LEGAL NOTES.

[**This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.**]

AN ENGINEER'S LIABILITY.

Some features of peculiar interest to surveyors, architects and engineers, are presented by a case recently decided in the city of Calgary. It appears to be the first time the matter has been tried out in the Canadian courts in this form and lays down the general principle that persons holding themselves out as able to do certain work impliedly warrant that they are possessed of such skill as is reasonably competent for its performance, and that, if they have not this skill and damage is sustained by reason of their error or lack of care, they are liable for any damages that result.

Woodward & Co., Contractors, vs. Municipal Engineering Co.

In this case Woodward & Company, contractors, agreed with W. B. Sterling & Company to build a warehouse on lots 9 and 10, as per plan registered. Woodward, in order to exercise due diligence and care in erecting the warehouse, engaged the Municipal Engineering Company to survey and stake out the lots. It transpired later that the members of this company were not qualified surveyors, but they proffered their services as such, did the work and indicated the two lots.

Subsequently the owner of lot 8, adjoining, gave notice that the warehouse was encroaching on his property to the depth of 13 inches, and Sterling notified the plaintiffs, where upon Dominion land surveyors were engaged to survey the property and find out whether the warehouse encroached upon lot 8 as claimed. The result proved that not only did the warehouse encroach upon the property, but also several inches on Eighth Avenue.

Woodward & Company thereupon had to move the building both from off lot 8 and off the avenue, and accordingly took action against the Municipal Engineering Company for damages sustained by them in having to remove the said warehouse. It was pleaded by the defendants that they were not Dominion land surveyors and consequently not properly qualified to do the work and that Woodward & Company in engaging a firm who were not thus properly qualified were guilty of contributory negligence and consequently should not succeed in the action against them.

The plaintiffs having proved that the survey was incorrect, and that in consequence they had been compelled at great cost to move the building and suffered damage therefrom, judgment was entered against the defendants for the full amount of the damages, $425, and costs.

This decision points to the necessity that as professional men we should be conversant with the general principles of law applicable to our profession, and with all the methods of most ordinary occurrence, even though knowledge outside our own profession is involved. Not indeed that we should supply a minute and accurate knowledge of the law, but the broad principles applicable under the circumstances.

And as to the degree of skill required of us in our own line—this is not an absolute quantity nor the highest degree possible. There may be persons who have higher education and greater advantages than we, but the professional man who brings to his task a fair, reasonable and competent degree of skill, such as may be expected in the circumstances of time and place from an average person in the same profession, incurs no liability for errors in judgment in applying his knowledge. The question is not as to whether he did or did not **make an error,** but whether such error was or was not due to **lack of proper care and skill.** And it should be noted that the law is much more ready to presume such negligence against one who is not a graduate or properly qualified than against one holding the ordinary proofs of efficiency.

It may further be noted that those who possess unusual and special skill stand in a different category to the rank and file of the profession. In these cases an extraordinary fee is paid in return for special skill and experience, and the man who demands such unusually high pay is required by law to exert a greater degree of diligence than the ordinary expert. He must acquit himself in accordance with the reputation and fame he bears or he becomes liable to his employers.

TENDER.

What constitutes a tender? The question is sure to recur from time to time and it is interesting to notice an incident where a city council, composed of men who must be supposed to have some experience in such matters nevertheless appear to have erred. The City of Montreal advertised for tenders for the supply of electricity for public street lighting. In response the Montreal Light, Heat and Power Company sent in a communication which apparently did not give details and specifications, but nevertheless was an offer to supply the required power. The City Council did not consider this an effectual tender capable of valid acceptance, but the company on consultation were advised 'inasmuch as the advertisement calling for such tenders distinctly states that the advertisers will not supply any specifications or forms of tender, your communication is certainly a tender for the public lighting and if accepted by the city would constitute a contract binding upon your company for the fulfilment of which your deposit could be held by the city. Your communication in question, however, does not contain any tender for private lighting."

In this case the ordinary principles of contract apply. There is no particular manner specified in which tenders must be framed, consequently, any offer for due consideration to supply the commodity required is capable of acceptance and when accepted by the city becomes a contract binding upon the company. It is not, however, capable of being accepted as a tender for private lighting as such was not in the contemplation of the offerers in replying to the advertisement.

MUNICIPAL AND COMPANY WORK—POWER TO ENFORCE PAYMENT.

Civil engineers and architects are constantly employed by municipalities and other corporations and when so engaged additional precautions are necessary to render them certain of their fees. It is a general rule of law that corporations are bound only by contracts made under their corporate seal. It is well that professional men should have this clearly before them, as in many cases engineers and architects have failed in collecting their fees after spending a good deal of time and money in the service of a corporation. Instructions from the mayor, town clerk, or works committee, or even a resolution duly passed by the municipal council, will not enable a professional man to recover payment for his services: the corporation may nevertheless choose to resist his claim and plead that the agreement was not under seal. In fact we frequently find amongst municipal councillors and directors of companies, illiterate men who, not understanding the value of professional services, are quite ready to dispute the engineer's bill, and the only safe way is to have your retainer in a form legally binding.

There are some exceptions. Such bodies can legally bind themselves without seal in trifling matters of constant occurrence, such as, the employment of workmen or inferior ser-

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