

JULY 9TH, 1908.

Moved in amendment by Alderman Hoben, seconded by Alderman Shaffner, that said report lay on the table, and that the opinion of Mr. W. B. A. Ritchie be obtained on the subject as referred to the City Solicitor, whether the Committee on Works may split up contracts in sums of \$500.00.

Alderman Chisholm asked for the opinion of the City Solicitor as to whether the amendment is in order.

The City Solicitor said he did not care to give a ruling affecting an opinion of his own.

His Worship the Mayor ruled that the amendment is in order.

The amendment is put and passed, 7 voting for the same and 6 against it, as follows:—

For the Amendment.	Against it.
Aldermen Shaffner, Hebb, Bligh, Hoben, Kelly, Hubley, Thompson—7.	Aldermen Wilson, Whitman, Chisholm, Martin, MacKenzie, Rankine—6.

Read report Committee on Works in re opinion of W. B. A. Ritchie on contract for water meters.

WATER METERS.

CITY WORKS OFFICE, July 7th, 1908.

To the City Council:

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached report of W. B. A. Ritchie, K. C., in re Water Meter Contracts was read and referred to Council for its information and action. Also attached, a letter from Neptune Meter Co. asking for a remittance to cover account.

A. B. CROSBY, *Mayor and Chairman.*

MR. W. B. A. RITCHIE'S OPINION.

HALIFAX, N. S., 6th July, 1908.

J. J. HOPEWELL, Esq., *Clerk of Works,*
City Hall, City.

DEAR SIR —I now beg to enclose my opinion in reference to the question submitted to me by your letter of the 13th ult. The conclusion which I have reached is that there is no contract between the Neptune Meter Company and the City which can be enforced against the City.

I remain,

Yours very truly,

W. B. A. RITCHIE.

ENCL

The question for consideration is as to the liability of the City upon a contract purporting to have been entered into March 7th, 1908, between the City of Halifax and The Neptune Meter Company of New York. The contract is for the supply of twenty-one hundred Trident water meters for the sum of \$18,068 00 delivered in Halifax, f. o. b., but exclusive of duty. Under this contract seven hundred meters have been delivered to and accepted by the City, but no payment has been made to the contractor.

First—The contract bears the seal of the City and the signature of the then Mayor and City Clerk, and the first question that has occurred to me is whether it can be said that the seal of the City was affixed to the contract without authority, and that the City can avail itself of such lack of authority as against the contractor. Some of the facts leading up to the affixing of the corporate seal of this contract may be referred to.

Under date November 7th, 1907, the Committee on Works notified the City Council that the committee recommended the purchase of these meters at the price for which contract was afterwards made. This report was presented to the City Council, November 8th, 1907, but consideration of it was deferred, and the matter did not again come before the City Council until March 3rd, 1908 when it was resolved "that the report be referred back to the Committee on Works to call for new tenders and report." New tenders were not called for in the ordinary way, but on March 3rd, in view of fall in price of copper, the persons who had put in tenders were communicated with and asked for fresh tenders; answers were promptly received, and so far, at least, as The Neptune Meter Company and Messrs H. B. Clarke & Son were concerned there were no reduction and a resolution of the Board of Works was passed March 5th, 1908, reciting that on that date the attached tenders were opened the documents attached being the answers received to communication of March 3rd asking for lower figures, and the resolution goes on to recommend the purchase as already recommended by report of November 7th, 1907.

The City Council seems to have regarded what was done as a sufficient call for new tenders pursuant to its resolution of March 3rd 1908, for on March 5th 1908, the report of the City Works Committee of the same date was adopted, the resolution passed being "that the report of the Committee on Works be adopted." Notice of reconsideration was given. No further meeting of the Committee on Works or City Council was held on or before March 7th, 1908, but on that date the contract in question, which contained provisions as to requirements of meters in regard to the registration in imperial gallons and approval of the City Engineer, etc., was prepared apparently under instructions from the Mayor; at all events it was on that day sealed with the seal of the City and signed by the Mayor and City Clerk and sent to The Neptune Meter Company with a letter from the City Engineer reading:—

"I am sending you enclosed contract for meters awarded to you at the last meeting of the City Council executed in duplicate by the Mayor and City Clerk. When signed by your Company please return copy with tender attached."

In view of the fact that the City Charter provides by Section 611 that the maintenance of the water works in good condition of repair and efficiency shall be performed and discharged by the Committee on Works and any improvements thereto or extensions thereof ordered by the Council executed by that Committee, it would seem that the contract should not have been sealed without the authority of such Committee, but I am told by the Clerk of the Works Committee that the course pursued in this case was not unusual. At all events, I think that, as the contract is executed in accordance with the provisions of Section 5 of the Charter and is in regard to articles that might be required by the City for the purposes of its water system, the City could not successfully claim, as against the contractor that the affixing of the corporate seal of the City to the contract was not authorized by the City.

Second.—The conclusion reached in the last paragraph that the City is not in a position to deny that the affixing of its corporate seal to the contract in question was duly authorized, would in the case of very many municipal corporations determine the question of liability, but the City Charter contains some special provisions, which are of a character thus referred to in Dillon's Municipal Corporations, 4th Edition, section 130:—

"Provisions are frequently made in Constitutions or in Charters or Legislative Acts to prevent the creation or increase of municipal indebtedness beyond specified limits or except upon certain conditions. Such limitations have been found by experience to be necessary to prevent extravagance, are remedial in their nature, and based upon the wise policy of paying as you go, and ought, therefore to be construed and applied to secure the end sought."

Sections 305 and 330 of the Charter are of this character.

Section 330 is as follows :—

“ If any debt is contracted or any money is expended by the Council or under its authority beyond the amount provided by law such debt or expenditure shall not be recovered from the City, but members of the Council voting for the resolution for the incurring of such debt, or the making of such expenditure, shall be jointly and severally liable therefor.”

The annual receipts on account of the water service are credited by the City Treasurer to maintenance account and moneys borrowed for the water service are credited to construction account. It seems that in each year there is a surplus from the annual receipts on account of the water service, and this surplus does not seem to be specifically dealt with by the Council each year, as is, I think, contemplated, by section 611, but is carried forward to the credit of the next year's maintenance account. The expenditure authorized by the resolution of the City Council of March 5th, 1908, adopting the report of the Works Committee of the same date, amounted to \$31,855.50, namely, purchase from The Neptune Meter Company for \$18,060.00 duty on same \$4,966.50, and purchase from Messrs. H. B. Clarke & Son \$8,829.00. The question is whether funds to that amount had been provided by law and could lawfully be so expended. Assuming that such expenditure might lawfully be paid out of balance to the credit of maintenance account which would be made up of balance brought forward from previous year and/or the revenues from water supply received during the current year, and not expended, I beg to say that I am informed by the City Treasurer that on March 5th, 1908, there was to the credit of maintenance account only \$18,766.51, and the same amount on March 7th, 1908. The contracts with Messrs H. B. Clarke & Son and the Neptune Meter Company both bear date March 7th, 1908; no doubt the contract with H. B. Clarke & Son was entered into first, as they were on the spot, and the contract with The Neptune Meter Company would not become binding until executed by them, as it contained provisions not in the tender. It will be seen therefore, that the expenditure authorized by the resolution of March 5th, 1908, was in excess of the amount then to the credit of maintenance account; and assuming the contract with H. B. Clarke & Son to have been entered into before that with The Neptune Meter Company, the latter contract involved expenditure in excess of the amount to the credit of maintenance account when that contract was made. These facts, would themselves, I think, indicate that the expenditure for water meters was not intended to be paid for out of maintenance account. Looking back at the earlier proceedings of the Works Committee, and City Council, it is clear from the resolution of the Works Committee of July 22, 1907, confirmed by resolution of the City Council of the same date, that it was not intended that the water meters should be paid for out of maintenance account. That report says :—

“ Your Committee estimate that the sum of \$50,000 should be provided for the installation of meters, and that that sum should be borrowed, and the meters installed this year.” There not being sufficient money provided by law from the annual income derived from the water supply, or the balance brought forward from the previous year to meet the expenditure in question, and the intention being that such expenditure should be provided by law by means of a special loan made for that purpose, it becomes necessary to consider whether the necessary funds have been so provided.

Mr. Bell's view is that in the construction of Section 330, money which the city is authorized to borrow for a particular purpose, and which it has determined to borrow, is to be included in figuring out “ the amount provided by law,” and I am disposed, with some hesitation, to adopt his view on that point. It must, I think, follow, if money has been improperly borrowed for a purpose which the borrowing Act does not authorize, that the fact of the money so improperly borrowed being in the treasury would not authorize the expenditure of such money. However, on March 5th, 1908, there was not in the treasury to the credit of the Water Construction Account sufficient to meet the expenditure authorized by resolution of that date, and in my opinion the Statute which was supposed to authorize the borrowing of \$50,000 for water meters, did not authorize such loan. Dealing with this latter question, it may be noted that by Section 311 of the Charter, it is made unlawful for the Council to apply for any legislation authorizing a loan except upon resolution passed upon a two-thirds vote of the members of the Council. I find that on February 27th, 1907, draft of an Act to enable the City of Halifax

to borrow money was presented to the Council, and after amendment was approved. Whether that Act contained provision authorizing the loan of \$135,000, hereinafter referred to, I am not aware, and there seems to be no record by which that point can be ascertained. I assume that it was so, for there is no other vote of the Council authorizing an application to the Legislature at the session in 1907 for the borrowing of as much as \$135,000 for the water works, and I cannot think that the Legislature would pass a bill authorizing the borrowing of a particular sum of money for a particular purpose, unless requested to do so by the representatives of the city. On April 4th, 1907, it was resolved by the City Council "that the City Solicitor be instructed to prepare an Act authorizing the City to borrow a sum not to exceed \$100,000 for the betterment of the water service." There is no further record as to this, and no such Act was passed. It may be that the power to borrow \$135,000 contained in Chapter 71 of the Acts of 1907, which was passed on the 25th day of April, 1907, took the place of this, but I think it is more likely, as before stated, that the provision authorizing the loan of \$135,000 was in the original draft bill submitted to the Council, and that the loan of \$100,000 was dropped, perhaps under the idea that the loan of \$135,000 covered the same ground. Any such idea could not, however, in my opinion, affect the construction of the Act.

Chapter 71 of the Acts of 1907 enacts by Section I, as follows :—

"The City of Halifax is hereby authorized to borrow the amounts set out in the schedule hereto, for the purposes specified for each such amount respectively, and for no other."

The second item in the schedule is as follows :—

"For the further extension and improvement of the water system not exceeding \$135,000"

The question is whether the borrowing of 50,000 for the purchase of water meters is authorized by this provision. It may be mentioned that by Section 611 of the Charter a distinction is drawn in reference to water works between improvements and extensions. Looking back at the legislation of previous years, we find that by Chapter 29 of the Acts of 1883, the City was authorized to borrow \$8000 00 "for the extension of the water service," and that by Chapter 50 of the Acts of 1888 the City was authorized to borrow \$25,000 "for the extension and improvement of the water service." The word "further" in the Act of 1907, apparently means in addition to the extension and improvement for which money was authorized to be borrowed by the Acts of 1883.

