LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

The Drainage Act, 1894.

Section 63 of this act makes provision for an appeal by the council of the municipality served, as provided in section 61 to the referee, from the reports, plans, specifications, assessments and estimates of the engineer or surveyor. In the event of such appeal, a written notice thereof must be served on the head of the council effecting the service, pursuant to section 61, within thirty days from the receipt of the copy from the last-mentioned council. In this written notice shall be set forth the reasons of the appeal. The general rule as to the computation of time fixed by a statute is—unless there be something in the statute to the contrary—to hold the first day excluded and the last day included. It was judicially decided, in a case where a statute required an annuity deed to be enrolled within twenty days of the execution thereof, that the words excluded the day of the execution, the presiding judge remarking that "it would be straining the words to construe the twenty days all inclusively. Suppose the direction of the act had been to enroll the memorial within one day after the granting of the annuity, could it be pretended that it meant the same as if it were said that it should be done on the same day on which the act was done? If not, neither can it be construed inclusively where a greater number of days is allowed." The appeal can be had only within the time and in the manner directed in the act. The right of appeal is given, as it were, only on certain conditions—the right can only be exercised within thirty days from the day on which the report was served on the head of the municipality. The mode of its exercise is by service within that time of a written notice of appeal. The appeal is limited to the report of the engineer. The sufficiency of the by-law and the petition on which it is based can be left to the action of the courts on a proper application. It is to be observed that there is a difference between the time allowed in this act for service of the notice of appeal, and that allowed in section 581 of the Consolidated Municipal Act, 1892. By the latter section the time was limited to twenty days, and sub-section 2 of the said section conferred power on the judge of the county court of the county to grant such further time as he might deem just to the municipality served with the report of the engineer, etc., in case the latter, through misapprehension or mistake, omitted to appeal within the twenty days, upon such terms as to costs or otherwise as to the said judge might seem just and reasonable. The sub-section referred to is not apparently re-enacted or incorporated in the new act. Sub-section 2 of the section of this act under discussion contains new provisions and gives the reasons of appeal, which shall be set out in the written notice of appeal served. It would be well for parties framing notices of appeal to follow closely the language of this sub-section in stating the reason of the appeal, as the case may be. Sub-section 3 of section 64 is worthy of notice. It provides that the council of the initiating municipality may, by resolution, to be passed within thirty days after the decision of the referee on the appeal to him, or in case of an appeal therefrom to the court of appeal, abandon the proposed drainage work, subject to such terms as to costs or otherwise, as to the referee or court of appeal may seem just. Section 66 and sub-sections deals with the same subject as section 573 of the Consolidated Municipal Act 1892. It provides for the amending of the by-law passed for the construction of drainage works, for which sufficient funds have not been raised by assessment on the lands and roads benefited to pay the cost of the work and for the issue of further debentures under the amending by-law in order to fully carry out the intention of the original by-law. In connection with this subject in was a short time ago decided that where drainage works were constructed under a contract, and certain work not provided for by the contract was done without which the drain would have been useless, although there was no formal resolution of the council authorizing the additional work, nor any contract thereof under the corporate seal, that the corporation was liable. Sub section 2 and three of the last mentioned section provide for the refund pro rata to the parties assessed of the surplus of any moneys that may be raised under the act for the construction of drainage works, and may remain in the hands of the council after the completion of such work.

LEGAL DECISIONS.

Gosfield South vs. Mersea.

JUDGMENT IN AN IMPORTANT DRAINAGE DISPUTE

Referee Britton has rendered his decision in the drainage case of Gosfield vs. Mersea, which was tried on February 6th and 7th, and reserved. This was an appeal from the assessment of Alex. Baird, engineer for the township of Mersea, whereby he assessed lands in Gosfield South for injuring liability in respect of certain proposed drainage works at the mouth of Sturgeon Creek. This is the first case in which the question of injuring liability has come up for decision.

The cost of proposed work was estimated at $1,026, which was assessed against lands and roads in Mersea at an estimate of $890 and against lands and roads in Gosfield South at $136. The total assessment for benefit was $30, outlet liability $15, and injuring liability, $981.

The intention of the scheme was to reclaim about 35 acres of land in flats at the mouth of the creek, the value of which, when reclaimed, would be considerably less than the cost of the proposed work.

The referee decides that there must be some relation between injury and benefit—that land cannot be injured to a greater amount estimated in money than the entire value of such land and the injuring liability in the same way cannot exceed that. Whenever a case occurs where a work to benefit the petitioners cannot be done, except at a cost far in excess of the benefit, such work ought not to be proceeded with merely for the sake of such benefit.

The referee holds that, although the council may approve of work, he still has jurisdiction on application by another municipality to prevent the work going on at the expense of the municipality assessed.

The referee also deals with the question of the mode of assessing for injuring liability and duties of engineer in respect thereto. Objection was taken to the engineer's report on the ground that lands assessed were not sufficiently described, and this the referee sustained holding that lands must be described fully enough to enable any one to know what lands are intended. This is a matter which, however, may be amended. The appeal was allowed with costs.

THE CORPORATION OF THE VILLAGE OF LONDON WEST VS. BARTRAM.

Municipal Corporation—Removal of Clerk—Resolutions thereto—Sufficiency of Seal.

This was an action of replevin brought to obtain possession of the books, papers, and seal of the plaintiffs, which had been in the custody of the defendant as their clerk.

The defendant had been removed from his office by resolution of the council, and a by-law was subsequently passed confirming his removal and appointing another person to be clerk in his stead.

The defendant having refused to deliver up the books, papers and seal after demand made upon him by the authority of the council, this action was brought.

The case was tried without a jury and judgment given for the plaintiffs.

The plaintiff moved on notice to set aside the judgment entered for the plaintiffs, and to enter the judgment in his favor.

It was held that the removal of a clerk of a municipal corporation may be by a resolution, it not being essential that a by-law be passed for such purpose.

When the seal of a municipal corporation is wrongfully detained by the clerk of the council a by-law removing him from office may be sealed with another seal *pro hac vice*.