Time For Holding Nomination of Councillors in Towns.

191.—F. J. C.—In towns when is the proper time—day and hour—to hold nominations for mayor and councillors as the law *now* stands? This question applies to the annual nomination day only. Please give the section of the law governing the question. For years we have been holding the nomination for mayor and councillors at 10 to 11 o'clock on the last Monday of December.

Mr. Winchester, the Master in Chambers, at Osgoode Hall, Toronto, recently gave judgment in the case of Rex ex. rel. Warr v. Walsh, unseating all the councillors of the town of Brampton, who were declared elected by acclamation on the 29th January last for the reason that the clerk of the town held the nomination meeting at 10 o'clock on the 29th December last, instead of at noon on that day, as the statute provides. The unseated councillors appealed from this decision, and Mr. Chief Justice Meredith reversed the decision of the Master, delivering the following judgment: "In each of the years from 1897 to 1902 (inclusive) the municipal council of the town of Brampton provided by by-law that the nomination for councillors should be held at the same time and place as the nomination for mayor, that hour being 10 o'clock in the forenoon, and this, they assumed to be, under sub-section 2 of section 118 of the Municipal Act (R. S. O., chapter 223). The difficulty arises in grafting the provisions of the Municipal Amendment Act of 1898 as to the election of councillors of towns having a population of not more than 5,000, upon the provisions of the Municipal Act." The learned Chief Justice held that "sub-section 1 of this section added by the Act of 1898 (71 a) had not the effect of abolishing (in the case of towns to which it applied) their division into wards, the only change made was that instead of there being a prescribed number of councillors for each ward, the number of councillors was fixed at six, and, instead of being elected by wards, they were all to be elected by a general vote. The language of sub-section 2 of the added section should be treated as an inaccurate expression of the idea that on the conditions and in the event mentioned in it, the former mode of constituting the council and of election of councillors might be restored. Sub-section 2 of section 118 should be read, in order to give effect to the amendment, as empowering the council, where the election is to be by general vote, to provide by by-law that the nomination of councillors shall be held at the same time and place as that for mayor, and to make the same provision in the case of all towns of over 5,000 where the nomination of councillors must still be made for the several wards of the town, and 119 should be read as providing that the meeting for the nomination of councillors in either case shall, unless the contrary is provided by by-law, be held at noon. Therefore, the council had power to pass the by-law under the authority of which the nomination for councillors was held, at the same time and place as the nomination for mayor, and the appellants were properly nominated and duly elected." The latter part of sub-section (3) of section 219 of the Municipal Act makes the decision of a Judge of the High Court final, so that the decision of the Chief Justice settles the law on this point until the Legislature sees fit to amend the Act.

A Divided Drainage Scheme—Cost of Building Bridge

192—I. J.—About 16 years ago, a scheme of drainage was brought into operation in this township, consisting of a number of main drains and some tributary ones covering a large area of territory. All the work was done under one engineer's report and one by-law. The assessments were under one head only with no distinction between benefit outlet and injuring liability, and nothing in the report to show for which of the three separate outlets each ratepayer was assessed. In 1897 the central outlet was repaired including one or two tributary drains and only a portion of the territory included in the original scheme was assessed for said work. The assessment was made under three heads of benefit, outlet and injuring liability. In the present year, a very expensive bridge was built over the central drain and the question arises, who are the proper parties to pay for said bridge, and in what proportion should they be assessed? The eastern and western portions of the territory assessed under the original by-law have now independent drainage of their own, and are almost entirely isolated from the central portion of said territory. In view of all these facts:

1. Should the cost of building the bridge above referred to, be levied on the whole territory assessed for the original construction of these drains, and in the same proportion as they were originally assessed for the whole scheme?

2. Should the cost of this bridge be levied only on the territory assessed under the by-law of 1897?

3. If the by-law of 1897 gives the proper basis of assessment for the cost of the bridge in question, should said cost be levied pro rata, according to the assessment for benefit only, for outlet only, for injuring liability only, or for the total assessment under all three heads?

