

MINUTES

OF THE

CITY COUNCIL

OF THE

CITY OF HALIFAX,

NOVA SCOTIA,

FOR THE CIVIC YEAR

1909-10.

INDEX.

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Minutes of City Council.

CIVIC YEAR 1909-10.

JOSEPH A. CHISHOLM, Esquire, Mayor.

OFFICE OF CITY CLERK, HALIFAX, N. S., May 3rd, 1909.

JOSEPH A. CHISHOLM, Esquire, having been on the 30th day of April, 1909, by the City Clerk, in the presence of the City Council, declared duly elected Mayor of the City of Halifax, for the civic year 1909-10, I do hereby certify that before entering upon the duties of the office of Mayor, he was on the 1st day of May, inst., sworn before His Lordship Chief Justice Townshend in the Supreme Court House by taking and subscribing the Oaths of Allegiance, of qualification and of office in the presence of Aldermen Whitman, Douglas, Hoben and Martin and the Assistant City Clerk.

And that upon the 3rd day of May he was sworn as a Justice of the Peace by the City Clerk.

L. FRED. MONAGHAN, CITY CLERK.

OFFICE OF CITY CLERK, HALIFAX, N. S. May 7th, 1909.

Ingram B. Shaffner, for Ward No. One; Frederick P. Bligh, for Ward No. Two; John B. Douglas, for Ward No. Three; John F. Kelly, for Ward No. Four; James R. Corston, for Ward No. 5; and John Rankine, for Ward No. 6, having been on the 30th day of April, A. D., 1909, by the City Clerk, in the presence of the City Council, declared duly elected Aldermen of the City of Halifax for three years ending April 30th, 1912, I do hereby certify that before entering upon the duties of the office of Aldermen they were severally sworn before His Worship the Mayor by taking and subscribing the Oaths of Allegiance and Qualification and Oath of Office of Aldermen and Justice of the Peace for the City of Halifax and signed the roll of Aldermen as follows:—

Ingram B. Shaffner, on the 6th day of May, A. D., 1909.

Frederick P. Bligh, on the 3rd day of May, A. D., 1909.

John B. Douglas, on the 3rd day of May, A. D., 1909.

John F. Kelly, on the 4th day of May, A. D., 1909.

James R. Corston, on the 6th day of May, A. D., 1909.

John Rankine, on the 6th day of May, A. D., 1909.

L. FRED. MONAGHAN, CITY CLERK.

Minutes of City Council.

AFTERNOON SESSION.

3.10 o'clock.

COUNCIL CHAMBER, CITY HALL, May 6th, 1909.

A meeting of the City Council was held this afternoon at the above hour. Present His Worship the Mayor, and Aldermen Whitman, Wilson, Shaffner, Hebb, Bligh, McManus, Smith, Douglas, Hober, Kelly, Martin, Thompson, Corston, MacKenzie, Edwards and Rankine.

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

PRESENTATION OF PAPERS.

The following named papers are submitted :—

Report Charities Committee, by Alderman McManus, Chairman.

Petition for improvement Cabot Street, by Alderman MacKenzie.

His Worship the Mayor submits the following named papers :—

Annual Report Governor City Prison.

Annual Report Salt and Grain Measurers.

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

Applications City Officials for reappointment.

Letter R. J. Whitten re obstruction by a telegraph pole in front of his premises Upper Watter Street.

Application Arthur Cox for position of Assistant City Assessor.

Application Acadia Sugar Refinery for a concrete sidewalk corner Hollis and Duke Streets.

Acceptance by John W. Umlah of proposition to pay him \$3500.00 for his property at Chain Lakes.

Letter Canadian Federation of Boards of Trade.

Applications for renewal of theatre licenses Academy of Music, Orpheus Hall Starr Theatre and Ackers' Theatre.

Committees nominated by His Worship the Mayor.

The Council proceeds to the appointment of the various committees :—

The list of Committees recommended for appointment by His Worship the Mayor was as follows :—

COMMISSIONERS OF COURT HOUSE.—The Mayor and Aldermen Wilson, Douglas, Edwards.

- FINANCE.—Aldermen Hoben, Whitman, Bligh, Smith, Thompson, Edwards.
 CITY PRISON.—Aldermen Wilson, Douglas, Kelly, Corston, Edwards.
 POLICE.—The Mayor and Aldermen Douglas, MacKenzie.
 FIRE ESCAPES.—Aldermen McManus, Hebb, Thompson,
 SPECIAL COMMITTEE ON ASSESSMENT.—Aldermen Whitman, Bligh, Douglas, Hoben, Corston, Rankine
 FIRE WARDS.—Aldermen Whitman, McManus Hebb, Hoben, Martin, MacKenzie.
 COMMERCIAL COMMITTEE.—The Mayor and Aldermen Wilson, Hebb, Smith, Martin, Edwards.
 SPECIAL COMMITTEE ON LIGHTING.—Aldermen Shaffner, Douglas, Hoben, Thompson, Rankine.
 ARBITRATION BETWEEN CITY AND COUNTY.—Aldermen Mackenzie, Shaffner, Bligh, Smith, Kelly, Thompson
 CABS.—The Mayor and Aldermen Douglas, Hoben.
 CAMP HILL CEMETARY.—Aldermen Hebb, Bligh, Smith, Corston, Rankine.
 CHARITIES.—Aldermen McManus, Shaffner, Hebb, Hoben, Martin, Rankine.
 HALIFAX COMMON.—Aldermen Shaffner, Kelly, Martin, Edwards, Mr. Wm. R. Powell, Mr. Wm. Bishop
 POINT PLEASANT PARK.—Aldermen Wilson, Douglas, Kelly, Corston, MacKenzie.
 LIBRARY.—Aldermen Wilson, Bligh, McManus, Kelly, Martin, Rankine and Mr. G. W. T. Irving.
 LAWS AND PRIVILEGES.—Aldermen Whitman, Bligh, Smith, Hoben, Martin, Rankine.
 SHIPBUILDING.—Aldermen Wilson, Smith, MacKenzie.
 TENDERS.—Aldermen Shaffner, Hebb, McManus, Kelly, Thompson, Rankine.
 CITY WORKS.—The Mayor and Aldermen MacKenzie, Douglas.

The said committees are separately read and considered.

COMMISSIONERS OF COUNTY COURT HOUSE AT HALIFAX.—Moved by Alderman Shaffner, seconded by Alderman Hebb, that Alderman Bligh be submitted for Alderman Wilson. Motion *passé*.

Moved by Alderman Douglas, seconded by Alderman Hoben, that Alderman Whitman be substituted for Alderman Douglas.

Alderman Whitman declines to serve.

