

known as the York roads, and especially that portion thereof called the Kingston road, the management of which he had superintended for some time. The Kingston road extends from the city of Toronto, beyond the limits of the said united counties, into the county of Ontario about three quarters of a mile.

During the term, *D. McMichael* and *Robert A. Harrison* shewed cause. The by-law or resolution does not create the debt in terms, but authorises an agreement to be entered into to pay for the roads in a certain way; and if it does not create the debt, the municipality may properly pass the resolution. It is under seal, and in that respect complies with the requirements of *Con. Stat. U. C. cap. 54, sec. 189*, to constitute it a by-law. Courts will endeavour to construe the by-law so as to give it effect: *Cameron v. Municipality of Nissouri*, 13 U. C. Q. B. 190. There is nothing illegal on the face of this by-law: *sec. 226* authorises the council to contract a debt, and the resolution merely authorises the warden to enter into an agreement to pay in a certain way. There is nothing on the face of this resolution to shew that any debentures are to be issued under it, and the court will not look behind the resolution to see if anything that may be illegal will be done under it: *Secord v. The Corporation of the County of Lincoln*, 24 U. C. Q. B. 142.

J. O'Connor, contra.—None of the provisions of sections 223 and 224, of the statutes referred to, have been complied with in this by-law. It does not name the day on which it is to take effect: it does not settle a special rate per annum, nor shew the amount of ratable property in the municipality, nor any means of paying off the debentures and interest. There is no other by-law supplying these defects; and what is a more serious objection, the by-law or resolution was not submitted to the electors for their assent before or since the passing thereof. The by-law in fact creates and raises a sum of money upon the credit of the municipality exceeding \$20,000, and ought, under section 224, to receive the express assent of the electors. The latter part of section 226 says, "such by-laws, debts, bonds, &c., shall be valid, though no special or other rate per annum has been settled or imposed to be levied in each year as provided by the then preceding sections;" but this does not make the by-law legal unless assented to by the electors. It may not, perhaps, be necessary that it should contain the special provision about rate per annum, sinking fund, &c., but the assent of the electors must be had, for that is not dispensed with. One of the roads extends beyond the limits of the municipality, and it is not contemplated that municipalities shall acquire property out of their limits, except for special purposes. Sections 187, 243, 331 & 339 of the statute apply more or less on this point. He cited *Clapp v. Thurlow*, 10 U. C. C. P. 533; *Paffard v. County of Lincoln*, 24 U. C. Q. B. 16; *Scott v. Peterborough*, 19 U. C. Q. B. 469; *In re Hawke v. Wellesley*, 13 U. C. Q. B. 636; *Edinburgh Insurance Company v. St. Catharines*, 10 Grant's Ch. R. 379; *Carroll v. Perth*, Ib. 64.

RICHARDS, C. J., delivered the judgment of the court.

(To be continued.)

COMMON LAW CHAMBERS.

(Reported by *ROBT. A. HARRISON, Esq., Barrister-at-law.*)

THE QUEEN V. CHAMBERLAIN ET AL.

Bail in criminal cases—Copies of information, examination, &c., how certified—Con. Stat. Can., cap. 102, s. 63.

Held, that where a prisoner makes application to a judge in Chambers to be admitted to bail to answer a charge for an indictable offence, under *Con. Stat. Can., cap. 102, s. 63*, the copies of information, examination, &c., may be received, though certified by the County Crown Attorney and not by the committing justice.

[Chambers, March 2, 1865.]

On 21st February last, defendant Chamberlain caused a notice to be served on the agent of the Attorney General to the effect that on the next day, at the hour of ten o'clock in the forenoon, an application would be made to the presiding judge in Chambers at Osgoode Hall for the admission to bail of the defendant Chamberlain to answer the charge for which he stood committed; and further, that certified copies of the depositions, &c., on which such application would be made had been brought from the office of the Clerk of the Crown into Chambers by judge's order for the purpose of the application.

The depositions, which were certified by the Clerk of the Peace in and for the county of Oxford, under the seal of the Court of Quarter Sessions in and for that county, disclosed the charge of forgery, which was the charge for which the accused stood committed.

Robt. A. Harrison shewed cause, and submitted that the only jurisdiction which a judge in Chambers had to bail on such a charge was either on writ of *habeas corpus* or under *Con. Stat. Can., cap. 102, s. 63*, and that the latter statute requires a notice to the committing magistrate, and that the copy of information, examination, &c., should be certified close under the hand and seal of the convicting magistrate, which had not been done in this case, and so he argued that there was no jurisdiction to bail the accused.

J. B. Read, contra, referred to the County Attorneys' Act, *Con. Stat. U. C., cap. 106*, which now provides that the County Attorney shall receive all informations, &c., which the magistrates and coroners are hereby required to transmit to him. He also referred to s. 9 of the Act, which provides that the county attorney shall be "the proper officer" of the court to receive depositions where a party is committed to trial.

ADAM WILSON, J.—The committing magistrate must make a proper return of the informations to the County Attorney. After this has been done he cannot transmit such proceedings to the Clerk of the Crown, nor can he deliver the packet containing the same to the person applying therefor, because he has delivered the proceedings to the County Attorney, as he was bound, in whose custody they are and must afterwards remain.

I think in favour of liberty I shall make the order to bail upon the transmission and certificate of the County Attorney.

It would unquestionably be better to have this matter specially provided for by legislation, although it is not impossible now for the commit-