

claim of plaintiff for payment of \$18,447.56, alleged to remain unpaid on the contract price of the work. (2) The claim for damages occasioned by the contents of certain city sewers which existed in the streets in which plaintiff was required to build the sewers which he contracted to construct, and the existence of which was not known to and not disclosed to him, flowing into the trenches dug by him and impeding and delaying him in the work and causing him additional expense in the doing of it. The first claim was based on the proposition that the contract was one for the doing of the whole work, including the rock excavation, for a lump sum of \$127,225, whether the quantity of the excavation turned out to be greater or less than 5,700 cubic yards. Held, that such was not the meaning of the contract, but that it was a contract to do the whole of the work contracted for, except the rock excavation, which was estimated at 5,700 cubic yards, for \$2.50 per cubic yard, for the quantity actually taken out. As to the second claim, the sewers were not private drains, but municipal sewers, belonging to defendants, into which the property owners were required to drain their houses and property, and which carried the drainage of the streets also. Held, that it would be most unjust if defendants were permitted to discharge the contents of these sewers into the trenches which plaintiff was required to dig, to his loss and damage, without being liable to make compensation to him for it, and plaintiff was entitled to recover from defendants \$2,810.50, which was the loss he sustained by the acts complained of, as estimated by defendants' own engineer.

RE RUSSELL AND DOYLE.

Mandamus to Provide Adequate School Accommodation—Hearing of at Trial of Action to Set Aside Award Forming School Section.

Judgment on application by Thomas Russell and others, ratepayers of school section 5, in the Township of Drummond, in the County of Lanark, for a mandamus, to the trustees of the school section to provide adequate accommodation for the school children resident in the section, and upon cross motion by the trustees to postpone the hearing of the application for a mandamus until after the trial of an action to set aside an award which purports to form school section No. 5. Held, that it will be more convenient and a saving of expense to direct that the disposition of this application shall be deferred until after the trial of the action. The trustees, defendants in that action, shall, if required, transfer the conduct of the defence to solicitors and counsel named by the present applicants on receiving indemnity against costs. The motion for a mandamus to come before the Chief Justice after the disposition of the action on the question of costs, and generally.

RE MACDONALD AND VILLAGE OF ALEXANDRIA.

Motion to Quash Drainage By-Law—Authority of Engineer as to Change of Route—Distinction Between Local Assessments and Assessment for Local Improvements.

Judgment on motion to quash by-law 243 of the village, passed on 2nd September, 1902, to provide money, by the issue of debentures, secured by a special rate, to pay for the construction of a drain on Main street, in the village, from a point 33 feet north of the northerly side of St. George street to the north side of Catharine street, then easterly along Catharine street to a point opposite to lot A, then southerly through said lot to the River Garry. The by-law recited that a petition was presented by the owners of real property to be

benefited to the council for the construction of a drain on Main street from Kincardine street to the River Garry. The total cost of the drain was \$3,644. Held, that the engineer had no authority to alter the route in the manner he did, substantially making a new work, and one not asked for. The council should not have accepted the new route without a new petition, unless they were prepared to enter upon it and proceed under section 668 of The Municipal Act. The distinction between local assessments, or assessment for local improvements, and those for general revenue purposes, must be recognized. The statute giving the power of local taxation must be strictly followed.

ACTIONS FOR DAMAGES CAUSED BY ACCIDENTS.

The present highway law of Ontario practically insures against accident everybody travelling on the highways. The section of the Act making the municipalities liable was introduced in 1850 with reference to roads in cities and towns, and in 1859 was included in The Municipal Act. A new sub-section was, however, added relating to accidents arising from persons falling owing to snow or ice upon sidewalks. The control over the highways of the Province was then in a transitory state. Municipal institutions were in their infancy, and it was thought that the council would not be able to maintain the roads. This resulted in the formation of a great many toll-road companies to take charge of the main highways, which had been or were still in some cases under the control of the Minister of Public Works, and to relieve municipalities of liability for non-repair. The road mileage throughout Ontario has gradually increased and during recent years the municipal authorities have taken over most of the toll roads. In some localities actions for damages have under these circumstances become so numerous that public attention has been directed to the misapplication of corporation funds for law costs and damages. There appears to have been some misunderstanding in reference to precedents for the section making municipalities liable. It was no doubt copied from the laws of one of the United States and afterwards looked upon as being in accordance with English law. Mr. Biggar, editor of the *Municipal Manual*, remarks in this connection that the common law obligation of parishes in England to repair their highways did not involve the existence of a civil liability to any one sustaining injury owing to the non-repair of such highway, and that a person injured by mere non-repair of a road can sue the municipality only if the Legislature gives him a right of action. It has been suggested that persons travelling on the highway should do so at their own risk, as in England and in other Canadian provinces, and that the Legislature should so amend the present law.

BERLIN'S MUNICIPAL ACHIEVEMENTS.

The Berlin town council accomplished during the past year the following: It voted \$15,000 for public school improvements; it passed a by-law granting the High School Board \$25,000 for a manual training school; it constructed cement walks to the value of \$7,300 and plank walks to the value of \$2,900; it expended \$6,641 on roadways, \$1,338 on storm drains and \$2,979 on sewers; it fought throughout the year for a new sewer farm and adopted plans for the same at a cost of \$55,000; it shelved the "new market" question for another year. And this municipality has a satisfied lot of taxpayers, nearly all of whom have already paid their contributions into the town treasury.