The motion is put and lost, 6 voting for the same and 10 against it, as follows :—

For the Motion.	Against it.
Aldermen McManus, Douglas,	Aldermen Shaffner, Wilson,
Hoben, Kelly,	Whitman, Hebb,
Martin, MacKenzie.—6.	Bligh, Smith,
	Thompson, Corston,
	Edwards, Rankine.—10.

The Committee is passed as amended.

FINANCE COMMITTEE.—Moved by Alderman Bligh, seconded by Alderman Edwards, that said nominations be confirmed. Motion passed.

CITY PRISON COMMITTEE.—Moved by Alderman Edwards, seconded by Alderman Bligh, that Alderman Rankine be substituted for Alderman Edwards. Motion passed.

The Committee is passed as amended.

POLICE COMMITTEE.—Moved by Alderman Edwards, seconded by Alderman Hebb, that Alderman Smith be substituted for Alderman Douglas.

Motion put and passed, 9 voting for the same 5 against it, as follows:—

For the Motion.	Against it.
Aldermen Shaffner, Wilson, Whitman, Hebb, Bligh, Corston, Thompson, Edwards, Rankine.—9.	Aldermen McManus, Hoben, Kelly, Martin, MacKenzie.—5.

Aldermen Douglas and Smith excused from voting.

Moved by Alderman Thompson, seconded by Alderman Wilson, that Alderman Shaffner be substituted for Alderman MacKenzie. Motion put and passed, 8 voting for the same and 6 against it, as follows:—

For the Motion.	Against it.
Aldermen Wilson, Whitman, Hebb, Bligh, Smith, Thompson, Corston, Edwards.—8.	Aldermen McManus, Douglas, Hoben, Kelly, Martin, Rankine.—6.

Alderman Shaffner and MacKenzie excused from voting.

BOARD OF FIRE ESCAPES.—Moved by Alderman Edwards, seconded by Alderman Rankine, that said nominations be confirmed. Motion passed.

SPECIAL COMMITTEE ON ASSESSMENT.—Moved by Alderman Edwards, seconded by Alderman Douglas, that Alderman Smith be substituted for Alderman Douglas. Motion passed.

Moved by Alderman Wilson, seconded by Alderman Hebb, that Alderman Martin be substituted for Alderman Corston. Motion passed.

Moved by Alderman Bligh, seconded by Alderman Hebb, that

Alderman Edwards be substituted for Alderman Rankine. Motion passed.

The Committee as amended is confirmed.

COMMITTEE OF FIRE WARDS.—Moved by Alderman Rankine, seconded by Alderman Edwards, that Alderman Thompson be substituted for Alderman Whitman. Motion passed.

Moved by Alderman Hebb, seconded by Alderman Bligh, that Alderman Edwards be substituted for Alderman MacKenzie. Motion passed, 8 voting for the same and six against it, as follows:—

For the Motion.

Against it.

Aldermen Shaffner, Wilson,
Whitman, Hebb,
Bligh, Smith,
Thompson, Corston.—8.

Aldermen McManus, Douglas,
Hoben, Kelly,
Martin, Rankine.—6.

Aldermen MacKenzie and Edwards excused from voting.

Moved by Alderman Edwards, seconded by Alderman Hebb, that Alderman Wilson be substituted for Alderman Hoben. Motion passed, 9 voting for the same and 6 against it, as follows:—

For the Motion.

Against it.

Aldermen Whitman, Hebb,
Bligh, Smith,
Hoben, Thompson,
Martin, Corston,
Edwards—9.

Aldermen Shaffner, McManus,
Douglas, Kelly,
MacKenzie, Rankine—6.

Alderman Wilson excused from voting.

The Committee as amended is approved.

COMMERCIAL.—Moved by Alderman Hebb, seconded by Alderman Bligh, that Alderman Thompson be substituted for Alderman Hebb. Motion passed.

The Committee as amended is approved.

SPECIAL COMMITTEE ON LIGHTING.—Moved by Alderman Douglas, seconded by Alderman Hoben, that Alderman Smith be substituted for Alderman Douglas. Motion put and lost, 6 voting for the same and 9 against it, as follows:—

For the Motion.

Against it.

Aldermen McManus, Douglas,
Hoben, Kelly,
Martin, MacKenzie.—6.

Aldermen Shaffner, Wilson,
Whitman, Hebb,
Bligh, Thompson,
Corston, Edwards,
Rankine.—9.

Alderman Smith excused from voting.

Alderman Douglas declined to serve on the Committee.

Moved by Alderman Hoben, seconded by Alderman Kelly, that Alderman Wilson be substituted for Alderman Douglas. Motion passed.

The Committee as amended is approved.

BOARD OF ARBITRATION BETWEEN THE CITY AND COUNTY.—Moved by Alderman Douglas, seconded by Alderman Rankine, that Alderman Edwards be substituted for Alderman MacKenzie. Motion passed.

Alderman Smith declines to serve on the Committee and on motion Alderman Whitman is substituted for Alderman Smith.

COMMITTEE ON CABS.—Moved by Alderman Wilson, seconded by Alderman Hebb, that Alderman Edwards be substituted for Alderman Douglas. Motion passed.

Moved by Alderman Douglas, seconded by Alderman Hoben, that Alderman Rankine be substituted for Alderman Hoben. Motion passed.

The Committee as amended is approved.

COMMISSIONERS OF CAMP HILL CEMETRY.—Alderman Bligh declines to serve.

Moved by Alderman Bligh, seconded by Alderman Douglas, that Alderman Wilson be substituted for Alderman Bligh. Motion passed.

COMMITTEE ON CHARITIES.—Moved by Alderman Rankine, seconded by Alderman Edwards, that Alderman Corston be substituted for Alderman Shaffner. Motion passed.

Moved by Alderman Hoben, seconded by Alderman Bligh, that Alderman Wilson be substituted for Alderman Hoben. Motion passed.

Alderman McManus declines to serve on this Committee.

Moved by Alderman McManus, seconded by Alderman Douglas, that Alderman Thompson be substituted for Alderman McManus. Motion passed.

The Committee as amended is approved.

COMMISSIONERS OF HALIFAX COMMON.—Moved by Alderman Bligh, seconded by Alderman Hebb, that Alderman MacKenzie be substituted for Alderman Edwards.

Alderman MacKenzie declines to serve.

Moved by Alderman Bligh, seconded by Alderman Wilson, that Alderman Hebb be substituted for Alderman Edwards. Motion passed.

The Committee as amended is confirmed.

DIRECTORS OF POINT PLEASANT PARK.—Alderman Douglas declines to serve.

Alderman MacKenzie declines to serve.

Moved by Alderman Hoben, seconded by Alderman Kelly, that Alderman Edwards be substituted for Alderman MacKenzie.

Moved in amendment by Alderman Wilson, seconded by Alderman Edwards, that Alderman Whitman be substituted for Alderman MacKenzie. Amendment passed.