In regard to the position of affairs at the time the Act of 1907 was passed, it should, I think, be borne in mind in construing the statute, that at this time the supply of water for the City had been found to be very insufficient, so that in order to make the system efficient either more water must be provided or less water used or wasted. It may be questionable whether the actual reports made to the City Council in regard to this matter can be taken into consideration in construing the statute, but if they can, it will be found that early in April, 1907, the City Engineer had made a report to the City Council founded in part on report of Mr. Willis Chapman, C. E., of Toronto, advising that the water service of the City provided sufficient water for all purposes, but that there was a very extensive waste of water, and recommending as a remedy not any extension or improvement of the system which would provide more water, but the making of the supply more available by putting in larger pipes in certain parts of the City, and, apparently as the chief remedy, that waste should be prevented by means of water meters. Whether it was that without the City Council being consulted, the Legislature changed the scheme of \$100,000 for "betterment" to \$135,000 for "further extension and improvement," or whether it was, as I suppose, that the clause authorizing the \$135,000 for further extension and improvement, was part of the draft bill approved by the Council February 27th, 1907, previous to the presenting of the reports of the Engineers, suggesting water meters as a remedy for the defective supply of water, I am not able to ascertain; and whichever was the course of events, I do not think it would throw much light upon the construction of the Act.

As I understand it, the view of the City Solicitor is that the effect of Chapter 71 of the Acts of 1907 is to authorize the borrowing, from time to time, for extension and/or

improvement of the water system up to \$135 000. I cannot regard the Act as one authorizing borrowing from time to time, up to \$135,000, and I think that the authorities and the reason of the thing show that in a case like this the word "and" should not be read "and/or." I think that after the Act of 1907 was passed it was necessary, in order to invoke the borrowing power for the water works thereby conferred, that the City Council should determine what amount should be borrowed "for the further extension and improvement of the water system."

The amount determined upon might be \$135 000 or any less sum, but I think that the determination must be made once for all. There are many statutory powers which become exhausted when they have once been used. What has been done under the power of borrowing for the water works conferred by the Act of 1907, is that \$50,000 has been borrowed for the purchase of water meters, and I have to say, upon the best opinion that I can form, and it is a question about which I can find no direct authority to assist me, that the expenditure of money for the prevention of waste by the introduction of the general use of water meters is not an expenditure "for the further extension and improvement of the water system." The only way that it could be figured out that there was sufficient money in hand to meet the expenditure authorized by the resolution of the City Council of March 5th, 1908, would be by adding to the balance then on hand in maintenance account the sum of \$29 099.00, credited to construction account on December 31st, 1907, on account of proceeds of the loan of \$50,000 for water meters, but I think this cannot be done because, in my opinion, the loan of \$50,000 was not money provided by law for the purchase of water meters.

In coming to the conclusion which I have, I regret that I am differing from the view taken by the City Solicitor, for whose opinion I entertain much respect, and I feel that the strong view he entertains to the contrary throws much doubt upon the correctness of my conclusion. I feel, however, obliged to express my individual opinion, which I have formed after very careful consideration of the matter. As to the actual borrowing of the \$50,000, I am told by the City Treasurer that stock was issued for the \$50,000 along with stock for a number of other loans, and that the money came in from the brokers, by instalments, from time to time, and that there was no way of allocating the moneys as they came in to any particular portion of the loan; however, on his books he credited to water construction account on December 31st, 1907, \$29,099 00, and on April 28th, 1908, \$20,901.00. It will be seen that the amount credited to this account for money borrowed under the Act of 1907, up to March 5th, 1908, was not as much as the expenditure authorized on that date, and perhaps I should mention that, although as I have pointed out, \$29,099 00 of money borrowed for purchase of meters was credited to Construction Account, on December 31st, 1907, and nothing has been paid for meters out of Construction Account; yet, according to the Treasurer's book, on March 7th, 1908, the amount to the credit of Construction Account was only \$1,001.14. The fact seems to be that there was a mistake; it seems to have been forgotten that the resolution of July 22nd, 1907, was to borrow money for the installation of water meters. It appears from the resolution of August 5th, 1907, that it was supposed that the resolution of July 22nd, 1907, was to borrow money water extension, and when the first instalment of the money was received it was used in paying off an old debit balance in Water Construction account, with the result that when money was required to pay for the meters, the money borrowed up to that time had been used for other purposes. There not being sufficient money to the credit of the Construction Account, the City Solicitor was asked if money to the credit of Maintenance Account could be used to pay for meters, and advised under date of April 24th, 1908, that this could be done, and the intention was apparently to pay the balance required for water meters out of the balance of proceeds of the \$50,000 loan which came in a few days later. My reason for thinking that this could not be done is based mainly upon the opinion I have expressed that the Act of 1907 did not authorize borrowing money to install water meters. In accordance with the advice of the City Solicitor, an order on the City Treasurer was drawn on April 30th, 1907, for \$12,893 04, payable out of Maintenance Account; this amount including \$8,838 81 paid to H. B. Clarke & Son for meters, and \$2,520.00 intended to be paid to The Neptune Meter Company, payment of which as I understand it, was stopped by the incoming Mayor.

It will be seen that the conclusion at which I have arrived is that the Act under which the \$50,000 to pay for water meters was borrowed, did not authorize the borrow-

ing of money for that purpose, and that there were no other funds available to meet the large expenditure purporting to be authorized by resolution of the Council of March 5th, 1908, and the result of my opinion is that the contract with The Neptune Meter Company of 7th March, 1908, is not binding upon the City.

Third.—There remains, however, a further question and that is as to whether assuming, as I have advised, that the contract with The Neptune Meter Company for 2100 meters is not binding on the City, there is any liability in respect of the 700 meters delivered by the company and accepted by the City as to 300 of which the money for payment has actually been voted by the City Council; I have carefully considered whether the acceptance of these meters, and as to part of them the voting of the money to pay for same, could be regarded as raising an implied contract as to these particular meters executed on the part of the contractor by the delivery of the meters, and which the City Council might validly have entered into, because there was sufficient money in the Maintenance Account, being part of the surplus in that account from the previous year, out of which these meters might have been paid for, but I have felt obliged to come to the conclusion that no such contract can be implied. These meters were all delivered under the contract of March 7th, 1908; that contract is not rendered void by the provisions of Section 330 of the City Charter, but those provisions are "that the debt incurred shall not be recovered from the City, but that the members of the Council voting for the resolution shall be liable therefore." There is no hardship on the contractor who has a contract which is binding on the members of the Council who voted for the resolution to purchase the meters, and there is no ground that I can find for implying another contract on the part of the City in regard to the meters which have been delivered.

W. B. A. RITCHIE.

Halifax, N. S., June 30th, 1908.

Also read letter Neptune Meter Co., covering account for water meters.

ACCOUNT FOR METERS.

NEW YORK, June 29th, 1908.

CITY CLERK,

Halifax, N. S. :

DEAR SIR,—We enclose herewith statement of your account.

You will notice that invoices of April and May as shown thereon are past due according to our tender.

We will be obliged to you if you will advise us when we may expect a remittance covering same.

Thanking you in advance for an early reply, we are,

Yours very truly,

NEPTUNE METER CO.

(Account enclosed \$18,355.46.)

Also read opinion City Solicitor re contract for water meters.

CITY SOLICITOR'S OPINION.

OFFICE OF CITY SOLICITOR, Halifax, N. S., July 7th, 1908.

L. FRED MONAGHAN, Esq.,

City Clerk, City.

DEAR SIR,—Through the courtesy of Mr. Ritchie I have been permitted to see the opinion which he has prepared in relation to the water meter contract and to

discuss the matter with him. His opinion as to the invalidity of the contract turns entirely upon a consideration of the financial side of the contract, a matter with which I did not deal, and which with all respect I did not consider I was called upon to deal unless specially requested to do so. After the most careful consideration of his opinion I find myself entirely unable to concur in his reasoning or conclusions. As it deals with points not touched upon by myself I have thought it only right to prepare a further opinion dealing with points covered by Mr. Ritchie, which I hand you herewith, and should be very glad to have submitted to the Council if the Council so desires.

F. H. BELL.

OFFICE OF CITY SOLICITOR, July 8th, 1908.

IN RE METER CONTRACTS.

SECOND OPINION. (For first opinion see Minutes June 4th, 1908.)

I am pleased to note that on all points on which I rested my former opinion, viz., the general power of the City to purchase meters, the regularity of the resolutions, and the form of the contract, Mr. Ritchie's opinion agrees with mine. His opinion as to the invalidity of the contract is based wholly on the financial considerations, with which I did not deal or feel myself called on to deal. I have given his reasons the most careful consideration, and with the greatest possible respect I find myself wholly unable to concur in them. As the points raised by him are in my judgment of the very greatest importance to the City, quite apart from the present contracts, I feel it is my duty to give the Council my opinion on them.

At the outset I beg to say that I have always assumed that any consideration of the financial aspect of a contract is entirely outside of my duties, unless my attention is specially called to it. There are other officials as well as committees charged with the duty of providing the funds for the discharge of the City's obligations, and I do not conceive when I am asked to pass on the validity of a contract that I am to discharge the duty of an auditor and ascertain how much money is available for its discharge.

The passage from Mr. Justice Dillon's work, cited by Mr. Ritchie in reference to limitations on the powers of municipal bodies to incur liability, has, in my opinion, no application to this City. It has reference to a case not uncommon in American municipal bodies in which the corporation has a general borrowing power with a limit. Halifax has no such power. Without a special Act of the Legislature the City cannot borrow one cent, and there is therefore no need of any such limitation.

Mr. Ritchie's opinion as to the invalidity of the contract is based upon Section 330, Sub-section 2, of the City Charter, which provides: "If any debt is incurred, or any money is expended by the Council, or under its authority, beyond the amount provided by law, such debt or expenditure shall not be recovered from the City." In brief, his argument is this:—The price of the meters (\$31,000) could only be paid out of the moneys of water maintenance account or of water construction account. On the 7th March, the date of the contracts, there was in the maintenance account only \$18,000, and in construction account only \$1,000. The construction account could not be supplemented by a transfer to that account of the moneys realized from the sale of \$50,000 in bonds which had been sold upon the supposed authority conferred by the statute which authorized the City to borrow \$135,000 for the improvement and extension of the water supply, because the purchase of meters was not an extension and improvement of the water system, and therefore as the City at the date of the contract did not have in hand funds available for the discharge of the obligation incurred, the contract was invalid. With the greatest respect I find myself wholly unable to concur in this view.

