

MUNICIPAL DEPARTMENT

LEGAL DECISIONS AFFECTING MUNICIPALITIES.

WIGLE V. VILLAGE OF KINGSVILLE.—

Judgment by Justice Ferguson in action tried without a jury at Sandwich. Action by Solomon Wigle, on behalf of himself and other ratepayers of the village of Kingsville, against the village corporation and W. A. Simpson for an injunction. The complaint was that on the 15th December, 1896, the defendant corporation entered into a contract in writing under the seal of the corporation with defendant Simpson to drill and explore for natural gas on part of lot 7, in the 1st concession of the Township of Gosfield South; that defendant Simpson entered upon the work and drilled to a depth of about 300 feet when plaintiff on the 26 January, 1897, obtained an interim injunction restraining defendant from further operations, which injunction was continued till the trial; that this contract was not authorized by by-law of the Council and no provision had been made in the estimates to satisfy the obligations of defendant corporation contained in the contract; that by the contract defendant corporation not only agreed to pay defendant Simpson, but also to pay him a liquidated amount in the nature of a penalty as damages in case he should be restrained in his operations; that the total expense to carry out the terms of the contract would amount to \$1,700, for the payment of which no provision had been made, and the plaintiff claimed damages and a perpetual injunction. By-law No. 141, upon which defendant relied, was a by-law to raise by way of loan \$18,290 for the purpose of mining from the earth and supplying the village of Kingsville with natural gas and to authorize the issue of debentures therefor. This was the whole scope of the by-law; it did not on its face authorize the making of any particular contract. Section 282 of the consolidated municipal act, 1892, provides that the powers of the Municipal Council shall be exercised by by-law when not otherwise authorized or provided for, and section 288 provides that every by-law shall be under the seal of the corporation, and shall be signed by the head of the corporation or by the person presiding at the meeting at which the by-law has been passed and by the clerk of the corporation. Held, that there is no provision for the exercising of the powers in question otherwise than by by-law, and a certain resolution of the Council, though entered in the minute book of the Council and containing the contract at full length and having the seal of the corporation attached to it, cannot be considered a by-law, because it is not signed, as is positively required by section 288. It does not profess to be a by-law at all, and it could not authorize the making of the contract in

question. Judgment for perpetual injunction with costs.

WILSON V. MANES.— Judgment on appeal by defendant in the Divisional Court at Toronto before Meredith, C. J., Rose, J., and MacMahon, J., from judgment of Armour, C. J., in favor of plaintiff for \$400 in action against the clerk of the Municipal Council of the village of Parkhill, to recover \$400 under sec. 168 of the Consolidated Municipal Act, 1892, and for \$500 damages at common law. The plaintiff's name appeared on the voters list used at the election of reeve and two councillors for Parkhill in January, 1896, as a tenant, and he alleged that upon tendering his vote and expressing his willingness to take the freeholder's oath, the defendant, as returning officer, required him to take the tenants' oath, and when he declined to do so, refused him a ballot paper. The plaintiff gave up the premises in respect of which his name was on the voters' list on 1st October, 1895, and moved to certain freehold property he had purchased. The trial judge held that the plaintiff was entitled to select the oath; that sec. 168 applied secs. 105 (a) and 106; and that the functions of the defendant were purely ministerial. Counsel contended that as the trial judge had found that there was no malice on defendant's part, there was no misfeasance: *Johnson v. Allen*, 260, O. R., 550. The majority of the court held that the duties of defendant in taking the votes at the polling place were merely ministerial, and an action lies for breach of them without malice or negligence; that plaintiff had the right to vote; and that, although the damages assessed were large, it could not be said that the chief justice erred in assessing them. Rose, J., with hesitation, agreed in affirming the judgment, with the variation that the damages should be reduced to \$400. In the result, the appeal was dismissed with costs, but will leave to defendant to appeal to the Court of Appeal, if so advised.

MOVABLE APPARATUS FOR FLUSHING SMALL SEWERS.

The Paris Genie Civil, referring to the above system of flushing sewers, states that it has been practised for several years in many different Belgian towns and illustrated the apparatus of M. G. Wittevrughele, City Engineer, of Antwerp. This con-

sists of a rectangular iron tank hung very low on two wheels. It is run over a man-hole and a telescopic pipe of large diameter is extended from its bottom to the bottom of the sewer. The top of the pipe is closed by a horizontal sliding valve and the tank is filled from the street mains, then the valve is quickly opened and the 3 cubic meters (about 792 gallons) of water in the tank is discharged in about 5 seconds, being delivered through an orifice in a vertical plane at the foot of the pipe on the downstream side.

In Antwerp nearly 100 kilometers of small sewers which have sections of from 5.4 to 8.1 square feet and very small slopes are flushed exclusively by this apparatus, which, costing 2,000 francs, only weighs about 600 kilograms (1,323 pounds) and is operated by four men who also move it from place to place without the use of horses.

Large sewers are flushed by means of a "pocket gate," which consists of a tarred sail-cloth bag whose open upper end is attached to a number of small steel wire "cables" that suspend it from a vertical screw working in a cross-bar clamped into the manhole shaft. The bag is filled with water that has sufficient weight and head to press it firmly against the surface of the sewer and form a tight barrier that dams up the flow in the sewer above. When the water was thus accumulated to a sufficient amount the bag is suddenly released and, emptying itself downstream, contracts and leaves a free water-way down which the contents of the upper sewer produce a flush that removes sediment and accumulations. This process is considered very economical for collectors with considerable flow and no flush tank.

A sewer 3,500 meters (11,483 feet) long and 2 meters (6.5 feet) wide was cleansed of mud 0.5 meters (18 inches) deep by this process at a cost of 0.07 franc per lineal meter.

Orillia now has an electric fire alarm system, put in at a cost of \$1,000, and said to be one of the best in Canada. It consists of eight alarm boxes, located at points indicated by the Fire Underwriters' Association; electric striker for town bell, which will give repeated or continuous alarms; electric attachments on horse stall doors in fire hall, causing them to open automatically as soon as an alarm is sent in; large gongs in fire hall, and in the residences of officers of the brigade and waterworks.

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