Moved by Alderman Hebb, seconded by Alderman Bligh, that Alderman Rankine be substituted for Alderman Douglas. Motion passed.

The nominations as amended are confirmed.

LIBRARY COMMISSION.—Alderman McManus declines to serve.

Moved by Alderman McManus, seconded by Alderman Edwards, that Alderman Smith be substituted for Alderman McManus.

Alderman Smith declines to serve.

Alderman Bligh declines to serve.

Moved by Alderman Bligh, seconded by Alderman Thompson, that Alderman Hebb be substituted for Alderman Bligh. Motion passed.

Moved by Alderman MacKenzie, seconded by Alderman Douglas, that Alderman Edwards be substituted for Alderman McManus. Motion passed.

The nominations as amended are confirmed.

LAWS AND PRIVILEGES COMMITTEE.—Aldermen Smith, Hoben, Martin and Rankine severally decline to serve.

Moved by Alderman Whitman, seconded by Alderman Douglas, that Alderman Edwards be substituted for Alderman Rankine. Motion passed.

Moved by Alderman Wilson, seconded by Alderman Whitman, that a vacancy be left to be filled by the Alderman to be elected for Ward Four. Motion passed.

Moved by Alderman Douglas, seconded by Alderman Bligh, that Alderman Wilson be substituted for Alderman Smith. Motion passed.

On motion Alderman Thompson is appointed in place of Alderman Martin.

The Committee as amended is approved.

SHIPBUILDING COMMISSION.—Alderman MacKenzie declines to serve.

Moved by Alderman MacKenzie, seconded by Alderman Hoben,

that Alderman Thompson be substituted for Alderman MacKenzie. Motion passed.

The Commission as amended is approved.

COMMITTEE ON TENDERS.—Alderman McManus declines to serve.

Moved by Alderman Whitman that the Committee as nominated, with the exception of Alderman McManus' place be now confirmed. Motion passed.

Moved by Alderman Douglas, seconded by Alderman McManus, that Alderman Edwards be substituted for Alderman McManus. Motion passed.

The Committee as amended is approved.

COMMITTEE ON CITY WORKS.—Moved by Alderman Wilson, seconded by Alderman Edwards, that Alderman Whitman be substituted for Alderman Douglas.

Moved in amendment by Alderman Hoben, seconded by Alderman Douglas, that Alderman Shaffner be substituted for Alderman Douglas.

Alderman MacKenzie declines to serve.

Alderman Shaffner declines to serve.

Alderman Douglas declines to serve.

The motion to appoint Alderman Whitman in place of Alderman Douglas is put and passed, 9 voting for the same and 6 against it, as follows:—

For the Motion.	Against it.
Aldermen Wilson, Hebb, Bligh, Douglas, Smith, Thompson, Corston, Edwards, Rankine—9.	Aldermen Shaffner, McManus, Hoben, Kelly, Martin, MacKenzie—6.

Alderman Whitman excused from voting.

Moved by Alderman Rankine, seconded by Alderman Bligh, that Alderman Smith be substituted for Alderman MacKenzie. Motion passed.

The Committee as amended is approved.

BOARD OF HEALTH.—The following are severally nominated by members of the Council as members of the City Health Board, viz:—Aldermen Rankine, Corston, Martin, Shaffner and Kelly.

Aldermen Kelly declines to serve, and Aldermen Rankine, Corston, Martin and Shaffner are severally appointed as members of the City Health Board.

Alderman Hoben declines to serve as a member of the Finance

Committee, the Special Committee on Assessment and the Special Committee on Lighting.

Moved by Alderman Whitman, seconded by Alderman Hebb, that Alderman Hoben's place on Finance Committee be left vacant. Motion passed.

Alderman Douglas declines to serve as a Commissioner of the County Court House and as a member of the City Prison Committee.

Alderman Kelly declines to serve as a member of the Committee on City Prison, the Board of Arbitration between the City and County, the Halifax Common Commission, the Point Pleasant Park Commission, the Library Commission and the Committee on Tenders.

Alderman McManus declines to serve on the Board of Fire Escapes and Board of Fire Wards

Alderman Martin declines to serve as a member of the Special Committee on Assessment, the Board of Fire Wards, the Commercial Committee, Charities Committee, Halifax Common Commission, Library Commission and City Health Board.

The Council proceeds to the appointment of a Deputy-Mayor.

Moved by Alderman Smith, seconded by Alderman Thompson, that Alderman Bligh be appointed Deputy-Mayor.

Moved in amendment by Alderman Douglas, seconded by Alderman Hoben, that Alderman MacKenzie be appointed Deputy-Mayor.

Alderman MacKenzie declines to serve.

Moved in amendment by Alderman Martin, seconded by Alderman Hoben, that Alderman Thompson be appointed Deputy-Mayor.

Alderman Thompson declines to serve.

The motion for the appointment of Alderman Bligh as Deputy-Mayor is put and passed and His Worship the Mayor declares Alderman Bligh to be Deputy-Mayor for the present civic year.

The Council proceeds to the appointment of City officials, as follows :—

Assistant City Clerk	H. S. Rhind.	Re-appointed.
Clerk of Works	James J. Hopewell.	"
Foreman Streets and Sewers.....	John McDonald.	"
Foreman Water Department.....	Ewen Morrison.	"
Assistant City Engineer	H. W. Johnston.	"
Clerks Water Department	James Laidlaw.	"
	Louis R. Kaye.	"
City Electrician	P. R. Colpitt.	"
Water Inspector	John E. Burns.	"
City Medical Officer	Thomas Trenaman.	"

Stenographer and Typewriter.....	Minnie Hunter.	Re-appointed.
Weighers of Coal	Simon Cummins, Supt.	"
	A. J. Smith.	"
	J. L. Egan	"
	D. J. Sullivan.	"
	James A. Harraher.	"
	William H. Hawley.	"
	John F. Selig.	"
	Mortimer Dwyer	"
Registrar of Camp Hill Cemetery.....	Alex. McDougall.	"
Governor City Prison	William Murray.	"
Matron Police Station	Mrs. Mary Spruin.	"
Underkeepers City Prison	D. E. Keating.	"
	Wm. Higlett.	"
	George Grant.	"
Messenger City Prison	Daniel McDonald.	"
Matron City Prison	Mrs. Murray.	"
Janitor City Hall.....	John Spruin.	"
Superintendent City Home	B. J. Mulcahy.	"
Matron City Home.....	Mrs. Mulcahy.	"
Engineer City Home	John H. Grant.	"
Secretary City Home.....	James O'Bryan.	"
Baker City Home.....	Daniel MacKintosh.	"
Fireman City Home	John R. Hennigan.	"
Surveyors of Lumber.....	Wm A. MacKenzie.	"
	Edwin Gibson.	"
Sealer of Leather	Jeremiah Barnstead.	"
Fence Viewers.....	Wm. T. Horton.	"
	John Grant.	"
Inspectors of Painters' Work	J. E. M. Taylor.	"
	Frank Reardon.	Appointed.
	James Harrison.	"
Inspectors of Masons' Work	Samuel Marshall.	Re-appointed.
	James Taylor.	"
Pound Keepers	Ronald MacInnes, Exhibition Grounds.	"

Moved by Alderman Wilson, seconded by Alderman Whitman, that the matter of providing two other pounds and pound keepers be referred to the Committee on Works for report. Motion passed.

