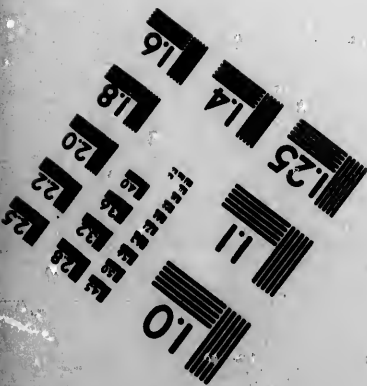
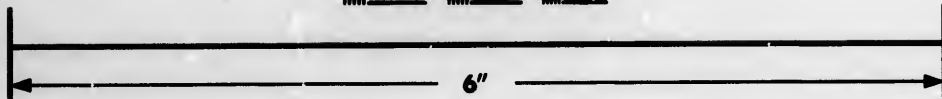
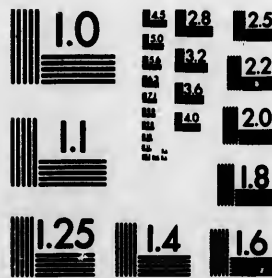


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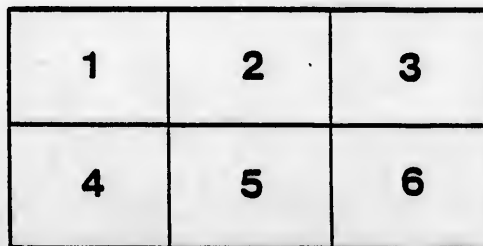
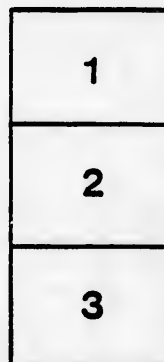
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1871.

PROCEEDINGS

OF THE

MUNICIPAL COUNCIL

OF THE

COUNTY OF WELLAND.

SPECIAL SESSION.—JOSEPH GARNER, WARDEN.
Wednesday, 22nd February, 1871.

WELLAND.

Printed at the Telegraph Office, by E. B. Dewhurst, County Printer
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1871.

PROCEEDINGS

OF THE

MUNICIPAL COUNCIL

OF THE

COUNTY OF WELLAND.

SPECIAL SESSION.

WELLAND, 23rd February, 1871.

Pursuant to call made under directions of the Warden in conformity with the requirements of a resolution in that behalf passed on the 27th day of January, now last past, the Council met at the Grand Jury Room in the Court House at the Village of Welland, on Thursday, the 23rd day of February, 1871, at 11 o'clock, A.M., in Special Session, to take into consideration the opinion of Messrs. Patterson, Harrison & Patterson, as to the liability of the County for the extra work performed and proposed upon North Wing of Gaol now in course of erection by Mr. Benjamin Schooley, as Contractor.

The Warden in the Chair.

MEMBERS PRESENT.—Messrs. Brooks, Buchner, Crawford, Furry, Haney, Hershey, Hill, Horton, Kirkpatrick, Lattimore, Lee, McDonough, Reavely, Treble & Willson.

—15.

The Warden explained the objects of the Session to be

as mentioned above; and, after thanking Councillors for the promptness with which they had responded to his call, expressed the hope that the business might be brought to a close in season to allow all to return to their homes to-day.

He concluded by reading to the Council the letter of the Clerk submitting the matter for the opinion of Counsel together with the opinion of Messrs. Patterson, Harrison & Patterson, formed thereon.

Mr. Treble having inquired whether the Architect would be present was informed by the Warden that he had been "telegraphed" to be here at 12 o'clock. Mr. Hill having inquired whether the original Tenders and Contract and all other original papers relating to the matter were within the Council Chamber, and having been informed that they were,

Moved by Dr. Haney, seconded by Mr. Furry,

That this Council do adjourn for dinner, and meet again at half-past 1, P.M., for the transaction of business.

The Council adjourned at 12 o'clock, in pursuance of the motion.

AFTERNOON SESSION.

At half-past 1, P.M., the Council resumed.

Mr. Latshaw being present, and being requested by Councillors, appeared at the Bar and answered such questions touching the matter before the Council as were proposed to him by Councillors in behalf of the County, and by Hon. J. G. Currie in behalf of Mr. Schooley, the Contractor.

Moved by Mr. Hill, seconded by Mr. Hershey,

That a cheque be granted by the Warden in favor of Messrs. Patterson, Harrison and Patterson in payment of their claim for opinion in Re North Wing, &c.