1. Since the eastern and western portions of the territory assessed under the original by-law have now independent drainage this territory is no longer a part of that included in the original drainage scheme. In fact, there appears now to be THREE separate drainage schemes, formed respectively out of the eastern, western and central portions of the territory included in the original drainage scheme. We are therefore of opinion that the cost of the building of the bridge over the central drain cannot be assessed against ALL the lands in the territory included in the original drainage scheme.

2. Yes. Since it is evidently part of the central drainage scheme.

3. The cost of the building of this bridge should be levied pro rata over ALL the lands assessed under the by-law of 1897 whether for benefit, outlet or injury liability.

Opening of Road Allowance—Building of Fences Along—Impounding of Stock.

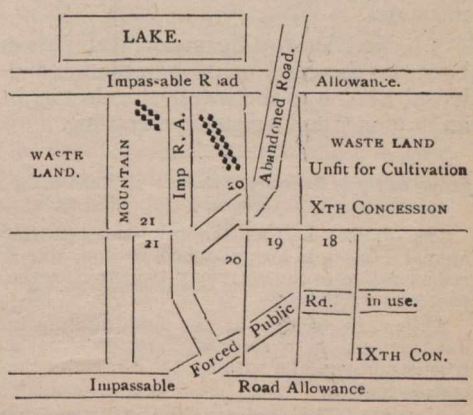
193.—P. S.—I own lots Nos. 18, 19, 20 and the east half of 21 in the 9th concession of this township and my son C—— is located for lots 20 and 21 in the 10th concession. He works my farm and we are assessed for the whole as joint owners. There is a road allowance between lots 20 ane 21 part of which I cleared and part of which was some 12 or 15 years ago used as a public road. Part of the original road allowance is impassable and I consented when the road was needed to let the public use a piece of road across the corner of lot 20, concession 9 as shown in the accompanying plan but never gave the council a deed or other conveyance of said piece of road. On lot 20, concession 10, which was then government land the road then travelled deviated far from the road allowance. Another road having been opened in lieu of this, it was abandoned but as it was fenced as far as my clearing went and came handy as a cattle path to the woods, I left it open until after my son located for the two lots in the rear of my land when I applied to the council for permission to close it and the following resolution was passed by them in 1897:—

"Moved by XX.
Seconded by XX.
That ——— be allowed to close up abandoned road known as the old P. road until said road shall be needed for public use.
Carried."

I have kept the said road allowance closed ever since and as owing to a lake and other obstructions there is no other egress to the rear of our land and no one is owning or occupying other land near in that direction we can use the uncleared portion and the road allowance between it as pasture land without being put to the expense of fencing it. Now some of the neighbors are coveting the said road allowance quite a portion of which, as already stated, I have cleared and cultivated, and our woods, as pasture land for their cattle and have requested the members of this year's council to compel us to open the old road again though it is not needed or wanted nor can it be used as a public road or for any other public purpose except for pasture and a majority of the members seem to be inclined to grant their request if they can. Should they persist and succeed we would not only be compelled to enclose our wood pasture with an outside fence but we would also have to fence the road allowance on both sides which would require an outlay altogether out of all proportion to the value of the land, or the benefit we derive from it or we will have to pasture all the cattle in the neighborhood along on our bush pasture though I had to purchase my land and we have been paying taxes on my son's lots for years, besides increasing the risk of having them break into our cultivated fields and destroying our crops. I may yet state that we have a municipal by-law allowing cattle which are not known to be breechy to run at large and which regulates the height and condition of lawful fences.

1. Would the council under the circumstances described be justified and legally authorized to compel us to re-open either the formerly travelled road or the original road allowance through both concessions?

2. Can we legally protest against and prevent it and how?



3. If we can be compelled to open the road allowance, are we legally compelled to build road fences on both sides to protect our crops