Weighers of Bundle Hay.....	Chris Connolly.	Re-appointed.
	John Punch.	"
	J. S. Hubley.	"
Weighers Loose Hay.....	W. McC. Boak.	"
	Thos. Keating.	"
	Joseph S. Hubley.	"
	Thomas Knowles.	"
Librarian Citizens' Free Library.....	Josephine Warren.	"

Assistant Librarian Citizens' Free Library.	Lizzie Barnaby.	Re-appointed.
	Miss Durney.	"
Superintendent Public Gardens	Richard Power.	"

REFERENCE OF PAPERS SUBMITTED.

Read petition for improvement Cabot Street.

Referred to Committee on Works for report.

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

Read Annual Report Salt and Grain Measurers for 1908-9. Filed.

Read Annual Report Governor City Prison for 1908-9. Filed.

Read complaint R. J. Whitten of obstruction by a telegraph pole in front of his premises Upper Water Street.

Referred to Committee on Works for report.

Read application Arthur Cox for position of Assistant City Assessor. Filed.

Read application of Acadia Sugar Refinery for a concrete sidewalk corner Hollis and Duke Streets.

Referred to Committee on Works for report.

Read applications for renewal of theatre licenses from Academy of Music, Orpheus Hall, Star Theatre and Ackers' Theatre.

Referred to Committee on Laws and Privileges for report.

Read letter Canadian Federation of Boards of Trade.

Referred to Commercial Committee for report.

Read letter John W. Umlah accepting the proposition of \$3500.00 for the purchase of his property at Chain Lakes in connection with the purity of the water supply.

Referred to the Finance Committee for report.

Read report Charities Committee for April.

REPORT CHARITIES COMMITTEE.

HALIFAX, N. S., April 29th, 1909.

His Worship the Mayor and City Council:

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

Members present :—The Chairman, Aldermen Hebb, Campbell and MacKenzie.

The Superintendent's report for the month shows that there were 25 persons admitted into the City Home, 1 born, 76 discharged and 3 died. Of the number admitted 4 were chargeable to the Province, 1 to Harrietsfield and 20 to the City. The total number of inmates at this date is 352, made up of 207 men, 141 women and 4 children. On the same date last year there were 195 men, 143 women and 4 children, a total of 342.

The following accounts are recommended for payment, viz :—Wentzells, Ltd., \$534.24; W. A. Mailing & Co., \$390.82; Smith Bros., \$216.59; F. A. Shaw, \$86.60; Scotia Pure Milk Co., Ltd., \$240.93; Geo. Gregoire, \$28.64; H. D. Mackenzie Co., Ltd., \$227.10; Henry Lovitt, \$22.94; Fleischman Co., Ltd., \$390; Halitax Electric Tramway Co., Ltd., \$20.03; V. G. Hospital, \$19.83; City Works Dept., \$49.62; T. C. Allen & Co., \$1.78; Farquhar Bros., \$16.55; R. B. Adams & Co., \$22.50; T. Larsen & Co., \$21.20; Patrick Dowd, \$20.00; Neil Fox, \$32.50; Blackadar Bros., \$2.80; water rates, \$500.00; W. Y. Kennedy, \$22.50; Snow & Co., Ltd., \$14.10; Hillis & Son, Ltd., \$20.00; B. J. Mulcahy, \$116.39; pay sheet, \$815.33; Brookfield Bros., \$81.74; Clayton & Sons, \$74.48; Wm. Taylor & Co., \$18.00; Wm. Stairs, Son & Morrow, Ltd., \$46.84; N. S. Hospital, \$975.43.—Total \$4,646.38.

Chargeable to 1909—1910, J. F. Shatford, \$593.35; Gillis & Wall, \$85.43; A. C. Theakston, \$51.75.

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 the payment of accounts mentioned therein.

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

The following resolution is submitted :—

Whereas, Aldermen Chisholm and Hubley were on the 20th day of April, 1909, with their consent in writing nominated for the office of Mayor and thereby vacated their office of Aldermen respectively for Wards two and four;

Therefore Resolved, That this Council hereby declares the respective seats held by the said Alderman Chisholm and Alderman Hubley to be vacant.

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

Moved by Alderman Kelly, seconded by Alderman Edwards, that the Council do now adjourn. Motion passed.

Council adjourns 5.10 o'clock.

EVENING SESSION.

8.10 o'clock.

COUNCIL CHAMBER, CITY HALL, May 13th, 1909.

A meeting of the City Council was called for this evening.

At the above named hour there were present His Worship the Mayor and Aldermen Hoben, McManus and Douglas.

Moved by Alderman Hoben, seconded by Alderman McManus, 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 Edwards, Martin, Kelly, Thompson and MacKenzie.

There being no quorum to do business the Council stands adjourned.

EVENING SESSION.

8.10 o'clock.

COUNCIL CHAMBER, CITY HALL, May 18th, 1909.

A meeting of the City Council was held this evening at the above hour. There were present His Worship the Mayor and Aldermen Whitman, Wilson, Shaffner, Hebb, Bligh, McManus, Smith, Douglas, Hoben, Kelly, Martin, Corston, MacKenzie, Edwards and Rankine.

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

PRESENTATION OF PAPERS.

The following named papers are submitted :—

Report City Prison Committee by Alderman Wilson, Chairman.

Reports (2) Finance Committee by Alderman Whitman, Chairman.

Report Library Commission by Alderman Hebb, Chairman.

Reports (2) Laws and Privileges Committee by Alderman Bligh, Chairman.

His Worship the Mayor submits the following named papers :—

Report Police Commission covering accounts.

Reports (2) Chief of Police re Sunday violations of Liquor License Act.

Report Coal Weighers for April.

Letter George S. Campbell, Chairman Board of Governors Dalhousie College, re transfer of certain City property to the College.

Letter Geo. E. Faulkner and others asking for civic concessions for Anderson Chair Company.

Letter Union of Canadian Municipalities in re Fundy Tidal Bill now before the Dominion Parliament.

Application E. C. Bethune for City grant of \$500.00 for harbor excursion steamer.

Application John Frain for refund of liquor license deposit.

Application of W. J. Johns for position of Assistant Assessor.

Application G. A. MacDonald for position in Assessors' Department.