At the outset I must express my dissent from a construction which would practically make the words "amounts provided by law" synonymous with "cash in hand." The language of our Charter has always, and I believe rightly, been held to refer to the amount of money which the City is authorized to raise, either generally or for the specific purpose, and either by taxation, regular or special, or under the authority of borrowing Acts. On their face the words are not identical with "cash on hand," and there is no reason for so construing them, and very many reasons why they should not be so construed. A very large part of our City business has always been, and must necessarily be, carried on in advance of the receipt of the moneys from which the obligations incurred will have to be discharged. Possibly the expenditures under the ordinary estimates and appropriations will be governed by the provisions of sections 304 and 305 and by section 310 which enables an amount not exceeding 30 per cent. of the total amount of taxes to be borrowed for the City's uses in anticipation of collection. But as to expenditures chargeable against the water account, these provisions are not applicable. That account does not pass through the hands of the Finance Committee, and is not included in the ordinary estimates and appropriations of the City, but is kept as a distinct account carried on from year to year, the surplus balances of which have been disposed of from time to time by the Council in the extension and improvement of the water system. To hold that a contract entered into in respect to the water system is invalid merely because at the date of the contract there was not in hand to the credit of the water system a sufficient amount of money to discharge the contract, although it was clear that when the contract required to be discharged ample would be in hand from the ordinary collections, is not in my opinion correct. Suppose that in the present case the contract in place of being for immediate delivery had been for delivery in three months' time, at the end of which period the ordinary collections would have amounted to ample to discharge the debt. Would the contract in that case have been invalid? I am therefore of the opinion that the test of the validity of a contract under section 330 is not whether the City had actually cash in hand sufficient to meet its obligation at the date of the contract; but whether an amount had been provided by law out of which the City could when required meet the debt.

I come now to the question whether or not the moneys which had been borrowed or which could be borrowed under Chapter 71 of 1907 could be used for payment for the meters. I will deal first with two points discussed by Mr. Ritchie, although I do not understand him to say that they are material. Of these the first is the section (311) which forbids the City applying for a borrowing Act except on a two-thirds vote of the Council. The effect of that section is to prevent the passage of any resolution to apply for a borrowing Act unless passed by the requisite majority. Possibly, too, it would justify proceedings by a ratepayer to obtain an injunction if an insufficient majority of the Council persisted in ignoring it. But it is not a check on the power of the Legislature, and if that body sees fit to pass an Act conferring borrowing powers on the City the want of a previous two-thirds resolution would not in my opinion invalidate a loan made under it or the right of the City to spend moneys so borrowed. The point is, however, immaterial, not only for the reason given, but because the resolutions for the borrowing bill were passed unanimously by fourteen aldermen. The next point is Mr. Ritchie's remarks on the sum of \$135,000 mentioned in the schedule to the borrowing Act. The point cannot in any way, as Mr. Ritchie says, affect the validity of the contract, but it is as well to clear it up. The Committee on Works had recommended an application for authority to borrow \$35,000 on water account, partly for some work which had been done and paid for out of maintenance account and partly for new work, and their recommendation was approved by the Council. The Council then resolved to apply for an Act authorizing a loan of \$100,000 to carry out the recommendations of Mr. Chipman's report. There were thus two distinct resolutions to borrow money on account of the same service, and the committee which had charge of the City bills naturally consolidated them.

I have now to deal with Mr. Ritchie's principal difficulty, namely, that the Act authorizing the City to borrow \$135,000 for the further extension and improvement

of the water system does not authorize the borrowing of money to pay for the meters. His contention is this: The object for which the money can be borrowed must be both an extension and an improvement of the water system, which the purchase of meters is not, and the Council must once for all decide for what object it will borrow the money, and when it has exercised that power its powers are exhausted, although only a fraction of the sum authorized has actually been borrowed. In this construction of the statute I find myself wholly unable to concur. Mr. Ritchie founds his argument largely on the word "and," which he thinks cannot in this case be read as "or" or "and/or." If any substitution of one conjunction for another were necessary to carry out the plain intention of the Legislature the courts would not, I think, hesitate to make it. More than one hundred years ago Lord Chief Justice Kenyon, in *Wright vs. Kemp* (1790), 3 T. R. 470, said:—"Where sense requires it there are many cases to show that we may construe the word 'or' into 'and' and 'and' into 'or' in order to effectuate the intention of the parties. In deeds certain legal phrases must be used, in order to create certain estates, as the word 'heirs' to create a fee, and 'heirs of the body' to create an estate in tail. But beyond that I would say with Lord Hardwicke that there is no magic in particular words, further than as they show the intention of the parties." And the cases are numerous (see *Words and Phrases Judicially Noticed*, Vol. 1, pp. 394 *et seq.*) in which the courts have pointed out that the distinction between the two conjunctions is not great, that both in every day life and in formal instruments the one is often used where the other might with equal propriety have been substituted, and have accordingly read them as the sense of the instrument manifestly required. But with all respect to my learned friend I do not think this is a case in which any substitution is required. The meaning and intention of the Legislature appear to me perfectly clear and simple, namely, to enable the City to provide itself with funds for the general purpose of improving and extending its water system. To carry this general purpose into effect may require many distinct things to be done, some of which may more properly be classed as "extensions" and others as "improvements," and others as both. But any one of them which could fairly be classed as falling under the one general purpose would be a thing for which money could properly be borrowed under the general authority. As to what those things shall be the Council so long as it acts honestly is the sole judge. Mr. Justice Dillon, section 94, states the law as follows: "Power to do an act is often conferred upon municipal corporations in general terms without being accompanied by any prescribed mode of exercising it. In such cases the common council, or governing body, necessarily have to a greater or less extent a discretion as to the manner in which the power shall be used. This discretion, where it is conferred or exists, cannot be judicially interfered with or questioned, except where the power is exceeded or fraud is imputed and shown, or there is a manifest invasion of private rights."

That the purchase of meters for the purpose of preventing the waste of water is a thing which could be classed as an "improvement" if the Council so determined, is not, in my opinion, open to doubt. The opinion of individual members of the Council may be otherwise. But the determination of the majority of the Council is conclusive and not subject to review by any court.

Mr. Ritchie's contention that the Council must exercise its borrowing powers under the Act, once for all, is, perhaps, not very material if his other contention is correct, namely, that the money to pay for the meters could not be borrowed under the Act at all. But it is most material in the view I take of the Act, and from it also I feel myself constrained to dissent. There are, undoubtedly, as he says, cases in which a power must be exercised once for all. But whether the particular instance is a case of that description must, as in all other matters of statutory construction, be determined by the object and intent of the Act. For example, if the Legislature were to authorize the City to borrow a sum not exceeding \$30,000 for some one particular purpose, such as the construction of a building, and the City constructed the building for \$25,000 and borrowed that amount only, it would be obvious that the power to borrow under the Act would have been exhausted, because the particular purpose had been accomplished. But no such inference could, in my opinion,

be properly drawn in the case of some large general power, requiring to be carried out by a number of specific acts, the selection of which would necessarily be left to the Council. To do so might require the Council to borrow the whole sum authorized at the outset, though not then required, or to undertake the performance of work without adequate consideration, possibly to float its loan on a bad market and to allow the money to remain on deposit for years. I do not conceive the Legislature ever intended a construction involving consequences so inconvenient and mischievous. Such a construction has never been put on any of the City's numerous borrowing Acts for general purposes. Our loans for sewers, sidewalks and pavements and the recent loan for the Silliker Works have all been contracted from time to time as the money was required, but if Mr. Ritchie's contention is right it would seem that all the loans made after the first were illegal.

For these reasons I am unable to concur with Mr. Ritchie's view that the contracts were invalid because in excess of the amount provided by law for their discharge.

F. H. BELL.

Halifax, N. S., July 8th, 1908.

Moved by Alderman Hoben, seconded by Alderman Whitman, that the opinion of the City Solicitor be printed and referred to the Laws and Privileges Committee for report and that the Committee have power to obtain a third opinion from another legal firm. Motion passed.

Moved by Alderman Chisholm, seconded by Alderman Whitman, that the thanks of this Council be tendered to Messrs G. S. Campbell & Co. for generously placing at the disposal of His Worship the Mayor and the Aldermen the S. S. "Togo" June 25th last on the occasion of their visit with Sir Sandford Fleming to the property at the North-West Arm proposed to be given by Sir Sandford to the City as a public park. Motion passed.

By leave of Council Alderman Chisholm submits the following resolution.

Resolved, That the following be a Committee to investigate and report on the system of civic organization as recommended in the report of the City Prison Investigating Committee submitted on October 17th, 1907, namely: Aldermen Whitman, Chisholm, Smith, Hoben, Campbell, MacKenzie.

Moved by Alderman Chisholm, seconded by Alderman Wilson, and passed.

By leave of Council Alderman Rankine submits the following resolution.

Resolved, That the Works Committee be requested to report on the advisability of installing an additional street light on Union Street between Young Street and Richmond Street, and one on North Street between Windsor Street and Oxford Street.

Moved by Alderman Rankine, seconded by Alderman MacKenzie and passed.

By leave of Council Alderman Martin submits the following resolution.

Resolved, That a granite crossing be placed on Maynard Street across Armoury Street.

Referred to Committee on Works.

Moved by Alderman Martin, seconded by Alderman Rankine, that the Council do now adjourn. Motion passed.

Council adjourns 12.25 o'clock.

EVENING SESSION.

8.10 o'clock.

COUNCIL CHAMBER, CITY HALL, August 6th, 1908.

The regular monthly meeting of the City Council was held this evening. At the above named hour there were present His Worship the Mayor and Aldermen Whitman, Hoben, Hubley, Kelly, Martin, McManus, Shaffner, MacKenzie and Edwards.

Moved by Alderman McManus, seconded by Alderman Martin, that the time for meeting be extended until 8.30 o'clock. Motion passed

8.30 o'clock. Roll called. Present, the above named together with Aldermen Wilson, Chisholm, Bligh, Hebb, Douglas, Smith, Campbell, Thompson and Rankine.

The Council was summoned to proceed with business standing over and the transaction of other business.

PRESENTATION OF PAPERS.

The following named papers are submitted :—

Report City Prison Committee, by Alderman Kelly, Chairman.

Report Commissioners of Common, by Alderman Kelly, Chairman.

Report Laws and Privileges Committee, by Alderman Chisholm, Chairman.

Report Charities Committee, by Alderman McManus, Chairman.

Report Finance Committee, by Alderman Hoben, Chairman.

Report Committee of Fire Wards, by Alderman Hubley, Chairman.

His Worship the Mayor submits the following named papers :—

Report Police Committee re accounts.

Annual Report City Auditor 1907-8.

Report City Health Board re City Medical Officer's telephone.

Report Chief of Police re Sunday violations of Liquor License Act.

Cash Statements City Collector for May and June.

Letter School Board re borrowing \$97,320.00 for school purposes.

Report Coal Weighers for June.

Notice of expropriation of City property for right-of-way for Intercolonial Railway.

Reports (10) Committee on Works, viz. :—

Final payment on Morris Street engine house.

