

When the time arrived for opening and considering the tenders, the reeve verbally notified three of the four councillors to attend a meeting of the council at his place of business on a certain day, on or about the 5th or 6th October, 1910. The other councillor, Overholt, was not notified, the explanation given by the reeve being that at a regular meeting of the council, held some time previously, Overholt had said he would not be satisfied with what the other members of the council would do. Overholt, on the other hand, referring to his not having received the notice of the meeting, said he was opposed to the by-law and the carrying out of the work, and was disgusted, and that he only heard of the meeting two or three days after it had taken place.

No business was done at the meeting on the day for which it was so called, and it was adjourned until the following day. It does not appear certain that any particular hour was named for the adjourned meeting, one of the members, McIntosh, saying that ten o'clock was named. His account of it is, that he attended at the reeve's place of business, the place named for the meeting, at 10 o'clock a.m. on the following day; that the reeve was not at home, his son stating that he had gone out to the country; that he (McIntosh), after waiting for a time, went away and returned at 12 o'clock; and, finding that the reeve had not yet returned and that there was no appearance of a meeting being held, again went away, and later on went out of town.

On the afternoon of that day, the reeve and two other members of the council, namely, Doyle and Irvine, met at the reeve's place of business, neither Overholt nor McIntosh being present, and decided upon accepting the plaintiff's tender, the only other person present at the meeting being the township engineer.

As appears by the evidence, no by-law of the corporation was passed accepting the plaintiff's tender or awarding him the contract or authorising the making or signing of any contract with him, the only action of the council thereon being a minute as follows: "Moved by Doyle, second Irvine, that P. O'Donald be awarded the contract for laying sewer." Signed "John Murphy."

The written record of what took place is of the most meagre kind, and, so far as the evidence shews, this record remained in possession of the engineer until the time of the trial, and no minute of what took place was entered in the books of the corporation, nor was the clerk of the municipality present at the meeting.