purchaser or lessee under the by-law shall contain a provision protecting the road for public travel, and preventing any uses of the granted rights interfering with public travel. The right of the public to the use of the highway as a highway is paramount to any right to reserve minerals, the latter right, therefore, must be so exercised as not to interfere with the former. The municipal corporation is liable to be held by any person sustaining damages by reason of defect in the highway.

Sub-section 3, of section 566, confers on county constables the right to pass by-laws for directing that on each or either

side of a highway, under the jurisdiction of the council passing through a wood, the trees (unless such are reserved by the owner for ornament or shelter), shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor, within a time appointed by the by-law, etc. Powers precisely similar to those by this clause, conferred on counties, are also conferred on townships by sub-section 3 of section 567. These sections do not apply when the trees are on one side of the road only. The former sub-section is to be read only as to the roads over which county councils have exclusive jurisdiction, the latter sub-section is to be read only as to roads vested in the townships. By this construction, conflict of jurisdiction is prevented. The sub-section under discussion authorizes a serious interference with private rights, and yet makes no express provision for compensation. The general rule is that when the property of a private individual is interfered with for a public benefit, compensation shall be made. If the proprietor himself cuts the trees they become his property, as owner of the land, but if he makes default the by-law may authorize the trees to be used either for municipal purposes or sold to defray the expenses by carrying the by-law into effect. Further expenses, if any, are to be paid out of the municipal funds. Sub-section 5, of said section 566, gives to councils of counties the power to pass by-laws to aid a town, township or incorporated village, by loan or otherwise, toward opening or making any new road or bridge in such town, township or incorporated village. The ordinary powers of a county council are, so far as roads and bridges are concerned, to deal only with county roads and bridges. County councils have no power to make grants in aid of the ordinary roads and bridges of particular local municipalities.

Legal Decisions.

MANGAN V. CORPORATION OF WINDSOR.

A contract for the construction of a sewer, between the corporation of the town and the plaintiff, provided for its construction within a limited time, but which was extended by resolution of the council, and again informally extended for a further period. The contract provided that, if the contractor neglected or refused to prosecute the work to the engineer's satisfaction, the corporation might employ and place on the work such force, men and teams, and procure such materials as might be deemed necessary to complete the work by the day named for the completion, and charge the cost thereof to the plaintiff, and by the specifications, which were made part of the contract, the same powers were conferred without any restriction as to time. The work not having been proceeded with to the engineer's satisfaction, the corporation, before the expiration of the second extension of

time, exercised the powers above conferred.

Held, that, under the contract, the power conferred could only be exercised during the time for the completion of the work or its extension thereof, but under the specifications, even after such time, and, therefore, even if they could not avail themselves of the second extension as granted informally, the powers would be properly exercised under the specifications.

A claim by the plaintiff that the defendants caused the amount stipulated for the payment of the work to be exceeded by the employment of more men etc., and the payment of larger wages than was necessary was found against him.

RE LONDON STREET RAILWAY CO. VS.
CITY OF LONDON.

Judgment on appeal by the defendants from the judgment of Falconbridge, J., the trial judge, in favor of the plaintiffs in an action for an injunction to restrain interference by the defendants with the construction of a track on a portion of the street railway line operated by the plaintiffs on Dundas street, west of Richmond street, in the city of London. Appeal allowed, judgment of trial judge set aside, and action dismissed with costs.

The court held that the plaintiffs have no right to meddle with the roadway in question, except in so far as they are authorized by the by-law of the defendants, and the agreements ratifying its terms. Under the second clause of the by-law, they are entitled to lay a single track at the point in question. Whether they are entitled, along with this single track, to lay "necessary side tracks, switches and turnouts" is a matter in dispute which the court does not find it necessary to determine. Having the right to lay a single track, and not a double track, they are obliged, under the sixth clause of the by-law, to lay it in the centre of the street, and, as the gauge is fixed at four feet, eight and a half inches, each rail of the single track should be two feet, four and a quarter inches from the centre line of the street. Supposing them entitled to lay down a side track or switch, they must lay it on one side or other of their track, so that, for example, if they lay it down on the north side of their track, the whole south half of the roadway, excepting only two feet four and a half inches adjoining the centre line of the street will be entirely unobstructed. The plaintiffs, instead of doing this, have laid down double tracks, the inner rail of each track being two feet from the centre line of the street, with the result that they occupy on each side of the centre line of the street the space of at least six feet four and a half inches, besides the width of the rails and the projecting portion of the ties. It is plain, therefore, that the plaintiffs, upon their own construction of the by-law, are interfering on one side or the other of the centre line of the street with a strip of