- Loan of City decorations.
 Silliker Car Co. crossing gates.
 Water extension I. C. R. Round House.
 Street lights.
 Claim of Warren Bituminous Paving Co. for \$2,500.00.
 Gottingen Street drainage.
 Accounts.
 Funds for sewers and permanent sidewalks.
 Tenders for wood work new workshops.
 Invitation to send delegates to Convention of N. S. Municipalities at Sydney, N. S.
 Petition of Thomas Whelan for reimbursement for loss through smallpox quarantine.
 Application of W. B. MacCoy for commutation of a common lot.
 Petition for granite curb and gutter corner of Maynard and Black Streets.
 Petition for concrete curb and gutter Williams Street.
 Applications W. L. Purcell and W. J. Coles for refund of liquor license deposits.
 Thanks of Trades and Labor Council for civic grant.
 Letter A. M. Payne re advertising Halifax.
 Letter Chronicle Printing Co. re advertising Halifax.

REFERENCE OF PAPERS SUBMITTED.

- Read petition for granite curb and gutter corner of Maynard and Black Streets.
 Referred to Committee on Works for report.
 Read Cash Statements City Collector for May and June, 1908. Filed.
 Read notice of expropriation by the Dominion Government of City property required for the use of the Intercolonial Railway in connection with the Cotton Factory branch of the said railway.

EXPROPRIATION CITY PROPERTY BY I. C. R.

HALIFAX, N. S., July 27th, 1908.

Corporation of the City of Halifax, Halifax, N. S.,

GENTLEMEN,—Take notice that the following is a description by metes and bounds of the land and property taken possession of for the use of His Majesty the King, the said land and property being required for the use of the Intercolonial Railway of Canada, in connection with the Cotton Factory Branch of said Railway at Halifax, in the County of Halifax, and Province of Nova Scotia, and that the said land and property are vested in His Majesty the King, his heirs, successors and assigns by virtue of "The Expropriation Act."

All that certain lot, piece or parcel of land situate, lying and being at Halifax, in the County of Halifax, and Province of Nova Scotia, and more particularly described as follows :—

Beginning at a point on the southeastern boundary of the right-of-way of the Cotton Factory Branch of the Intercolonial Railway where it is intersected by the prolongation of the boundary line between the properties of the aforesaid City of Halifax and Estate of Levi Hart ; thence northeasterly along the said southeastern boundary of the right-of-way of the Cotton Factory Branch of the Intercolonial Railway a distance of 940 feet, more or less, or until it meets the boundary line between the properties of the said City of Halifax and John Brown ; thence southeasterly along said boundary line between the said City of Halifax and John Brown, a distance of 59 feet, more or less, to a point, said point being distant 50 feet, measured at right angles to the centre line between the new double tracks of the Cotton Factory Branch ; thence southwesterly parallel to and distant 50 feet, measured at right angles from said centre line between the new double tracks of the Cotton Factory Branch a distance of 960 feet, more or less, or until it meets the said boundary line between the properties of the City of Halifax and Estate of Levi Hart ; thence northwesterly along said boundary between the properties of the City of Halifax and the Estate of Levi Hart, a distance of 83 feet, more or less, to the place of beginning—containing in all an area of 52,616 square feet, more or less, or one acre and two hundred and eight one-thousandths of an acre, according to a plan filed in the Registry of Deeds at Halifax, N. S., on the 22nd day of July, A. D. 1908, under the provisions of the Revised Statutes of Canada, 1906, Chapter 143, being "The Expropriation Act."

R. T. MACLREITH,

Agent of the Minister of Justice.

Referred to Committee on Works for report.

Read report Chief of Police reporting no violations of Liquor License Act on Sunday since last report. Filed.

Read Annual Report City Auditor 1907-8. Filed.

Read letters Chronicle Printing Co. and Mr. A. M. Payne re advertising Halifax.

Referred to Finance Committee for report.

Read resolution of thanks from Trades and Labor Council for City grant towards defraying cost of entertaining delegates to Convention in Halifax September 21-26.

THANKS OF LABOR COUNCIL.

HALIFAX, N. S., July 10th, 1908.

MR. L. F. MONAGHAN, *City Clerk.*

SIR,—At a meeting of the Committee appointed by the Halifax Trades and Labor Council to draft up resolutions the following resolution was adopted unanimously :—

Resolved, That the thanks of the Halifax Trades and Labor Council be extended to the Halifax City Council for their hearty co-operation and assistance rendered the Halifax Trades and Labor Council in entertaining the visiting delegates to the coming Convention of the Trades and Labor Congress of Canada, to be held in this City September 21-26 inclusive.

H. C. Low, *Secretary.*

Filed.

Read letter Board of School Commissioners re borrowing \$97,320.00 for school purposes.

LOAN FOR PUBLIC SCHOOLS.

HALIFAX, N. S., July 18th, 1908.

A. B. CROSBY, ESQ., *Mayor of Halifax* :

SIR,—I have the honor to inform you that application has this day been made, for the approval of the Governor-in-Council, of two contracts for school houses, in accordance with Sec. 812 of the City Charter, as amended by Sec. 7, Cap. 67, Acts of 1907, viz. :—

1. For "Chebucto" School, Chebucto Road.....\$70,814 00
2. For "Oxford" School, Oxford Street... .. 25,558 00

And also in accordance with Sec. 12 of the said Act for an order directing the City of Halifax to issue its debentures for an amount sufficient to produce the sum of \$97,320.00.

R. J. WILSON, *Secretary*.

MEMO.

Site, already approved by the Governor-in-Council.....	\$5,500 00
Chebucto School.....	\$70,814 00
Oxford School.....	25,558 00
	96,372 00
Architect, 5 %.....	4,818 60
Legal Expenses.....	130 00
	\$106,820 00
Less Fire Insurance Compton Avenue.....	9,500 00
	\$97,320 00

Filed.

Read report Coal Weighers for June. Filed.

Read applications of W. L. Purcell and W. J. Coles for refund of deposits made with applications for liquor licenses.

Referred to Laws and Privileges Committee for report.

Read petition for concrete curb and gutter Williams Street.

Referred to Committee on Works for report.

CONSIDERATION OF PAPERS SUBMITTED.

Read application of W. B. MacCoy for commutation of a common lot now held by him on College Street.

Moved by Alderman Chisholm, seconded by Alderman Hoben, that a deed be given Mr. MacCoy upon his paying the amount fixed for commutation and the amount due for back rent, and on the City Solicitor giving a certificate that Mr. MacCoy is entitled to a conveyance.

Moved in amendment by Alderman Kelly, seconded by Alderman Martin, that the application be referred to the Laws and Privileges Committee for report.

The amendment is put and lost, 8 voting for the same and 9 against it, as follows :—

	For the Amendment.	Against it.
Aldermen	Wilson, Whitman, Hebb, Kelly, Hubley, Thompson, Martin, Campbell.—8.	Aldermen Shaffner, Chisholm, Bligh, McManus, Douglas, Smith, Hoben, MacKenzie, Edwards.—9.

The original motion is put and passed.

Read letter Union of Nova Scotia Municipalities requesting the City Council to send delegates to Annual Convention at Sydney, August 26th.

Moved by Alderman Douglas, seconded by Alderman Hebb, that His Worship the Mayor, Aldermen Whitman and Smith and the City Engineer be the delegates to represent the City of Halifax at this Convention. Motion passed unanimously.

Read letter City Health Board requesting the City Council to pay one-half of the rent of City Medical Officer's telephone.

CITY MEDICAL OFFICER'S TELEPHONE.

HALIFAX, N. S., July 21st, 1908.

To His Worship the Mayor and Members of the City Council :

GENTLEMEN,—At a meeting of the City Health Board held on Thursday, the 16th inst., the following resolution was introduced and passed, and I am directed to transmit the same to you for your consideration :—

Resolved, That in view of the excessive amount of City work imposed upon the City Medical Officer's private telephone, the City Council be recommended to pay half the cost of such telephone.

JOHN A. WATTERS, *Secretary.*

Referred back to the City Health Board with the information that no funds are available for this year in telephone account.

Read report Charities Committee for July.

REPORT CHARITIES COMMITTEE.

HALIFAX, August 5th, 1908.

His Worship the Mayor and Members of the City Council :

GENTLEMEN,—The Charities Committee met this day and beg to submit the following report :—

Members present : The Chairman, Aldermen Hebb and MacKenzie.

The Superintendent's report showed that during the month of July the admissions consisted of 20 men, 11 women and 4 children. There were also 4 births. There were 20 men, 13 women and 6 children discharged, and 2 men and 1 woman died. Of the number admitted 8 were chargeable to the Province, 2 to Truro, N. S., and 24 to the City. The total number of inmates at this date is 217, made up of 180 men, 135 women and 2 children.

The following accounts were recommended for payment :—

A. L. Doyle & Co., \$255.20. W. A. Maling & Co., \$353.38. J. & M. Murphy, \$71.25. F. A. Shaw, \$28.22. P. T. Shea, \$148.80. Scotia Pure Milk Co., \$97.65. Geo. Gregoire, \$28.69. Henry Lovett, \$14.00. The Fleischmann Co., \$3.90. S. Cunard & Co., \$172.50. Hugh D. MacKenzie & Co., \$106.33. N. S. Telephone Co., \$11.25. Halifax Electric Tram Co., \$16.27. Gunn & Co., Ltd., \$125.00. Wentzell's, Ltd., \$135.00. John F. Outhit, \$66.60. T. Larsen & Co., \$16.20. Farquhar Bros., \$3.60. W. C. Knight, 75c. T. C. Allen & Co., 90c. John Foley, \$38.50. Day & Kinsman, \$38.32. Snow & Co., \$8.10. City Provision Co., \$2.00. W. N. Brown, \$11.10. C. S. Hosterman, \$18.40. B. Mulcahy, \$742.71. Pay Sheet July, \$816.33. N. S. Hospital, \$709.96. Total, \$4040.91.

The tender of Wentzell's, Ltd., for 25 bbls. Beaver flour at \$5.25 and 25 bbls. Swansdown flour at \$4.80 is recommended for acceptance.

P. J. McMANUS, *Chairman.*

The following resolution is submitted:—

Resolved, that the report of the Charities Committee be adopted and His Worship the Mayor authorized to sign warrants for payment of the accounts mentioned therein.

Moved by Alderman McManus, seconded by Alderman Hebb, and passed.

Read report Committee of Fire Wards on various matters.

REPORT COMMITTEE OF FIRE WARDS.

COMMITTEE ROOM, CITY HALL, August 4th, 1908.

His Worship the Mayor and City Council:

GENTLEMEN,—The Committee of Fire Wards met last evening. Present—Aldermen Hubley (Chairman), Whitman, Edwards, McManus, Hebb and Thompson.

The Committee beg to report and recommend as follows:—

1. That Lieut. John Kennedy of No. 4 Engine Company and Ralph Smith, Engineer of No. 3 Engine Company, have resigned.

2. That Vincent Brunt, Hoseman of No. 2 Engine was suspended for three days for using profane language at fire box 54, July 19th, and the Chief's action was approved of by the Board.

