Duties of Pathmaster.

60—J. G.—I am pathmaster in road division No. 9 here. I was notified by some of the ratepayers to put railng or some protection on a bridge over a gully or ravine to protect wagons or sleighs from running off the road in icy time as the fall would be about sixteen feet as it was dangerous for men and teams to drive over. When I did the job the reeve and council objected to paying me. I had a right to see one of the councillors about it, still they paid me, but not to do the like again without letting them know. The road list does not call for that. The reeve admitted my charge was reasonable and the place was dangerous. Please advise me.

From the statement of the facts the pathmaster appears to have been paid by the council for the work he did, so the councillors evidently considered the erection of the railing was necessary, that the pathmaster performed the work properly, and that his charge was not unreasonable. We think, however, that before undertaking work of this kind, the pathmaster should receive instructions from the council to proceed with it, otherwise he runs the risk of the council's refusing to confirm what he has done, and pay him for doing it.

LOCAL OPTION IN OWEN SOUND

On page 283 of the issue of THE MUNICIPAL WORLD for November 1906, we drew attention to the judgment of Mr. Justice MABEE and of the Divisional Court, in appeal from his judgment, on an application to quash a local option by-law, of the town of Owen Sound. The applicant, W. H. Sinclair, appealed from the order of Divisional Court (8 O.W.R. 460), reversing the order of MABEE, J., (8 O.W. R. 239), quashing the local option by-law which was submitted to the vote of the electors on 1st January, 1906, when 1,238 votes were cast in its favor and 762 against it, and it was declared carried by a majority of 476. The principal ground of attack upon the by-law was that the voters were not allowed to vote by wards, the one man one vote principal being adopted, and many electors deprived of their second and third votes who had property in more than one ward, but the Divisional Court held that they were properly allowed each only one vote. Other objections were that the wrong lists were furnished to the deputy returning officers ; that persons were allowed to vote who were not entitled to vote ; that confusion was caused by the color of the ballot papers used, and that there were many irregularities at the polls. The court (Meredith, J. A., dissenting), held that the decision of the Divisional Court was right. Per Moss, C. J. O. :—The provisions of the Municipal Act, 1903, to which we are referred by sec. 141 of the Liquor License Act, are those comprised in secs. 338 to 375, inclusive, so far as the same are applicable. It is plain that there is a broad distinction made between expressing an opinion or votiug on a by-law for contracting a debt, and on other by-laws requiring the assent of the electors. Sections 338 to 352 inclusive may be said to apply generally to all votins for the purpose of ascertaining the opinion of the electors on a by-law requiring their assent. By the incorporation of secs. 138 to 206 inclusive, a code of procedure is created for submitting the by-law to the electors, including the proceedings at the poll and for and incidental to the same and for purposes thereof, sec. 351. Looking at all these provisions, there is nowhere to be found any provision expressly enabling any elector to vote more than once except in the specified cases of aldermen or councillors where in cities or towns the aldermen or councillors are elected for the wards, in which case every elector rated in any ward for the necessary qualification may vote once in each ward for each alderman or councillor to be elected for the ward ; sec. 158 (3). And throughout, the general common law rule is one vote where a poll is demanded is taken for granted. Section 355 speaks of ratepayers, and deals with their rights of voting. It is clearly not intended to regulate voting generally. The language read as it should be, in the light of the context, shows that the ratepayer spoken of there is the ratepayer referred to in the two preceding sections, and the case dealt with is that of voting on a by-law for contracting a debt, while its grouping with the sections immediately preceding and following show that it was the intention to confine it to that case. As to the other objections, the most formidable as presented in the argument was the action of the clerk in inserting in the notice of the election a warning against voting more than once on the by-law. This is now answered by showing that his view of the law was correct, and that, however unnecessary and outside the scope of his duty, the giving of the warning could not and in fact did not prevent any elector from giving one vote. An inspection of the respective ballot papers for voting on this and another by-law shows that there is nothing in the objection based on a supposed confusion by reason of the colors of the papers. As respects the remaining objections they are not sufficiently made out in some cases, and the remaining cases are not such as to effect the validity of the by-law. Appeal dismissed with costs.

The above decision of the Ontario Court of Appeal further confers the opinion we expressed in our answer to clause 3 of question 391 1906.

The number of contested elections was much larger than in former years. This was owing largely to the interest created by change in county council representation.

TAXATION OF RAILWAYS.

The property of a railway company should be assessable and subject to taxation the same as the property of a private individual.

Under the present law a special section of The Assessment Act provides for the assessment of railway land. This would be entirely satisfactory, if it included the right to assess the structures, sub-structures, superstructures, rails, ties, poles and other property situated on the right-of-way, as distinguished from other land owned by railway companies. This class of property, which is now exempt from assessment, is similar to the buildings on ordinary land. Every municipality in which railway lands are situated is interested in the removal of this exemption. There may be a difference of opinion as to value, as rails, ties, poles, etc., on a railway right of way cannot be compared with the buildings and other structures suitable for use on an adjoining farm. An assessor, in valuing a farm, considers the whole property, but in valuing railway land he can only consider the portion within his municipality and the statutory direction to value it at the same rate as adjoining land is a proper one; the land is not worth more. The rails, ties, poles, etc., on the right of way have a value that should be assessed for the purposes of municipal taxation, and that value is the amount by which the value of the land is thereby increased. They are not suitable for use on the land of the railway within the municipality in the sense that farm buildings are, because the whole railway does not come within the jurisdiction of the assessor. What would the buildings on a farm be worth if a purchaser did not have the right to use the farm ? What would the rails, ties, poles, etc., on a railway right of way be worth to a purchaser of the portion situated within the municipality who did not own the rest of the railway and have a right to operate it as such ? The answer is, what they would bring for the purposes of removal or scrap value. The actual value of a railroad is different from other property, the most valuable portion being the franchise or right to construct and operate it. This is not assessable for pur-