Reports (7) Committee on Works, viz :

Cabot Street improvement.

Railway crossing, Cornwallis Street.

Letter Wm. J. Marks, consulting engineer.

Yale Street sewer.

Cleaning grass City Hall.

Quinpool Road curb and gutter.

Concrete sidewalk Hollis and Duke Streets.

His worship the Mayor requested the Council to appoint presiding officers to conduct the elections to fill the casual vacancies in the office of Alderman for Wards Nos. 2 and 4.

Moved by Alderman Hebb, seconded by Alderman Bligh, that J. L. Barnhill and Alexander MacKenzie be the presiding officers in Ward No. 2. Motion passed.

Moved by Alderman Edwards, seconded by Alderman Bligh, that Aldermen Hoben and Kelly be the presiding officers in Ward No. 4. Motion passed.

REFERENCE OF PAPERS SUBMITTED.

Read application John Frain for refund of deposit made with his petition for a liquor license.

Referred to Laws and Privileges Committee for report.

Read reports (2) Chief of Police reporting no violations of Liquor License Act on Sunday since his last report. Filed.

Read applications G. A. MacDonald and W. J. Johns for position in Assessors' Department. Filed.

Read application of E. C. Bethune for City grant of \$500.00 for a harbor excursion steam.

Referred to Finance Committee for report.

Read report Coal Weighers for April. Filed.

Read letter Union of Canadian Municipalities covering copy of an Act now before the Federal Parliament to incorporate the Fundy Tidal Power Company.

Referred to Laws and Privileges Committee for report.

CONSIDERATION OF PAPERS SUBMITTED.

Read letter Governors of Dalhousie College re transfer of certain City Property to the College.

The following resolution is submitted :

Resolved, that the City Council of the City of Halifax offer to the Governors of Dalhousie College the lot of land bounded by Summer, College, Morris and Carlton Streets on the same terms as they now hold the present site of the College, namely :— that the same be transferred to the College free of charge so long as the same shall be used exclusively for educational purposes.

Moved by Alderman MacKenzie, seconded by Alderman McManus, and passed unanimously, there being 14 Aldermen present.

Read letter George E. Faulkner and others asking for certain civic concessions on behalf of the Anderson Manufacturing Company.

Moved by Alderman Whitman, seconded by Alderman Bligh, that the same be referred to the Laws and Privileges Committee for report. Motion passed unanimously.

Read report Police Committee covering accounts for payment.

POLICE ACCOUNTS.

MAYOR'S OFFICE, May 18th, 1909.

To the City Council :

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

Cragg Bros & Co., hardware, &c., \$72.60. Neil Fox, repairs harness, \$1.00. N. S. Furnishing Co., book case, &c., \$13.16. Total, \$86.76.

J. A. CHISHOLM, Mayor and Chairman

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

Read report May 13th, 1909, Laws and Privileges Committee on various matters.

REPORT LAWS AND PRIVILEGES COMMITTEE.

COMMITTEE ROOM, CITY HALL, May 13th, 1909.

To His Worship the Mayor and City Council :

GENTLEMEN,—The Committee on Laws and Privileges met this day—Present : Aldermen Bligh, Wilson, Thompson and Edwards.

On motion of Alderman Thompson, seconded by Alderman Wilson, Alderman Bligh was appointed Chairman of the Committee for the ensuing year.

The following matters were dealt with :—

1. Letter W. B. A. Ritchie in re suit of Neptune Meter Co. vs. the City of Halifax.

Action deferred until the City Solicitor gives his opinion on the matter.

1. Re applications for renewals of public entertainment licenses from the following :—

J. D. Medcalfe, manager for Academy of Music.

St. Mary's T. A. & B. Society, owner, Nickel Theatre.

George Wooten, owner, Acker's Family Theatre.

T. H. Trifts, manager, Unique Theatre.

Jacob Withrow, owner, King Edward Theatre.

George H. Coutre, manager, King Edward Theatre.

J. E. Roy, owner, Orpheus Hall.

It is recommended that the several applications for licenses be granted—the licenses to be subject to the regulation that they be taken out in the name of the owner of the theatre in which the entertainment is to be held, the license fee in each case to be the same as last year—Alderman Edwards dissenting to the granting of all licenses for nickel theatres.

3. Re applications of Charles Brown and John Neville for refund of deposits made with their liquor license applications, it is recommended that the amounts deposited be refunded in each case less the cost of advertising.

4. In re application of the Dominion Atlantic Railway for the appointment of a sworn weigher of cars, it was recommended that this application be referred to the City Solicitor for his opinion if the City has authority to make such an appointment.

5. In re circular letter of the Canadian Federation of Boards of Trade and Municipalities, it is recommended that the same be referred to the incoming commercial committee for their consideration.

F. P. BLIGH, *Chairman.*

The same is considered clause by clause.

Read Clause 1 re appealing suit Neptune Meter Co., vs. The City of Halifax. Passed.

Read clause 2 re applications for theatre licenses.

Moved by Alderman Bligh, seconded by Alderman Wilson, that said clause be adopted. Motion put and passed. 13 voting for the same and 2 against it as follows :

For the Motion.

Against it.

Aldermen Shaffner, Whitman,
Wilson, Bligh,
McManus, Douglas,
Smith, Hoben,
Kelly, Martin,
Corston, MacKenzie,
Rankine.—13.

Aldermen Hebb, Edwards.—2

Clauses 3, 4, and 5 are severally read and passed.

Moved by Alderman Whitman, seconded by Alderman Bligh, that the report as a whole be adopted. Motion passed.

Read report (May 17th 1909) Laws and Privileges Committee on various matters.

REPORT LAWS AND PRIVILEGES COMMITTEE.

COMMITTEE ROOM, CITY HALL, May 17th, 1909.

To His Worship the Mayor and City Council :

GENTLEMEN,—Your Committee on Laws and Privileges beg to report that at a meeting held this day, there being present Aldermen Bligh (Chairman) Whitman and Wilson, the Committee had under consideration :—

1. The letter of Mr. W. B. A. Ritchie, K. C., Solicitor for the City in the suit of the Neptune Meter Co., vs. the City of Halifax, also his opinion and the opinion of

the City Solicitor on the subject of an appeal from the judgment of Mr. Justice Laurence.

In view of the strong opinion of Mr. Ritchie, who is acting especially as the Solicitor of the City in this matter, it is recommended that an appeal be taken to the full bench of the Supreme Court of Nova Scotia.

2. In re letter of Dominion Atlantic Railway asking for the appointment of a sworn weigher of cars.—At a previous meeting of the Committee the City Solicitor was asked for an opinion on the matter, which is hereto attached. It is recommended that the opinion of the City Solicitor be concurred in and a copy sent to the Dominion Atlantic Railway, also that the applications received for position of weigher be filed.