3. That three lengths or 150 feet of Maltese Cross Hose burst and one length of Canadian Rubber Co.'s Para Hose blew off a coupling at the test of fire engine on the King's Wharf on July 27th—all two years in service.

The blowing off of the coupling being a minor matter, the length of hose will be repaired at the Company's expense and the hose placed in commission. The three lengths of Maltese Cross Hose have been returned to the factory to be replaced under the guarantee.

4. That of the 2000 feet of hose recently contracted for, 500 feet Keystone, 500 ft. Dreadnought and 500 ft. Paragon stood the test applied by the Chief Engineer of 300 lbs. pressure one length of each kind being tested to a pressure of 400 lbs. Of the 500 feet Maltese Cross Hose two lengths or 100 feet burst at a pressure of 375 lbs., and the whole 500 feet has been returned to the factory.

5. The Chairman and Chief have been authorized to the Board estimates of cost of pointing the north and east sides and repairing window frames of the Central Engine House.

6. The following report of the Chief was unanimously concurred in and is recommended to the Council for adoption:—

August 3rd, 1908.

To the Chairman and Members Board of Fire Commissioners :

GENTLEMEN,—I beg leave to make the following recommendations:—

- a. That Thomas Strachan, Hoseman No. 4 engine, be appointed Lieut., vice John Kennedy, resigned.
- b. That James Vass and William Bishop, supernumeraries, be appointed to the Call Force vice John Lomas and William McDonald, resigned.
- c. That Frederick Cummings and Arthur Smith be appointed Supernumeraries.
- d. That the Tramway Company be asked to allow the members of the Fire Department while on duty to ride free on the cars according to their Charter.
- e. That the Fire Department in uniform and with apparatus be inspected by His Worship the Mayor and Members of the Board of Fire Commissioners on or about the 8th of September.
- f. That when the members of the Call Force are ordered out for inspection or parade and do not attend they shall be fined one (\$1.00) dollar.
- g. That a hall door bell be placed in the Morris Street engine house.
- h. That tenders be asked for painting, overhauling and nickleing No. 1 fire engine now in the repair shop.

Respectfully submitted,

P. J. BRODERICK,
Chief Fire Department.

7. It is recommended that Rule 34 of the Department Regulations be amended increasing the present fine of fifty cents to one dollar for absence of members from Company drill.

8. The following tests prepared by the Chairman and Chief to be applied by Macdonald & Co., to the Horton Aerial Ladder are recommended for adoption by the Council:—

Erect at the centre of Stairs, Son & Morrow's building on Lower Water Street and extend ladder to top of roof.

Erect ladder on Hollis Street, to roof of Metropole Building.

Erect ladder on Herald Building, Granville St., to south top window and move to north top window. Time to be taken from start to finish.

Ladder to leave Bedford Row Engine House, proceed to N. S. Furnishing Co., on Barrington St., erect ladder to roof of said building. Time to be taken from leaving Engine House until ladder is erected on roof of building.

9. The Union Protection Co., wrote the Board that the alarm gong at their hall is worn out and asking for a new one. It was decided to supply the U. P. C. Hall with a new gong to the satisfaction of the Chairman, the City Electrician and Capt. Hoyt of the U. P. C.

10. In response to advertisement tenders were received for a two-horse sleigh and for uniforms.

SLEIGH.—Patrick Dowd, \$300.00; J. H. Mont & Co., \$306.00. The tender of P. Dowd, being the lowest, is recommended for acceptance, Mr. Dowd to construct the same within 90 days and the sleigh to be inspected by the Chairman and Chief before any paint is applied.

CLOTHING.—James Halliday, Thos. P. Connors, Thos. Brenton and Clayton & Sons.

Clayton & Sons' tender for \$17 25 for uniforms and \$5 25 for pants being the lowest, is recommended for acceptance, provided their tender is for the samples upon which the other tenders were submitted and that they will complete contract in thirty days.

11. The Board, agreeably to resolution of Council, again considered the matter of placing one of the small rooms on the upper floor of the Spring Garden Road Engine House now occupied by the Veteran Firemen's Association at the disposal of the driver of the Chief's waggon and the police patrol waggon.

Mr. Edward Phelan, President, and Mr. John Maguire, Treasurer, of the Veteran Firemen's Association, were notified to attend the meeting, but failed to do so. The Board had before them all the extracts from the Minutes of the Fire Wards and the City Council from 1896 when the use of the building was first given to the Veteran Firemen's Association to date and found that during the last five years the matter of the occupancy of this building has occupied the attention of both bodies on many occasions.

On January 7th, 1903, the Fire Wards reported to the Council that they had no intention to dispossess the Veteran Firemen's Association of the building and this decision has never been rescinded. The occupation of the little room for active fire service is practically an indispensable necessity and will not in any way inconvenience the Veteran Firemen's Association.

For the reasons given your Committee have unanimously decided to adhere to the recommendations reported up to Council July 9th, 1908.

12. The doors of the Spring Garden Road Engine House are in a very dilapidated condition and also other parts of the building and certain repairs and painting are necessary at Central Engine House in addition to the pointing recommended in paragraph 6 of this report. The cost is estimated at about \$300.00. It is recommended that the Chairman and Mr. Fidler have the work done by tender and contract.

13. The Nova Scotia Board of Fire Underwriters having determined to add ten cents per hundred dollars on certain fire risks until the City provided two 800-gallon steam fire engines for the water front, the City at great expense purchased two very powerful engines for this district and the same are now in commission. In addition to the above the City has procured another smaller engine for outlying districts and spent a great deal of money on improving the fire service generally. At the recent test of the larger engines much satisfaction was expressed at the demonstrations made of the capabilities to these machines.

It is therefore recommended the City Council request the Fire Underwriters to make the reduction of ten cents promised upon the placing of these two engines in service.

14. The following accounts are recommended for payment :—

Imperial Oil Co., gasoline, \$83.55. W. & A. Moir, machine work, \$8.66. Henry Lovett, leather, \$16.80. Jas Roue, distilled water, \$1.50. Halifax Tram Co, light, \$14.56, power, \$8.86—\$23.42. J. S. Cashen & Sons, forage, \$318.49. J. F. Crowe & Co., soap, \$4.50. J. Starr, Son & Co., gong, etc., \$24.00. Canadian Rubber Co., coat, \$5.00. Geo. E. Smith & Co., hardware, \$2.78. J. C. Calder, polish, \$15.20. E. B. Eddy & Co., paper, \$6.50. Halifax Brush Co., brooms, \$3.50. National Drug Co., oil, etc., \$5.88. Wentzells, Ltd., soda, \$36.00. Nova Scotia Telephone Co., phones, etc., \$83.13. Herald, advertising, \$6.83. Fred. Parsons, carriage hire, \$4.50. W. & C. Silver, bedding, \$4.60. W. & C. Silver, floor cloths, \$211.00. Macdonald & Co., machine work, \$34.30. Wm Brunt, et al., labor, \$23.38. W. C. Knight, saddlery, \$14.80. J. H. Mont & Co., carriage work, \$3.50. Wm. Robertson & Co., hardware, \$1.90. H. H. Fuller & Co., hardware, \$26.20. A. S. Austen, hardware, \$3.53. J. C. Merlin & Son, lumber, \$9.22. Robert Merlin, lumber, \$5.16. Melvin & Co., hardware, \$2c. Thomas J. Healy, plumbing, \$47.55. Total, \$937.00.

ANDREW HUBLEY, *Chairman.*

The same is considered clause by clause.

Clauses 1 to 7 are severally read and adopted.

Read clause 8 re tests to be applied to Horton aerial ladder constructed by Macdonald & Co.

Moved by Alderman Edwards, seconded by Alderman Hubley, that said clause be adopted.

Moved in amendment by Alderman Whitman, seconded by Alderman Hebb, that this clause be referred back to the Committee of Fire Wards. Amendment put and passed.

Clause 9 and 10 are severally put and passed.

Read Clause 11 re occupancy of a small room in Spring Garden Road Engine House by the Chief's driver, now used by the Veteran Firemen's Association.

Moved by Alderman Edwards, seconded by Alderman Whitman, that said clause be adopted. Motion passed, 11 voting for the same and 3 against it as follows:—

For the Motion.

Against it.

Aldermen Shaffner, Wilson, Whitman,
Hebb, McMaus, Smith,
Hubley, Thompson,
Campbell, Edwards,
Rankine—11.

Aldermen Hoben, Martin,
MacKenzie—3.

Clauses 12, 13 and 14 are severally read and adopted.

Moved by Alderman Hubley, seconded by Aldermen Edwards, that the report as amended be adopted as a whole, and His Worship the Mayor authorized to sign warrants for payment of the accounts referred to therein. Motion passed.

Read report Committee on Works covering report City Engineer and opinion of City Solicitor re Claim of the Warren Bituminous Paving Co. for payment of \$2500.00 retained as fines.

PENALTY ON WARREN PAVING COMPANY'S CONTRACT.

CITY WORKS OFFICE, Aug. 6th, 1908.

To the City Council:

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached reports of the City Engineer and City Solicitor on claim of the Warren Paving Co. for payment of \$2,500 retained as fines was read and referred to Council. The letter was addressed, as will be seen, to me, but to save time I submitted same to this Committee, and you now have the result in the attached reports.

A. B. CROSBY, *Mayor and Chairman.*

CITY ENGINEER'S OFFICE, July 7th, 1908.

His Worship the Mayor:

SIR,—Attached hereto is a copy of the papers in reference to the penalty imposed

on the Warren Paving Company I think the report covered everything in connection with it, but in the letter from the Paving Co. of June 19th, 1908, all reference to the paving on Spring Garden Road has no bearing on the question, as the Spring Garden Road pavement was not included in the work which the penalty covers, and no penalty was enforced for delay in paving Spring Garden Road. The Council on the recommendation of the City Works Committee compromised the penalty, making it \$1,500 instead of \$2,500, which they would have had to pay under the contract.

F. W. W. DOANE, *City Engineer.*

WARREN BITUMINOUS COMPANY'S CLAIM.

OFFICE OF CITY SOLICITOR, Aug. 1st, 1908.

F. W. W. DOANE, *City Engineer,*

DEAR SIR,—The only point with which a lawyer is called upon to deal in connection with this matter is the legal effect of the penalty clause in the contract quoted by you in your letter of the 7th March, 1907. I believe the law respecting such clauses in building contracts to be perfectly well settled to the following effect: Where a contractor has in his contract agreed that his rights and liabilities are to be left to the opinion or discretion or certificate of the architect or engineer employed in the supervision of the work, such agreement practically constitutes the architect or engineer an umpire or arbitrator, and his determination respecting any matter coming within the scope of the clause conferring this power upon him, is in the absence of fraud or collusion with the building owner conclusive and final, and will not be viewed by a court no matter how unjust or wrongful it is in the opinion of the contractor may be.

As to the matters of controversy between yourself and the company I am not qualified to deal, either by knowledge or skill, but I can only say that they appear to me all unquestionably matters probably arising under the penalty clause, and upon which, if I am correct in my view of the law, your conclusion is final and binding upon the contractor.