Moved by Mr. Kirkpatrick, seconded by Mr. Willson,

That the Contractor be allowed, without prejudice, to complete the Gaol on the plan he has adopted, and when finished, if the building be approved of by the Government Inspector, that any extras claimed for by the Contractor be taken into consideration by the Council and arranged as the Council shall then see fit and proper; but the adoption of this Resolution by the Council shall not bind the Council to any sum or allowance whatever, more than is contained in the original Contract, \$7,750.

Moved by Mr. Hill, seconded by Mr. Lattimore, in amendment,

That all in the original motion after the word "That" be expunged, and the following inserted—this Council do now adjourn.

Which amendment being proposed to the Council was lost on a division.

The original motion being again proposed.

Moved by Mr. Lee, seconded by Mr. Buchner, in amendment,

That all in the original motion after the word "That" be expunged, and the following inserted—this Council having had the opinion of Messrs. Patterson, Harrison & Patterson in regard to the liability of the County for certain alterations and improvements from the original Plan of the North Wing of the Gaol, and having heard Mr. Latshaw's explanations in reference thereto: And whereas it appears to this Council that said alterations are decidedly for the interest of this County as well as being better arranged.

Be it therefore Resolved that the sum of \$—— be paid Mr. Schooley on account of said alterations, but no more be paid on account of said improvements until the Building is completed and accepted: the above sum not to prejudice Mr. Schooley's claim nor bind the County for any larger amount: but when the Building is completed the Council will consider the whole matter and act in a spirit of justice between the County and Mr. Schooley.

Which amendment was withdrawn by Mr. Lee with the consent of the seconder and the Council.

The original motion being again proposed.

Moved by Mr. Hill, seconded by Mr. Hershey, in amendment,

That all in the original motion after the word "That" be expunged, and the following inserted:—Whereas the Contractor has by the permission of a Committee of this Council and with the permission of the Architect appointed by this Council deviated from the original Contract between him and this Council respecting the rebuilding of the North Wing but without the consent and concurrence of this Council: And Whereas a large amount of money has been and will be expended over and above the original Contract price by the Contractor on account of such deviations for which the Corporation are in no way liable: And Whereas it is the opinion of this Council that the Gaol, when completed according to the Plan adopted by the Contractor will be better in many respects than if completed according to the original Plan.

Therefore be it Resolved That the Contractor be permitted, but without prejudice to the rights of the Corporation, to complete the building according to the Plan now being worked upon by him and according to which estimates have been furnished to this Council, and that this Council, without relieving the said Contractor or his sureties from his or their obligation under the original contract, do pay to the said Contractor the amount claimed by him for said extra work, at the same rate and in the same manner as payments under the original contract; provided always that said payments for said extras do not, without the sanction of this Council exceed the sum of \$2,000.

A debate having arisen thereupon at 6 o'clock the Council adjourned for want of a quorum, no division having taken place upon the motions before the Council.

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Clerk's Office, County of Welland, }
Fonthill, 31st January, 1871. }

MY DEAR SIR :

Re The North Wing of Gaol.

I send you to-day by parcel post the following :

1. Copy of Resolution of County Council directing opinion of counsel to be taken as to the liability of County for the price charged by Mr. Schooley, the Contractor, and allowed by the Architect, for certain alterations in the walls and other parts of the building now in course of erection, being the North Wing of the County Gaol at Welland.
2. Copy of Resolution directing that the opinion of your firm be taken.
3. Copy Mr. Inspector Langmuir's letter to Warden, date 11th January, 1870.
4. Copy Mr. Inspector Langmuir's letter to Warden, date 20th January, 1870.
5. Copy Resolution directing Tenders to be advertised for, date 28th January, 1870
6. Copy Report Special Committee on Gaol repairs, date 7th June, 1870.
7. Copy Resolution appointing John Latshaw as Architect, date 10th June, 1870.
8. Original Contract, Benjamin Schooley with County, date 12th April, 1870.
9. Copy Report Special Committee on Gaol Repairs, date 22d December, 1870.
10. Copy Resolution appointing Messrs. Treble and Garner on Committee, date 23d December, 1870.
11. Copy Memorandum by Mr. Inspector Langmuir as to the alterations for which this charge is made, date 7th November, 1870.
12. Copy Report Special Committee on Gaol repairs, date 27th January, 1871.
13. Copy Resolution adopting the report upon terms mentioned, date 27th January, 1871.

You will notice a clause in Contract declaring that no alterations shall be made or extras be paid for. You will also notice in Specification annexed a clause that "extra or omitted works are to be measured, &c." Under this he thinks his claim certified by the Architect good, notwithstanding his Covenant to the contrary. The Contract only need be returned; the other papers I do not need.

I am, my dear Sir,

Yours, &c.,

D. D'EVERARDO, Clerk.

R. A. HARRISON, Esq., Toronto.

•

TORONTO, February 6, 1871.