3. In re application Augustus Husbands for bill poster's license, it is recommended that the License be granted.

4. In re application of Arena Rink Company for license, it is recommended that the license be granted, the license fee to be the same as last year.

F. P. Blich, *Chairman.*

The same is considered clause by clause.

Read clause 1 in re appealing suit The Neptune Meter Co. vs. The City of Halifax. Also read letters W. B. A. Ritchie and the City Solicitor on the subject.

NEPTUNE METER CO. vs CITY OF HALIFAX.

HALIFAX, N S., May 4th, 1909.

F. H. BELL, Esq., *City Solicitor, City.*

DEAR SIR,—Mr. Henry and I have had some argument before Laurence, J. on settling rule in above as to interest and costs, and the Judge has made an order that the plaintiff recover \$18,335, together with interest from 9th of September, 1908, which is the date notice of action was given, and that the defendant is entitled to the costs of commission to New York, the Judge holding same to have been unnecessary. Mr. Henry claimed interest from the date the meters arrived at Halifax, and urged very strenuously that the plaintiff was entitled to the costs of the New York Commission. In accordance with understanding between us, I have given Mr. Henry notice of appeal so that appeal may be proceeded with if the City should so decide, and I have arranged with Mr. Henry a stay of proceedings pending the determination of the City Council as to going on with the appeal.

I wish to call your particular attention to the position of this matter in view of the decision of Laurence, J. that the property in the meters has passed to the City without inspection or approval by the City Engineer. I fully recognize that the question as to the validity of the contract is one about which lawyers may well differ, but in regard to the question of the passing of property without approval by the City Engineer, I beg to say, without wishing to be in anyway disrespectful to Mr. Justice Laurence, that I think it is perfectly clear that his decision is wrong. I have recently given this matter careful consideration, and beg to enclose you memo which I have prepared on the subject. In my opinion the meters in the Plant Warehouse are and have been at the risk of the Meter Company, but, if, as the latter claim, they are at the risk of the City, so that assuming that the validity of the contract were established the City is bound to take the meters although it may prove that owing to exposure to cold or otherwise they have very materially depreciated in value, I think that this would be a very serious position for the City.

W. B. A. RITCHIE.

P. S. If appeal is to be proceeded with we might perhaps be able to get it on for hearing in July. I understand that the Court is going to meet early in July.

NEPTUNE METER COMPANY VS. CITY OF HALIFAX.

MEMO. OF W. B. A. RITCHIE, K. C., COUNSEL FOR DEFENDANT, AS TO DECISION
LAURENCE, J., HOLDING THAT ENGINEER'S CERTIFICATE WAIVED.

The operative part of the contract is as follows:—

“That the said City agrees to buy, and the said Contractor agrees to sell two thousand (2,000) Trident Water Meters, size of inlet five-eighths of an inch, for the price of eight dollars and forty cents (\$8.40) each; and one hundred (100) Trident Water Meters, size of inlet three-fourths of one inch, for the price of twelve dollars and sixty cents (\$12.60) each. The above prices shall be for the goods delivered in Halifax, f. o. b., but exclusive of duty, and shall include all couplings, strainers and other fittings requisite, to the satisfaction of the City Engineer, of the said City. The meters shall be adapted to register in Imperial gallons and shall be subject in all respects to approval by the said Engineer before being accepted by the City.

“Terms of payment shall be cash on delivery in Halifax, after inspection and approval by the City Engineer.”

Action is brought to recover the contract price of 2,105 meters, alleged to have been sold and delivered under this contract.

The statement of defence denies that the meters sued for were in accordance with the alleged contract and denies delivery of the meters.

In reply to this, plaintiff alleges that 700 meters were accepted and taken delivery of by the City, and that as to the other meters, the City repudiated the contract sued on and notified the Meter Company that it declined to take delivery of the meters and to pay for the same, and the Meter Company alleges that the City thereby waives inspection and approval by the City Engineer of the meters and the performance of all other conditions precedent on the part of the Meter Company and discharged the Meter Company from all obligations to obtain inspection and approval by the City Engineer of the meters and the performance of all other conditions precedent.

The facts disclosed at the trial were that 700 of the meters were approved by the City Engineer and accepted and taken delivery of by the City, but that as to the balance they were never accepted or received by the City or examined or approved by the City Engineer but were shipped by the Meter Company from New York to Halifax contrary to the orders of the City, and when they arrived at Halifax were stored by the Meter Company at the Plant Warehouse, at Halifax, where they still remain. No evidence was produced that any request had ever been made to the City Engineer to examine or approve of the meters.

The judgment of Laurence, J., on this branch of the case is as follows:—

“The contract sued on provides that the meters and attachments to be supplied shall be delivered in Halifax to the satisfaction of the City Engineer, and shall be subject in all respects to approval by the said Engineer before being accepted by the City and payment shall be cash on delivery in Halifax after inspection and approval by the City Engineer.

“700 of these meters were delivered, inspected and approved by the City Engineer, and accepted by defendants and should be paid for. The other 1,400 are in a warehouse of the Canada Atlantic & Plant Steamship Co., at Halifax, ready for inspection and acceptance by defendants. The 1,400 meters have not been inspected and approved by the City Engineer, and for the reason, it is stated, that on the 6th August, 1908, the City Council came to the following resolution: “That the City decline to take delivery of the meters or to pay the bill of the Neptune Meter Co. until directed to do so by a decision of the Court.” This repudiation of the contract and refusal to carry it out was communicated to the plaintiff, and has, it is contended, waived and excused the necessity of inspection

“and approval by the City Engineer and that the plaintiff company is entitled to recover the price of the 1,400, as well as the 700.

““An absolute refusal to perform an agreement or an absolute repudiation of it, communicated to the opposite party is a waiver and excuse of the performance by him of future conditions precedent.” Bullen & Leake, pp. 158, 756, and cases there cited.

“A renunciation of the contract or a total refusal to perform it before the time of performance has arrived may be acted upon by the other party, and so adopted by him as a rescission of the contract. Leake on Contracts, 619, Cort vs. Ambergate Railway Co., 17 Q. B. 127.

“The contract is for the sale of goods specified and described to be delivered at Halifax, and I think the property in these ‘meters’ in the warehouse has passed to defendants so as to entitle the plaintiffs to recover the agreed price.

“Benjamin on Sales, 322, 355.

“MacKay vs. Dick, 6 App. Cas. 251.

“Badische Amilin Fabrik vs. Basle Chem. Works (1898) A. C., at p. 207.

“I am of opinion the plaintiffs should have judgment for \$18,355.00, or the contract price of the goods delivered and costs of suit.”

I have carefully considered the authorities cited by the learned judge and am clearly of the opinion that they do not bear out the conclusion at which he has arrived.

