

out an auctioneer's license fee of the municipality imposed on transient traders, before selling his own goods or merchandise by auction? R. S. O., chap. 223, sec. 583, ss. 31.

Sub-section 2, of section 583, of The Municipal Act, authorizes the councils of counties and separate towns, and of cities having less than one hundred thousand inhabitants, and the boards of commissioners of police in cities having one hundred thousand inhabitants or more, to pass by-laws for licensing, regulating and governing auctioneers, and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction, etc. The fact that the trader referred to has paid the license fee of the municipality imposed on transient traders, does not entitle him to sell by public auction. The important question is, whether the above section applies to a person who is selling his own goods by public auction. We think it does. An auction is a public competitive sale of land or goods to the highest *bona fide* bidder, and an auctioneer is a person who conducts such a sale. In *Goshen vs. Kern*, Indiana, 469, 30 Am. Rep. 234, counsel contended that the word "auctioneer," refers to one who sells the goods of another, and does not include a person who sells his own goods. Upon this point, Howk, C. J., said: "The argument of counsel is founded upon one of the definitions of the word 'auctioneer,' in Bouvier's law dictionary, as follows: 'A person authorized by law to sell the goods of others at public sale.' If the term 'auctioneer' had no other meaning than the limited one thus given it, the argument of counsel would be perhaps well founded; but Bouvier also defines an auctioneer as 'one who conducts a public sale or auction.' In Burrill's law dictionary an auctioneer is defined as 'one who conducts a public sale or auction,' and again as 'a person who is authorized to sell goods or merchandise at public auction, or sale for a recompense, or (as it is commonly called) a commission.' In Wharton's law dictionary auctioneers are defined to be 'licensed agents appointed to sell property and to conduct sales or auctions.' In Webster's dictionary the meaning of the word 'auctioneer' is thus given: 'A person who sells by auction; a person who disposes of goods or lands by public sale to the highest bidder.' In Worcester's dictionary the word 'auctioneer' is defined as follows: 'One whose business it is to offer property for sale by auction; one who invites bids at a sale by auction.' It will be seen by these various definitions of the word 'auctioneer,' by the best lexicographers, legal and otherwise, of our language, that it, as ordinarily used, has no such limited and confined meaning as the appellee's counsel has sought to give it. In the first rule prescribed by law in this state for the construction of statutes it is provided that 'words and phrases shall be taken in their plain and ordinary and usual sense.' Under the allegation of the appellant's complaint the appellee was an auctioneer within the plain, ordi-

nary, and usual sense of that term." According to the above case, it will be seen that the word "auctioneer" applied to a person selling his own goods by public auction. But our Act goes farther. It applies to "other persons selling goods by public auction." The only case in our own courts which contains anything useful upon the question is *Merritt vs. Toronto*, 22 Ap. Repts., p. 205. At pp. 213-4, Mr. Justice McLennan says: "An auctioneer is a person who sells property of any kind by public auction. For some reason the statutes seem not to extend to persons selling land by auction, or anything but goods, wares, merchandise or effects; that is to say, personal property. It may, perhaps, be assumed that it is intended to apply only to persons who make sales by auction their business, although it says 'other persons selling or putting up for sale,' and that it is not to apply, for example, to a person selling his own household furniture in that manner. But the business of an auctioneer may either be the selling of his own goods, or the goods of others, or it may combine both. There is no reason why a shopkeeper should not carry on his business altogether by auction, or partly by that method, and partly by ordinary sales over the counter. The Act makes no distinction, all persons selling by auction may be regulated and governed. I myself can see no reason why a person selling his own goods by auction should be regulated and governed any more than his neighbor who sells his goods over the counter in the ordinary way. I suppose those intended to be reached are the probably more numerous class who sell by auction the goods of others." It will be observed that, though Mr. Justice McLennan thinks that the Act was not intended to apply to a person selling his own property, yet he says the Act makes no distinction.

#### New System of Voting.

12.—J. R.—1. There being a desire on the part of a great many in this municipality to introduce the new system of voting (or as some term the numbered system), can you direct me to any source where I can learn how it is operated?

2. Would it not require a by-law to be passed at December meeting of the council to allow of its operation at the ensuing municipal elections?

3. Should you have published anything in back numbers of the *WORLD* telling how it is done, kindly state year and number.

1 and 2. Section 136 of the Municipal Act provides that, "In case of a poll of an election of persons to serve in municipal councils the votes shall be given by ballot." Section 141, sub-sec. 1 provides that "the ballot-papers shall be according to the form given in schedule 'A' to the Act." The general procedure at municipal elections you will find in section 94 and following sections of the Municipal Act. The only other system of taking the votes of the electors allowed by statute, is by the use of a voting machine. The use of these machines was legalized by chapter 37 of the Ontario Statutes, 1900. The use of the voting

machine can be adopted by by-law of the council passed pursuant to section 1 of the last mentioned Act.

3. We are not aware that as yet anything has been published in the *WORLD* on this subject, except our answer to question number 296, 1900, which, however, would not convey much information in the matter.

#### What Voters' List Should be Used?

13.—M.—The voters' list for 1900 has only been distributed December 1st. There will be appeals against list. In that case 1900 list will not be in force for the election to be held on January 7th next. On what list will we have to vote, 1899 or 1900?

Section 151 of the Municipal Act, sub-section 1, provides that, "In any municipality for which there is a separate assessment roll, but for which no voters' list for the municipality has been filed with the Clerk of the Peace or certified by County Judge under *The Voters' Lists Act*, the clerk of the municipality shall, before the poll is opened, prepare and deliver to the deputy returning officer for every or any ward or polling sub-division, a list in the form of schedule 'C' to this Act; containing the names, arranged alphabetically, of the male persons appearing by the then last revised assessment roll, to be entitled to vote in that ward or polling sub-division; and he shall attest the said list by his solemn declaration, in writing under his hand. Sub-section 2 provides for the case of income voters and real property owners who have not paid their taxes before the 14th of December preceding the election, and where the municipal council has passed a by-law pursuant to sub-section 1 of section 535 of the Act. The list in your municipality will therefore have to be prepared as above provided.

#### Payment of Costs of Drainage Scheme.

14.—SUBSCRIBER.—1. The township of Williamsburg adjoining this has initiated a drainage scheme and has assessed a portion of this township for outlet liability. Of course we raise and pay over the amount demanded, but where do we get our expenses for by-law, printing, council meeting, etc?

2. Parties sued the township of Osnabruck for damage caused by a drainage scheme being improperly carried out, and recovered, although it was proved that the engineer's instructions were followed in the construction of the drainage question. Who pays the damage, the township or drainage scheme?

1. The cost of preparing the by-law, printing, and all other legitimate expenses connected with the passing of the by-law, should have been included by the engineer in his report as part of his estimate of the cost of the whole work, and retained by the township of Osnabruck when paying over the sum for which it was liable to the township of Williamsburg. If this has not been done, we do not see what means the township of Osnabruck now has of collecting it.

2. Unless the circumstances are such that the case comes within the provisions of sub-section 2, of section 95, of The Drainage Act, (R. S. O., 1897, chap. 226,) the drainage and costs recovered against, and