F. H. BELL, *City Solicitor.*

Moved by Alderman Hoben, seconded by Alderman Chisholm, that this matter be referred to the Committee on Laws and Privileges for report. Motion passed.

Read report Commissioners of Public Gardens re accounts.

PUBLIC GARDENS ACCOUNTS.

COMMITTEE ROOM, PUBLIC GARDENS, August 5th, 1908.

His Worship the Mayor and City Council:

GENTLEMEN,—A meeting of the Commissioners of Halifax Common was held this day at 5 p. m. Present—Chairman Kelly, Commissioners Smith, MacKenzie, Bishop, Macdonald, Powell, Power, and the Superintendent.

They had before them the accompanying bills, of which the following is a summary. The same were approved and passed for payment, and the Secretary instructed to forward them to the City Council for their information and concurrence.

The Halifax Tram Co., \$1 00. James D. Walsh, 40c. Brookfield Bros., \$16.95. Donovan & Brennan, \$46.15. F. A. Shaw, \$11.35. H. H. Fuller & Co., \$4.97. Longard Bros., \$7.70. S. Cunard & Co., \$96.00. J. A. McInnis & Son, Ltd, \$19.44. Mrs. Bell, 60c. Chronicle Pub. Co., \$5.58. Jos. Breck & Sons, \$5.00. R. B. Adams, \$1.25. W. Webster, \$13.50. Total, \$229.39.

EDW. T. POWER, *Secretary.*

Moved by Alderman Kelly, seconded by Alderman MacKenzie, that the report be adopted and the accounts paid. Motion passed.

Read report Police Committee covering accounts for payment.

POLICE ACCOUNTS.

AUGUST 6th, 1908.

To the City Council :

GENTLEMEN,—The Police Committee beg to recommend for payment the following accounts :—

N. S. Telephone Co, rent Telephone three months ending Sept. 30th, 1908, \$19 25. J. Wonnacott, repairing handcuffs, 75c. Amherst Boot & Shoe Co., boots, \$3.40. W. & C. Silver, making suit for messenger, \$12.00. G. A. Burbidge, vaccine, 90c. Total, \$36.30.

A. B. CROSBY, *Mayor and Chairman.*

Moved by Alderman Shaffner, seconded by Alderman MacKenzie, that the report be adopted and the accounts paid. Motion passed.

Read report City Prison Committee on various matters and accounts.

REPORT CITY PRISON COMMITTEE.

COMMITTEE ROOM, CITY HALL, August 5th, 1908.

To His Worship the Mayor and City Council :

GENTLEMEN,—Your Committee on City Prison beg to report that a meeting of the Committee was held this day. Present—Aldermen Kelly (Chairman), Wilson and Hubley.

The Governor reported to the Committee that Underkeeper Anderson had resigned his position to accept a position at the Trachoma Hospital.

Your Committee recommend that the resignation be accepted, and that the position be not filled for the present.

The Committee held an investigation at the Prison on July 21st last, into the escape of several prisoners from the Prison yard.

The Committee found that the fence recently constructed by the Works Department was inadequate to confine the prisoners, and have instructed the Governor to have iron stanchions inserted in the wall and strung with barbed wire to make it more secure.

The Chairman was instructed to engage Mr. John Foley to repair and point the chimney on the east side of the main building and repair slates on roof.

The following accounts are recommended for payment, viz. :—

Halifax Tram Co., light, 54c. Black & Flinn, lime, \$1.95. Neil Fox, harness repairs, \$4.75. W. A. Maling & Co., ox heads, \$13.00. A. M. Bell & Co, hardware, \$4.28. Clayton & Sons, pants, \$25.00. Gunn & Co., oats, \$28.56. Jordan & Mann, horseshoeing, \$4.01. Day & Kinsman, fitting ventilators, \$35.00. Wentzells, Ltd., groceries, \$45.62. Total, \$162.71.

JOHN F. KELLY, *Chairman.*

Moved by Aldermen Hubley, seconded by Alderman Hebb, that said report be adopted and the accounts paid. Motion passed.

Read report Committee on Works re accounts.

CITY WORKS ACCOUNTS.

CITY WORKS OFFICE, Aug 6th, 1908.

To the City Council :

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached bills for the several services were submitted, approved and recommended to Council for payment :—

Water Maintenance	\$ 418 59
“ Construction	126 51
Streets	1460 58
Street Lighting	1690 40
New Workshops	543 65
Public Gardens Fence	209 17
Public Baths	100 60
Cleaning Paved Streets	97 90
Internal Health	91 22
Teams and Stables	75 26
City Property	74 22
Telephones	73 75
City Hall Lighting	66 35
Sewer Loan	28 60
Inspection Electric Wiring 1907-8	9 50
“ “ “ 1908-9	60
Final payment Barber Asphalt Pav. Co., Permanent Pavement	6819 68
	\$11886 58

A. B. CROSBY, Mayor and Chairman

Moved by Alderman Whitman, seconded by Alderman Hubley, that said report be adopted and the accounts paid. Motion passed.

Read Report Finance Committee in re City's contract for banking business with the Royal Bank and covering accounts for payment.

REPORT FINANCE COMMITTEE.

COMMITTEE ROOM, CITY HALL, Aug. 5th, 1908.

To His Worship the Mayor and City Council :

GENTLEMEN,—Your Committee on Finance beg to report that at a meeting of the Committee held this day, there being present Aldermen Hoben (Chairman), Bligh and Smith, the following accounts, amounting to \$1,711.29, were examined, found correct, and are recommended for payment :—

Dr. Finn, certificate and autopsy on death F. Burke, \$12.00. Joseph Spencer. removal of bodies, \$4.50. British Am. Bank Note Co., printing bonds, etc., \$150.00. Blackadar Bros., advertising, \$2.60, \$7.35, \$4.20—\$14.35. Herald Pub. Co., advertising, \$5 85, \$4.00, \$6.83—\$21.68. Holloway Bros., printing Mirutes, \$45.90. A. & W. Mackinlay, Ltd., blank books—Assessors, \$72.00; Police Commission, \$25.40—\$97.40. T. C. Allen & Co., stationery and blank forms—Assessors, \$12.00; Police Department, \$3.45; Auditor, \$1.25; City Clerk, \$38 61—\$55.31. D. Archibald, Sheriff, court fees, \$3.80. S. H. Holmes, court fees, \$4.70. Union of N. S. Municipalities, subscription to August 1, 1908, \$50.00. Union of Canadian Municipalities, annual fee, \$120.00. MacAlpine Pub. Co., directories, \$42.00. Religious of Good Shepherd, maintenance of women, one quarter to August 1, 1908, \$75.00. Halifax Industrial School, maintenance boys—

truants, quarter ending August 1, 1908, \$285.00 ; regular commitments, quarter ending August 1st. 1908, \$193.33—\$478.33. St. Patrick's Home—truants, \$94.65 ; regular commitments, \$242.17—336.82. Ritchie & Robertson, opinion re water meter contract, \$100.00. Robert E. Harris, opinion re water meter contract, \$100.00. Total, \$1711.29.

The Chairman brought to the notice of the Committee that the contract with the Royal Bank of Canada for the City's bank account will expire on the 1st September next. He and the City Treasurer had had an interview with Mr. Taylor, the local manager, who had given his assurance that the Bank would continue the contract at the same rates for another year.

Your Committee recommend that the City Treasurer be instructed to continue the City's account with the Royal Bank for another year on the present terms.

C. R. HOBEN, *Chairman*.

The following resolution is submitted :—

Resolved, That the report of the Finance Committee be received and adopted, and His Worship the Mayor authorized to sign warrants for payment of the accounts therein recommended.

Moved by Alderman Hoben, seconded by Alderman Smith, and passed.

Read petition Thomas Whelan for reimbursement for alleged loss through small-pox quarantine.

Referred to City Health Board for report.

Read reports Committee on works and City Engineer re street lights Union St. and North St.

STREET LIGHTS.

CITY WORKS OFFICE, Aug. 6th, 1908.

To the City Council :

GENTLEMEN,—At a meeting of the Committee on Works held July 28th, the attached report of the City Engineer on Minute of Council in re street lights Union Street and North Street was read.

It was decided to recommend the placing of said lights when funds are placed in the next estimate for that purpose.

A. B. CROSBY, *Mayor and Chairman*.

CITY ENGINEER'S OFFICE, July 27th, 1908.

His Worship the Mayor :

SIR,—In accordance with the accompanying extract from Minutes of Council I beg to report that there is no light on Union Street, between Young Street and Richmond Street, nor on North Street between Windsor Street and Oxford Street. Both these blocks are very long, and consequently there is a long distance unlighted. I would recommend that these two lights be installed when funds are available. At present the appropriation will not permit of the installation of more lights.

F. W. W. DOANE, *City Engineer*.

Moved by Alderman Hubley, seconded by Alderman Whitman, that said reports be adopted. Motion passed.

Read reports Committee on Works and City Engineer re final payment to Contractor George B. Low for construction of Morris Street Engine House.

MORRIS STREET ENGINE HOUSE.

CITY WORKS OFFICE, July 28th, 1908.

To the City Council :

GENTLEMEN,—At a meeting of the Committee held this day the attached certificate of the City Engineer for final payment to contractor Geo. B. Low, on account Morris Street Engine House was read and recommended for payment. Amount of certificate as per Engineer's report, filed Board of Works Office, \$156.00.

A. B. CROSBY, *Mayor and Chairman.*

Moved by Alderman Whitman, seconded by Alderman Hubley, that said reports be adopted and the account paid. Motion passed.

Read report Committee on Works re loan of City decorations for Eudist Seminary Fair at the Arena Rink.

LOAN OF CITY DECORATIONS.

CITY WORKS OFFICE, August 6th, 1908.

To the City Council :

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached letter from E. J. Kelly, Secretary of Fair in aid of Eudist Seminary, asking for the loan of City decorations was read.

It was unanimously resolved to recommend that the request be granted, provided Mr. Kelly becomes surety for their return in as good a condition as when loaned.

A. B. CROSBY, *Mayor and Chairman.*

Moved by Alderman Hubley, seconded by Alderman Martin, that the report be adopted. Motion passed.

Read report Committee on Works re proposed loans of \$25,000 for sewers and \$10,000 for sidewalks, covering opinion of City Solicitor.

LOAN FOR SEWERS AND SIDEWALKS.

CITY WORKS OFFICE, August 6th, 1908.

To the City Council :

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached reports of the City Solicitor in re funds for Sewerage and Permanent Sidewalks was read.

It was decided to recommend that \$25,000 for Sewerage, and \$10,000 for Permanent Sidewalks be borrowed.

A. B. CROSBY, *Mayor and Chairman.*

IN RE SEWERAGE LOAN.

OFFICE OF CITY SOLICITOR, HALIFAX, Aug. 4th, 1908.