The passage referred to in Bullen & Leake, at p. 158, lays down the principle that “An absolute refusal to perform an agreement, or an absolute repudiation of it, communicated to the opposite party, is a waiver and excuse of the performance by him of future conditions precedent.”

The sense in which this proposition is enunciated will be clearly seen by reference to the cases cited for it, namely, Ripley vs. McClure, 4 Exchequer; Cort vs. Ambergate, 17 Q. B.; Bank of China vs. American Trading Company (1894), Appeal Cases.

Ripley vs. McClure was an action of damages for failure to take delivery of a cargo of tea, alleging that plaintiff was ready to deliver on arrival of ship at Belfast, but that the defendant before such arrival refused to receive the cargo. It was held that plaintiff was entitled to recover damages for breach of contract, that the refusal before the arrival of the cargo to accept delivery unretracted down to and inclusive of the time when the defendant was bound to receive the cargo was evidence of a continuing refusal and a waiver of the conditions precedent of delivery and that consequently defendant was liable for breach of contract without any tender of delivery being made by the vendor.

Cort vs. Ambergate was an action on the case alleging a contract by the defendant to purchase railway chairs and acceptance of part and refusal by defendant to accept the residue, and alleging that defendant prevented plaintiff from supplying the residue and claiming special damages. It was held that where, in the case of such a contract, the purchaser gives notice to the vendor not to manufacture any more goods, the latter may without manufacturing any maintain an action for breach of contract.

In Bank of China vs. American Trading Company (1894), A. C., 266, where the Trading Company brought an action against the bank for damages for breach of contract to buy exchange at certain rates, it was held upon the true construction of the contract to be a condition precedent to the liability of the bank to buy the exchange that the goods for which the exchange was given should be financed through the bank, and in the judgment of the Privy Council it is said:—

“Their Lordships do not think it admits of doubt that the intimation thus

“made by the bank, coupled with their failure to give any answer to the inquiry made by the company, amounted to a complete repudiation of all the contracts, whether for finance of goods or for exchange; and that the company were absolved from the necessity of making further offers to settle terms of finance, in order to preserve their claims of damage for breach of the contracts of exchange.”

Bullen & Leake, page 756, lays down the principle that a total refusal to perform a contract before the time of performance has arrived, may be acted upon by the other party and adopted by him as a rescission of the contract, giving rise to an action for breach of contract.

Benjamin on Sales, 322, 355, and *Badische vs. Basle* (1898), Appeal Cases, at page 207, lay down the principle that there the vendor's contract is to deliver to the buyer at a certain place and he delivers to a carrier to take to that place, property in the goods in general does not pass to the purchaser on delivery to the carrier, but only when the goods have reached their destination and are delivered to the purchaser.

In *McKay vs. Dick*, 6 Appeal Cases 251, the action was by the vendor upon a contract for the sale of a steam digging machine. The contract provided that if the machine should fall short of digging a certain quantity upon a cutting which the purchaser was excavating on a properly opened up face, the purchaser was not to be bound to keep the machine, but might return it at any time within two months. The vendor sent the machine to the purchaser's cutting and the purchaser refused to pay for it, claiming that it had not fulfilled the requirements as to digging. There was no dispute that the machine had not dug the quantity that it was required to dig by the contract, but the vendor's claim was that the reason for the machine not digging the quantity called for by the contract was that the purchaser had not given an opportunity of trying it on a properly opened up face and this contention was upheld by the House of Lords, it being held that the purchaser must pay the contract price for the machine which had been furnished to him by the vendor, it not being shown that it was not up to the requirements of the contract in regard to quantity of excavation on the purchaser's cutting because it had never had a fair test.

Lord Blackburn says at p. 263, that the vendor was to supply a machine capable of digging and filling into waggons at least 350 cubic yards of clay in a day and that it was brought to the purchaser's cutting and erected there, and he says:—“If the machine did not answer the test, the pursuers were to remove it before the end of February; if it did answer the test the defender was to keep it and pay the agreed price.” And at page 264, he says, that if the facts found in the Court below were truly found, it follows in point of law “that the defender, having had the machine delivered to him, was by his contract to keep it, unless on a fair test according to the contract it failed to do the stipulated quantity of work, in which case he would be entitled to call upon the pursuers to remove it. And by his own default he can now never be in a position to call upon the pursuers to take back the machine, on the ground that the test had not been satisfied, he must, as far as regards that, keep, and consequently pay for it.”

The question of waiver of certificates usually comes up in regard to building contracts, and it is laid down in reference to such cases that such waiver will not easily be inferred.

See *I Hudson on Building Contracts*, Third Edition, p. 414.

It is laid down among other places in *3 Halsbury's Laws of England*, page 221, that whether or not there has been a waiver of a condition precedent is a question of fact. Other authorities speak of it as a question of intention, and say that to constitute waiver by conduct, the acts relied upon must be inconsistent with the continuance of the right alleged to be waived.

See *14 Encyclopædia Laws of England*, 2nd Edition, pages 539, 540.

It seems clear that the position taken by the City, namely, that doubts had

arisen as to the validity of the contract, which prevented the City from carrying it out until a decision as to the law was arrived at, does not show any intention to dispense with the Engineer's certificate if the contract were adjudged legal. In regard to the communications between the City and the Meter Company on this subject, they are all in evidence and show that on May 4th, 1908, a telegram was sent by the City Engineer to the Meter Company, as follows:—

“I am instructed by the Mayor to notify you not to make any further shipments of meters to Halifax.”

To this the Meter Company replied by letter of May 4th, asking for information as to the occasion of the telegram, and they wrote again inquiring on the 6th May, saying:—

“We are holding up the balance due under our contract until we hear from you as to the reason of the telegram.”

The City Engineer replied to the Meter Company's letter of May 4th, under date May 8th, saying:—

“I was instructed by the Mayor to send you a telegram and he directed me to allow things to remain as they are until the new Works Committee, which was appointed last night, has a meeting, after which I will write to you again.”

On June 1st, 1908, the Meter Company wrote the City Engineer, as follows:—

“We wrote you some time ago asking the reason of your wiring us to withhold shipment of the balance of our contract for supplying your City with meters. We have waited a reasonable time, we think, and not hearing from you, have ordered our factory to go ahead with the shipments and complete our contract. A couple of hundred meters went forward Friday last, and there will be a further shipment to-morrow or next day.”

On June 12th the Meter Company wrote to the City Engineer, enclosing a statement for meters forwarded previous to June. In reply to this the City Engineer wrote to them on June 25th, as follows:—

“In reply to your letter of June 12th with statement, I beg to inform you that the steps taken by His Worship the Mayor to delay the further shipment of meters was approved by the City Council, and outside legal opinion has been asked regarding the validity of the contract and the legality of other steps taken in connection with this matter. Nothing further will be done by the City Council until the receipt of such legal opinion.”