DEAR SIR,—

We are in receipt of your letter of the 31st ultimo.

We are also in receipt of the parcel containing Contract, copies of resolutions, &c. From the latter we gather the following facts :—

The Inspector of Prisons having seen the plan for the proposed alterations to the North Wing of the Welland Gaol, and carefully examined the details indicated in the plan by letter dated 20th January, 1870, expressed himself that they were in all respects satisfactory, and approved of them in accordance with the Prison Inspector's Act. The County Council accordingly passed a resolution, dated 28th January, 1870, authorising advertisements for tenders, limiting the maximum to \$8,000, and stipulating that the work was to be completed by 1st July, 1872, without any alterations as to the Plans or Specifications whatever, and requiring a clause to that effect to be inserted in the Contract. An advertisement was afterwards published asking for tenders.

In the advertisement it was stated that the Contractor would be required strictly to adhere to the Plan and Specification, and that no departure therefrom would be allowed, nor any payments made for extras either in work or materials.

On 3rd March, 1870, the tenders were opened by a Committee of the Council appointed for the purpose, and the tender of Benjamin Schooley to do the work for \$7,750 was accepted. The contract for the doing of the work is dated 12th April, 1870, and contains a stipulation that the Contractor should in all things in the prosecution of the works adhere strictly to the specification and plan, "it being distinctly understood that no departure therefrom should be allowed; and that no extras, either in materials or work, should be paid for; that no greater price or sum of money than that named in the tender should, in any case or under any circumstances, be paid for, all the materials to be furnished, all the work to be done and performed, and all

the services rendered by the contractor in pursuance of the contract."

By Resolution dated 10th June, 1870, the appointment of an Architect and a Special Committee were authorized.

The duties of the Architect prescribed by the Resolution were "to take charge of and superintend the construction of the North Wing of the Gaol now under contract, in accordance with the plans and specifications of said work."

The duty of the Special Committee was prescribed by the same Resolution—"to confer with the Architect when occasion may require." Mr. John Latshaw was the Architect appointed. Some alterations and extras were suggested by the Architect, others were suggested and required by the Prison Inspector. But no action of the Council seems to have been asked or had to authorize such alterations or extras. By Resolution dated 23rd December, 1870, two gentlemen were added to the Building Committee in lieu of two gentlemen who had ceased to be members of the Council. By the same Resolution the Committee was instructed "to enquire into the cost of the alterations made in building a stone wall not in the plan approved by the Prison Inspector, also the alterations made in the window gratings and iron doors of the prison; also the cost of a drain not included in the plans and other alterations made and not included in the contract, and to have an estimate made of the cost for altering the wall of Gaol yard and building a wooden fence in yard, as shown in a plan submitted to the Council, and the repairs necessary for kitchen arrangements." On 27th January, 1871, the Committee reported that alterations made and to be made would cost \$2,808 and \$1,125 respectively, with a proposed reduction in the former item in the event of a settlement. The Committee also reported that the alterations in the iron doors and windows were sanctioned by the Building Committee, and "as to the balance of the alterations the Committee could not find sufficient data to make any suggestions." The report was adopted, "provided always that the Council do not by the adoption thereof incur any pecuniary liability thereby to any person whatsoever."

An opinion is desired as to whether "the County is bound by the action of the Building Committee, superintendent or other party who may have ordered or allowed or agreed to the alterations made without the consent of the Council."

By the contract express provision is made against extras, and an express agreement is therein contained to the effect that there shall be no payment for extras. Both the Building Committee and the Architect were appointed to superintend the doing of the work under the contract. Neither had any power to alter or vary the contract. No order on the part of either for extras will bind the Council. Such an order was beyond their authority. Nor is the Council bound by any orders given by the Prison Inspector. It was his business before deciding upon the plan to have considered all the details. Having expressed himself satisfied with the plan and induced the County to enter into a contract in accordance with the plan, he should not afterwards have made alterations. It remained for the Council and for the Council alone to decide whether or not the alterations should, under the circumstances, be made. But in the absence of an express contract on the part of the Council to pay for such work, no one was authorized to do it so as to hold the Council liable for payment.

The Council alone was empowered, if it saw fit, to authorize extras or alterations. The Council did not intend to have any such. It certainly never contemplated that on a contract for \$9,000 there should be extras to the extent of \$4,033.

We do not think the Council liable for such unauthorized work for at least two reasons:—

1.—The payment for it is against the express terms of the contract.

2.—The debt, if any, was one incurred last year and is one for which no provision appears to have been made by the Council of last year.

We return the contract.

Yours truly,

PATERSON, HARRISON & PATERSON.

D. D'EVERARDO, Esq.,
County Clerk,
Welland P. O.

Fee \$20.