Chairman Committee on Works:

DEAR SIR,—I have been asked for an opinion on the following point :—By Chapter 71 of the Acts of 1907 the City was authorized to borrow for the construction of new sewers a sum not exceeding fifty thousand dollars (\$50,000). The City has already borrowed the sum of twenty-five thousand dollars (\$25,000) for this purpose under this Act, and the question upon which I am asked to give my opinion is whether by so doing it has exhausted its powers to borrow for that purpose under the Act, and whether consequently a further loan of twenty-five thousand dollars (\$25,000) would legally be contracted.

I beg to say that I am clearly of opinion that the City's powers in this respect have not been exhausted, and that the loan can consequently legally be made. Whether or not a power conferred by a statute is exhausted is in all cases to be gathered from the purport of this Act. If, for instance, an Act authorized a loan for a particular purpose such as the construction of a building or of one designated sewer, and the City accomplished the work for a sum less than the amount authorized to be borrowed, I would think that no further loan could be made under that authority because the purpose for which it was authorized had been accomplished. But no such inference could, in my opinion, be properly drawn in the case of a general power such as the one now under consideration. The construction of new sewers implies a number of sewers. There is no reason why these should all be constructed at one time, and many reasons why their construction should be spread over a period of time. And a construction which would compel the City to build them all at once or to borrow the money years before it was required would be so inconvenient and unbusinesslike that in my opinion no legislature could be taken to have intended it.

F. H. BELL, *City Solicitor.*

IN RE PERMANENT SIDEWALK LOAN.

OFFICE OF CITY SOLICITOR, August 4th, 1908.

The Chairman Committee on Works :

DEAR SIR,—I have been asked for an opinion on the following point :—By Chapter 65 of the Acts of 1906 the City was authorized to borrow one hundred and fifty thousand dollars (\$150,000), for the purpose of laying permanent sidewalks on the streets of the City. The City has already borrowed and expended a sum under the provisions of the Act, and the question upon which I am asked for my opinion is whether by so doing it has exhausted its powers to borrow under the Act, and consequently whether a further loan could legally be contracted under the Act.

I beg to say that I am clearly of opinion that the City's powers under the Act have not been exhausted, and that a further loan can consequently be legally made. Whether or not a power conferred by a statute is exhausted by one exercise of the power under it, is in all cases to be gathered from the nature and purport of the Act. If, for instance, the Act authorizing a loan for a particular purpose such as the construction of a building or of the sidewalks on one particular street, and the City accomplished the work for a sum less than the amount authorized to be borrowed, I would think that no further loan could be made under the authority of the Act because the purpose for which the authority was given had been accomplished. But no such inference can, in my opinion, be properly drawn in the case of a general power such as the one now under consideration. The Act evidently contemplated the construction of a number of sidewalks. There is no reason why these should all be constructed at one time, and the provisions of the Act manifestly contemplated their being constructed from time to time, as required. Any construction which would compel the City to build the sidewalks all at once or to borrow money years before it was required, would be so inconvenient and unbusinesslike that in my opinion no legislature could be taken to have intended it.

F. H. BELL, *City Solicitor.*

Moved by Alderman Whitman, seconded by Aldermen Hubley, that the said report be adopted. Motion passed unanimously.

Read reports Committee on Works and City Engineer re gates at I. C. R. crossing Almon Street into Silliker Car Works.

RAILWAY CROSSING, ALMON STREET.

CITY WORKS OFFICE, August 6th, 1908.

To the City Council:

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached report of the City Engineer in re Crossing Gates Silliker's Siding, was read, and recommended for adoption.

A. B. CROSBY, *Mayor and Chairman.*

CITY ENGINEER'S OFFICE, July 23rd, 1908.

His Worship the Mayor:

SIR,—The Silliker Car Company submitted a plan of gates for their railway crossing on Almon Street, and have erected one on each side in accordance with the plan. The Act provides that these gates shall be subject to the approval of the Council. It is customary at railway crossings to put in similar gates more as a warning than as a precaution. Such gates do not prevent children, or even adults, from going over the railway track if they insist on doing so, nor will they stop a runaway team; but as such a provision seems to be generally accepted in other cities I would recommend the gates erected for approval.

F. W. W. DOANE, *City Engineer.*

Moved by Alderman Whitman, seconded by Alderman Hebb, that said reports be adopted. Motion passed.

Read report Committee on Works re tenders for woodwork new City Work shops.

WOODWORK NEW CITY WORKSHOPS.

CITY WORKS OFFICE, August 6th, 1908.

To the City Council:

GENTLEMEN,—At a meeting of the Committee on Works held this day the attached tenders for Woodwork in New Workshops, in accordance with specification attached, were opened as follows:—

John MacInnes & Son	\$7151 00
W. T. Harris & Son	6464 00
Walter Lownds	6000 00
Jas. F. Corston	5250 00
Chas. Carmichael	4728 00
Freeman Bros.	4500 00

It was decided to recommend that the Committee on Works be authorized to have the work done under the supervision of the City Carpenter.

A. B. CROSBY, *Mayor and Chairman.*

Moved by Alderman Whitman, seconded by Alderman Chisholm, that this Council accept the tender of Freeman Bros. for \$4500.00.

Moved in amendment by Alderman Thompson, seconded by Alderman Hubley, that the report of the Committee on Works be adopted.

The amendment being put is lost, 8 voting for the same and 10 against it, as follows:—

For the Amendment.	Against it.
Aldermen Shaffner, Bligh, Hoben, Hubley, Thompson, Campbell, Edwards, Rankine.—8.	Aldermen Wilson, Whitman, Chisholm, Hebb, McManus, Douglas, Smith, Kelly, Martin, MacKenzie—10.

Moved in amendment by Alderman Hoben, seconded by Alderman Thompson, that this matter be referred back to the Committee on Works for further consideration and report.

Amendment put and lost, 8 voting for the same and 10 against it, as follows:—

For the Amendment.	Against it.
Aldermen Shaffner, Bligh, Hoben, Hubley, Thompson, Campbell, Edwards, Rankine.—8.	Aldermen Wilson, Whitman, Chisholm, Hebb, McManus, Douglas, Smith, Kelly, Martin, MacKenzie.—10.

The original motion is put and passed.

Alderman Hubley gives notice of reconsideration.

Read report Laws and Privileges Committee on various matters.

REPORT LAWS AND PRIVILEGES COMMITTEE.

COMMITTEE ROOM, CITY HALL, Aug. 4th, 1908.

To His Worship the Mayor and City Council:

GENTLEMEN,—Your Committee on Laws and Privileges beg to report that since the last meeting of the Council three meetings of the committee have been held, at which all the members were present. A number of important matters referred by the Council for report were carefully considered, and your committee are pleased to make the following recommendations:

1. In re application of Nathan Komarsky for a junk dealer's license, it is recommended that the application be granted subject to the approval by this committee of the location of the store in which the business is to be conducted.
2. In re application of J. A. Watt et. al. for privileges under the Manufacturers' Act, Mr. Watt was invited to appear before the committee and state what business he intended to engage in, but did not respond to the invitation. It is recommended that no action be taken in this matter at present.
3. In re application of L. M. Young and Wm. Conway for a refund of the deposit made with their applications for liquor license, it is recommended that the amounts deposited less the cost of advertising be refunded in each case.

4. In re application of Wentzell's, Limited, for a bill poster's license, it is recommended that application be granted.

5. In re letter Messrs. MacInnes, Mellish, Fulton & Kenny, solicitors of Miss Marion Hall, in re employment of Miss Hall in the Engineer's office, it is recommended that the City Clerk be instructed to write the solicitors of Miss Hall that the City acknowledges no liability in the matter of this claim.

6. In re letter of J. P. Fairbanks in reference to taxation on Queen Hotel, your committee are unable to recommend any action in the matter.

7. In re application of Halifax Arena Company for a reduction of the license fee of the Arena, your committee have considered this application, and are of the opinion that the amount charged is not excessive, and therefore cannot recommend a reduction.

8. In re notice of motion to amend Rule 18 of the Rules of Council in re notices of reconsideration, etc., April 30th, 1908, the City Solicitor was instructed to draft the said amendment to the Ordinance which is herewith submitted. This has been approved of by your committee, and it is recommended that the same be adopted by the Council and forwarded to the Governor-in-Council for approval.

9. Re report Committee on Works covering opinion of W. B. A. Ritchie and City Solicitor in re contract for water meters, also accounts of Neptune Meter Company for water meters.

Your committee, acting under authority of a resolution of the City Council passed at a meeting held on the 9th June last, decided to obtain the legal opinion of R. E. Harris, Esq., K. C., as to whether a contract existed between the City of Halifax and the Neptune Meter Co. Mr. Harris has submitted the opinion asked for, which has been printed and distributed to the members of the Council.

Your committee submit the opinion of Mr. Harris to the Council without recommendation.

10. Re report City Engineer in re official City Plan.

Your committee have had a resolution prepared by the City Solicitor which is submitted herewith approving of the plans with the exception of all the streets shewn on said plan objected to by citizens and members of the Council. It is recommended that the accompanying resolution be adopted.

J. A. CHISHOLM, *Chairman.*

The same is considered clause by clause.

Clauses 1 to 8 are severally read and adopted.

Read clause 9 re contract for water meters covering opinion of R. E. Harris, K. C., on the subject.

Said opinion is now read.

OPINION OF ROBERT E HARRIS, K. C.

HALIFAX, N. S., July 24th, 1908.

JOSEPH A. CHISHOLM, Esq., K. C., *Chairman of Laws and Privileges Committee :*

DEAR SIR,—My opinion has been asked upon the question as to the liability of the City of Halifax, on a contract dated March 7th, 1908, between the Neptune Meter Company and the City of Halifax, by which the Company agreed to supply the City twenty-one hundred Trident Water Meters, delivered f. o. b. Halifax, for \$18,068.00.

Among the papers placed before me is an opinion of the City Solicitor, Mr. F. H.

Bell, K. C., dated May 13th, 1908, an opinion of Mr. W. B. A. Ritchie, K. C., dated July 6th, 1908, and a further opinion of the City Solicitor, dated July 8th, 1908.

The opinion of Mr. Bell is to the effect that the contract is legal and binding and can be enforced against the City, while Mr. Ritchie reaches the opposite conclusion.

Having the greatest respect for the considered opinion of these gentlemen, both so eminent in their profession, I felt my task to be unusually difficult. I must, however, state the opinion at which I have arrived, after a careful consideration of the whole matter.

The opinion of Mr. Ritchie that the contract is invalid is based on section 330, sub-section 2 of the City Charter, which provides that :

“ If any debt is contracted or any money is expended by the Council, or under its authority, *beyond the amount provided by law*, such debt or expenditure shall not be recovered from the City, but members of the Council voting for the resolution for the incurring of such debt, or the making of such expenditure, shall be jointly and severally liable therefor.”

It is common ground that, unless chapter 71 of the Acts of 1907, (under which the City borrowed \$50,000 for the installation of water meters) authorized such a loan, the contract in question was the contracting of a debt *beyond the amount provided by law*, within the meaning of section 330 of the City Charter. There was no other amount or at least no other sufficient amount provided by law which would justify the contract.