On August 18th the City Clerk sent to the Meter Company copy of resolution of August 15th, which is as follows:—

“WHEREAS, legal opinion is at variance respecting the liability of the City for payment of the bill for meters consigned to the City of Halifax by the Neptune Meter Company;

“AND WHEREAS, doubts have arisen as to whether Aldermen could vote for the payment of this bill without rendering themselves financially liable personally;

“THEREFORE RESOLVED, that the City decline to take delivery of the meters or to pay the bill of The Neptune Meter Company until directed to do so by a decision of the Court.”

In my opinion the intention is clear, namely, that the City authorities felt that they could not do anything under the contract until the legal question as to its validity had been determined but that if the contract was determined to be valid, they intended that the Meter Company should supply what the contract called for, namely, meters approved by the City Engineer. The case is, I think, in principle like the Mersey Steel Company vs. Naylor, 9 Appeal Cases, 434.

There the purchaser was a company and a petition had been presented to wind

it up, and the company refused to make payments under the contract because they were advised that they could not without leave of the Court safely pay pending the petition, and it was held that this could not be regarded as a refusal to carry out the contract which the vendor could accept as a renunciation and breach.

There is a good deal of difference in the circumstances between the two cases, but it seems to me that the principle is the same; at all events the principle that waiver is a question of fact, depending upon the intention with which the acts relied upon are done, is clear and well established.

There is another way of stating the matter, although perhaps the principle involved is the same, and that is that there can be no recovery for the price of the goods because the property in them has not passed.

The principle is very clear as to unascertained goods, including goods to be manufactured, that the property does not pass without actual delivery to the purchaser, unless there has been an appropriation by the vendor of the goods to the contract with the assent of the purchaser.

See Benjamin on Sales, 5th Edition, pages 343-349.

13 Encyclopædia Laws of England, 2nd Edition, page 96.

Of course there may be cases where the vendor is given by the contract the right of appropriating goods to it. Such a case is *Aldridge vs. Johnson*, 7 Ellis & Blackburn 885 (1857); but here it is perfectly clear under the terms of the contract that the vendor had not power to bind the purchaser by appropriating certain goods to the contract before approval by the City Engineer. The vendor had something to do besides manufacturing the goods and sending them to Halifax; it had to obtain the approval of the City Engineer. The contract says that the contract price shall include all couplings, strainers and other fittings requisite to the satisfaction of the City Engineer and that "the meters shall be adapted to register in Imperial gallons and "shall be subject in all respects to approval by the City Engineer before being accepted by the City."

I am of the opinion that under this contract that at least everything must be done which is prerequisite to the City being bound to accept before it can be said that the property has passed. Such being the true construction of the contract, I think that it is clear that even a distinct refusal to carry out the contract, much less a statement that the contract cannot be carried out until its validity has been established, cannot be held to work any variation of the contract as to the passing of property thereunder.

In *Jenner vs. Smith*, L. R., 4 C. P., 270 (1869), the contract was for a sale of hops, and the vendor had selected out of his stock certain packets of hops for the purchaser and had them set apart at the warehouse, but the purchaser refused to accept them; and it was held that the property had not passed, and in that case Lord Esher, then Brett, J., said, referring to the question of appropriation:—

"There is no pretence for saying that there was any previous authority here; and there was no subsequent assent to the appropriation, for the defendant in his reply to the letter enclosing the invoice, repudiated the whole transaction."

It will be noted that the learned Judge certainly does not consider that repudiating the transaction has the effect of altering the construction of the contract as to passing of the property.

It is to be noted that, as to the meters stored at the Plant Warehouse, in view of the position which plaintiff has taken, if it cannot sustain the decision of *Laurence J.* as to waiver of inspection involving the passing of property, it cannot recover in this action in respect of these meters. It cannot now treat the refusal of the City to take delivery as a breach and recover damages therefor because it never accepted the refusal as a breach of the contract entitling plaintiff to damages, but on the contrary refused to do so and insisted upon going on and completing the contract, except as to the Engineer's approval, by sending the meters to

Halifax after notice of the refusal to take them, until after determination as to the validity of the contract.

See Leake on Contracts, 5th edition, page 619.

NEPTUNE METER CO. VS THE CITY OF HALIFAX.

OFFICE OF CITY SOLICITOR, HALIFAX, N. S., May 17th, 1909.

The Chairman Committee on Laws and Privileges :

SIR,—Upon the question submitted to me, namely : with what prospect of success the City could appeal from the judgment of Mr. Justice Lawrence in favor of the plaintiff, I beg to say as follows :—

On the main question involved in the action, namely : whether or not the contract was one binding on the City, I have already previous to the action given my opinion at length in two opinions that the contract was a binding one. These opinions have been endorsed by the learned judge both in the conclusion and in the reasons on which they were founded, and I have nothing to add to them.

Mr. Ritchie has raised another ground on which he contends the judgment is erroneous, and stated his reasons at length in a memorandum which I enclose for your consideration. This ground is that by the contract the approval by the City Engineer was a condition precedent to the acceptance of the meters by the City, that such approval was not given, and that consequently the plaintiffs are not entitled to recover as for goods sold and delivered. The plaintiff's answer to this, which has been accepted by the learned judge, is that the City's refusal to accept the goods operated as a waiver of the right of inspection and approval. I have most carefully considered Mr. Ritchie's argument and examined the authorities, and I find myself unable to concur with him. I will state as briefly as possible my reasons for so differing.

There is, I conceive, no difference of opinion between us that (A), when goods are sold subject to inspection and approval they must be approved before delivery is complete ; but, (B), that where the party having the right of inspection wrongfully refuses to exercise it such refusal will be treated as a waiver of the right to approve.

The case of MacKay vs. Dick, 6, Ap. Ca., p. 251, cited by Mr. Ritchie, was one extremely similar in its facts to the present one, in which the House of Lords held that the defendant who had the right to make a trial of a digging machine before paying for it had wrongly failed to make such a trial, and was consequently bound to keep the machine and pay for it. The difference between us is really whether or not the conduct of the City has amounted to such a refusal to inspect for the purpose of approval as amounts to a waiver of its rights.

The general principle of law by which the rights of the parties to such a contract as the one under consideration is governed is stated by Lord Blackburn in the case of MacKay vs. Dick, as follows :—

“ I think I may safely say, as a general rule, that when in a written contract it appears that both parties have agreed that something shall be done which cannot effectually be done unless both concur in doing it, the construction of the contract is that each agrees to do all that is necessary to be done on his part for the carrying out of that thing, though there may be no express words to that effect. What is the part of each must depend on the circumstances.”

Obviously in the present case, the part of the plaintiff company was to permit the City Engineer to have all reasonable facilities to make his inspection, and sufficient time to make it in, and on the part of the engineer to use all reasonable diligence to make his inspection and signify his approval or disapproval. To