

# The Municipal Miscellany.

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*The Municipal Miscellany, devoted to the dissemination of useful information relating to Municipal and other local Institutions, published monthly, at \$1 per annum; six copies for \$5. Address all communications to G. E. NEILSON, publisher Municipal Miscellany, Arnprior, Ont.*

## Calendar for August, '91.

14. Last day for County Judge to defer judgment in appeals from Court of Revision.
15. Last day for notices of appeals against Primary, Junior and Senior Leaving High School Examinations. County Selectors of Jurors meet.
20. Clerks of the Peace to give notice to municipal clerks of number of jurymen required from municipality.

## QUESTION DRAWER.

Would you kindly answer the following questions in your next journal:—1, No dog by-law was passed this year, a petition from the inhabitants being against it. Some sheep were worried by dogs. Is the council compelled to pay two-thirds of the damage, or does the want of a by-law free the council from responsibility? 2, A road was flooded last spring. The pathmaster let down a fence in order that teams would get through. The owner claims damages—the fence being broken and cattle allowed in, tramping into the soft ground. Is the council responsible. E. G.

E. G. says "no dog by-law was passed this year, a petition from the inhabitants being against it." We presume he means that in compliance with a petition of the inhabitants a by-law was passed doing away with the levy of a tax on dogs. Unless such was done the Act itself would be in force levying a tax on dogs, and requiring the municipality to pay two-thirds of the damages sustained to sheep from being worried by dogs. If a by-law doing away with the levy imposed by the statute has been passed it would also do away with the responsibility of the municipality for losses sustained by owners of sheep, as it is in consideration of this dog tax that the corporation becomes responsible. It is well known that in a majority of cases sheep are worried at night, or when no person is near to see or identify the dogs, so that it was rare that the owner of sheep could prove his claim for damages against the owner of the dogs. This state of affairs discouraged many farmers from raising sheep, and the object of the statute referred to was to encourage sheep raising by providing what might be termed an insurance fund out of which to indemnify farmers for loss of sheep occasioned by dogs, whether the owners of the dogs are known or not. The statute, however, is not arbitrary, as it can be dispensed with by a by-law of any council on petition of twenty-five ratepayers, so that the people have the matter in their own hands. Of course it does not follow that the council is obliged to pass such a by-law even if petitioned for, but if the farmers in townships prefer to take their own risk as to indemnity for loss of sheep rather than pay a dog tax it is quite likely the council would comply with their petition, and pass the necessary by-law. In reply to the second question, we are of opinion that the owner can recover for damages from the council. The pathmaster is

a servant of the corporation and acting in his official capacity would make the corporation liable, although for that matter it is doubtful if the corporation would not be equally liable if the fences were put down and the road opened by a private traveller who found the highway impassable. There is no doubt as to the right of the travelling public to thus use private property if the roads are impassable. Owners of land have not such an absolute ownership as to prevent this undoubted right on the part of the public, which leads us to think that if no damage could be shown the owner would have no claim for this temporary use of his property. The public, however, have no right to use the land longer than absolutely necessary, nor yet to damage the land or fences. The overflow from a heavy rain or melting snow might be unavoidable or the reverse, but from whatever cause it would be the duty of the council to promptly remedy the defect if in its power. If the council neglected to do so and the public had to use private property longer than otherwise necessary, the owner might then have a fair claim for the use as well as the damage. Each case would be decided on its merits. While we express our opinion as above, we do not do so in a positive sense, and would be pleased to receive the opinion of others on the same point.

When a farm lies partly in two municipalities would you call the tenant non-resident for the municipality in which the house and buildings are not situated. G. S.

Yes. His house or sleeping place of himself and family is his residence, and that being outside the bounds of the municipality makes him a non-resident. In Harrison's notes a decision of the courts is cited, which referred to polling places under somewhat similar circumstances and the same rule would hold good as regards the question of residences. He says: "One Robert Gillis had a farm through which ran the division line between wards Nos. 2 and 3. His house stood on that part of the farm included in ward No. 2, but his barn on the part in ward No. 3. The township council passed a by-law that the election of councillors for ward No. 3 should be held at Robert Gillis' *Held*, that the by-law must be read as meaning some part of his property in ward No. 3, and that as the election was shown to have taken place in the house without the limits of the ward, it was void."

I beg to acknowledge receipt of your MISCELLANY since March till this date, and shall be glad if you say so to exchange the *Cardwell Sentinel*. In case you do so, kindly send Jan. and Feb. numbers, as I would like to file them. Your little publication ought to be of immense benefit to municipal clerks, not only to those who are novices in the business but to those who have not the time to look over years of statutes. By-the-bye, your June number says: "Only residents can be put on Part I. of the voters' lists." Are you not in error?

G. P. H., Tottenham.

Have forwarded Jan. and Feb. numbers to *Sentinel* as requested and will be pleased to exchange. In reference to question asked as to the right of non-residents to be