It is also common ground, that if Chapter 71 of 1907, authorized the loan of \$50,000 and its expenditure for water meters, then the contract is not void under section 330 of the City Charter.

Section 1 of Chapter 71, of the Acts of 1907, reads as follows :

“ The City of Halifax is hereby authorized to borrow the amounts set out in the schedule hereto for the purposes specified for each such amount respectively and for no other.”

The only item bearing upon the question in the schedule is the following :

“ For the further extension and improvement of the water system, not exceeding \$135,000.”

Mr. Ritchie has reached the conclusion that money cannot be raised under this Act for the installation of water meters, because it is not an “ extension *and* improvement of the water system” and therefore, that the \$50,000 borrowed cannot be considered as provided by law, within the meaning of section 330 of the City Charter ; and, as I understand his argument, while he apparently thinks water meters are an improvement within the meaning of the Act, yet he is of opinion that the money can only be expended for something which is both an extension *and* an improvement of the water system, and that the installing of water meters cannot be considered as both an extension and an improvement, and therefore their purchase and installation is not authorized.

I have reached the opposite conclusion.

I think water meters are an “ improvement of the water system” within the meaning of the Act in question. In view of the results claimed by installing water meters, I am not at all sure that they may not properly be regarded as being also within the word “ extension,” but I do not base my opinion on this. It is sufficient, in my opinion, if they can be regarded as improvements within the meaning of the Act, because I think that the Act authorizes the borrowing of money for both extensions and improvements, and that the money borrowed can be expended partly for improvements and partly for extensions ; provided, however, that the total amount for both purposes does not exceed \$135,000.

In Maxwell on Statutes, 4th edition, p. 557, reference is made to a case decided under the Statute of Charitable uses. That statute speaks of property to be employed for the maintenance of sick *and* maimed soldiers. The question was whether a sick

soldier, who was not maimed, i. e., who was not sick *and* maimed, was entitled to be maintained. The court held that he was, and that the statute referred to soldiers who were either sick or maimed, and not only those who were both.

Apart altogether from this authority, I think I would have reached the same conclusion regarding the words "improvements and extensions" for several reasons.

1st. Because the opposite conclusion leads to unreasonable results.

It is obvious that there must be many improvements which are not, properly speaking, extensions, and extensions which perhaps could not, properly speaking be designated as improvements. That the Legislature intended only to authorize such works as could properly be designated as extensions *and* improvements does not seem to me to be reasonable. Such a construction seems to leave in a most unsettled and unsatisfactory condition the question as to what is within the Act—whereas the construction I have adopted is clear and free from difficulty.

As Keating J., said in *Boon vs. Howard* (1874) L. R. 9 C. P. 277, 308:

"If the words are susceptible of a reasonable and also of an unreasonable construction, the former construction must prevail."

Or, as the Court put it in *R. vs. Skeen*, 28 L. J. M. C. 91:

"If the language employed admit of two constructions, and according to one of them the enactment would be absurd and mischievous and according to the other it would be reasonable and wholesome, we surely ought to put the latter construction upon it as that which the Legislature intended."

2nd. Because I think it is the obvious and popular meaning of the language used.

It is impossible for me to think that the words used could be understood in common language or by plain men as having the restricted meaning suggested by Mr. Ritchie.

Lord Teunterden, in *Attorney General vs. Winstanley*, 2 D & Cl. 302, 310 said that "the words of an Act of Parliament which are not applied to any particular science or art" are to be construed "as they are understood in common language."

"I base my decision," said James, L. J., in *Cargo ex Schiller* 2 P. D. 145, 161, "on the words of the statute as they would be "understood by plain men who know nothing of the technical rule of the Court of Admiralty, or of flotsam, lagan, and jetsam."

Craie's Statute Law, p. 153 thus states the rule:

"Critical refinements and subtle distinctions are to be avoided, and the obvious and popular meaning of the language should, as a general rule, be followed."

As I view it, the obvious and popular meaning of the words is not satisfied by the interpretation sought to be given to them by Mr. Ritchie.

There is also ample authority in decided cases for reading, if necessary, the word "and" as "or." but I am not at all convinced that such a reading of this statute is necessary. The words used in the statute clearly in my opinion were meant to give and do give authority to borrow \$135,000, to be expended partly for extensions and partly for improvements.

If the words were extensions or improvements, "I do not see why it could not just as reasonably be contended that the money could only be expended for one or the other, but could not be expended partly for one and partly for the other.

In reaching the conclusion I have reached, careful consideration has been given by me to the previous statutes referred to by Mr. Ritchie.

These statutes recognize a clear distinction, as he points out, between improvements and extensions, and this distinction, is the basis upon which my opinion is founded.

If the conclusion which I have reached upon the question as to the construction of

the statute is correct, none of the other matters referred to in Mr. Bell's or Mr. Ritchie's opinions seems to call for any discussion.

I have, however, examined the books in the office of the Clerk of Works and I find that prior to the 8th day of March, 1908, the City had expended for improvements and extensions and charged to construction account a sum amounting to \$28,192.56; and subsequently, a portion of the \$50,000 borrowed for water meters was appropriated by the City Treasurer to the liquidation of this \$28,192.56.

When I discovered this I thought it perhaps raised the important question as to whether or not the \$28,192.56 could be said to have been properly paid out of the \$50,000 because if it had been properly paid there would remain less than \$31,855.00, the amount of the contract in question, and the contract entered into at the time, or prior thereto, with Mr. H. B. Clarke for water meters; but on further investigation, I found that \$22,261.67 out of the total of \$28,192.56 so appearing in construction account as expended for extensions and improvement, had been expended prior to the 25th April 1907, the date when the borrowing Act was passed, leaving only \$5,930.89 expended for extensions and improvements after the passing of the Act.

I have reached the conclusion that no portion of the \$28,192.56 could properly be paid out of the \$50,000 for the following reasons:

1st. It is clear, I think, that the Act of 1907, does not authorize the City to expend any portion of the money borrowed under its provisions in paying an expenditure incurred before the Act was passed. It obviously was intended for future extensions and improvements and even if the \$5,930.89 could properly be paid out of the \$50,000, it still leaves a balance of \$44,069.11 provided by law for the purchase of the water meters; and as the contracts, including the duty, amount only to \$31,855.00 (a much smaller amount than that provided) this balance to the debit of the construction account cannot be said to affect the matter in any way.

2nd. The resolution of the City Council of July 22nd, 1907, to borrow \$50,000 for the installation of water meters was an appropriation or setting aside of that amount of money for the sole purpose of installing water meters, and at least in the absence of a resolution of the City Council changing this, no portion of this \$50,000 could be legally otherwise applied.

Mr. Ritchie and Mr. Bell have apparently both regarded the \$50,000.00 as borrowed for the sole purposes of installing water meters, and that is my own view.

The circumstance that some of the loan was irregularly diverted to other purposes can have no effect on the fact that \$50,000 had been by law provided for the purpose of meeting the liability incurred by the City on the contracts for the purchase of water meters.

My attention has also been called by one of the Aldermen to the provision of the City Charter regarding water meters, and the question has been raised as to whether these provisions would prevent the City from purchasing the water meters in question.

After giving this matter careful consideration, I have arrived at the conclusion that none of these provisions of the City Charter effect the authority of the Council to deal with this matter under the legislation in question.

I have, therefore, to advise that the contract made with the Neptune Meter Company is enforceable against the City.

Yours very truly,

ROBT. E. HARRIS.

HALIFAX, N. S., July 24th, 1908.

P. S.—Since writing the foregoing opinion, my attention has been called to certain facts connected with the issue of debentures by the City which it is suggested may affect the question as to the validity of the contracts in question.

It appears that the tenders of the brokers for the debentures for the \$50,000 and the

other debentures issued by the City at the same time, stipulated that they were subject to a satisfactory solicitor's opinion as to the validity of the debentures.

When the debentures (amounting in all to several hundred thousand dollars), were submitted to the solicitors of the brokers for an opinion as to their validity, they were of opinion, and so advised, that these debentures while a debt of the City gave the holders no lien upon the property of the City, differing in this respect from other debentures of the consolidated fund. This was not regarded as satisfactory by the brokers, who asked that an Act be passed by the Legislature, giving the holders of these debentures a lien upon all the property of the City equally with the holders of the three million dollars of other debentures forming part of the consolidated fund.

This matter came before the City Council on the 5th day of August, 1907, when, after reciting that doubts had arisen as to the extent and application of the lien, it was resolved that the "City Solicitor be instructed to prepare an Act for submission to the next session of the Legislature, making such lien to apply in favor of all such stock or debentures at any time issued heretofore or hereafter, and that His Worship the Mayor be instructed to apply to the members of the Provincial Government for the assurance that such an Act will be passed at the next ensuing session of the Legislature."

I understand that the Mayor did apply for and receive from the members of the Provincial Government an assurance that the required Act would be passed. Later on and before the legislation was obtained a considerable sum of money was paid over by one of the brokers in exchange for debentures, no doubt relying upon the assurances that the legislation would be passed in due course.

On September 12th, 1907, at a meeting of the City Council, a letter was read from one of the brokers asking that a resolution should be prepared and presented at the meeting of the Council, guaranteeing to take back the debentures paid for at the purchase price, in case the Legislature failed to pass the Act at its next session, and a resolution was accordingly passed by the Council.

On the 8th day of March, 1908, when the contract was entered into with the Neptune Meter Company, it appears that the Act in question had not been finally passed. It had passed both branches of the Legislature, and was awaiting the assent of the Lieutenant-Governor, which was not given until March 26th, some eighteen days later.

On the 8th of March the brokers were not bound to accept delivery of or to pay for the debentures, because the Act had not been finally passed, the assent of the Lieutenant-Governor being necessary to its validity.

The position, therefore was that the City had been authorized to borrow \$50,000, the Council had passed all the necessary resolutions to borrow the amount, and the City had invited, received and accepted tenders for the sale of the bonds; but unless the Act making the debentures a lien on all the property was finally passed, the money paid in for debentures would have to be refunded and the balance of the debentures would not be paid for by these brokers under their contract.

The question is therefore squarely raised, whether it can properly be said that there is an "amount provided by law" within the meaning of section 330 of the City Charter, by reason of the fact that the Legislature had authorized the City to borrow money and the City had resolved to borrow it; or in other words, was it necessary that the money should actually have been paid in at the time the contract was entered into, or at least that the bonds should have been sold to reliable persons, so that the City would be absolutely sure of having the money to pay the liability when it became due.

I must say here, that when I wrote the main part of this opinion, I thought there was a good contract for the sale of the debentures to the brokers, and that a part of the money at least had been paid in without any conditions.

The question is, whether the facts now disclosed affect the matter.

I find that no reference is made in either of the opinions submitted to me to the facts which I have related. Both Mr. Ritchie and Mr. Bell have taken the view that it