

the election unless he is named or intended to be named on the voters' list. See latter part of sub-section 1 of section 353.

6 (a) No name that does not appear on the last revised assessment roll can be entered by the clerk on the voters' list to be prepared under section 348, so if the husband's name does not appear on this assessment roll, he cannot be entered on the voters' list. Not being entered on the voters' list he cannot vote. See latter part of subsection 1 of section 353.

(b) The special list to be prepared under section 348.

7. This person being on the assessment roll and voters' list as a leaseholder must take the oath of a leaseholder, prescribed by section 357 of the Act in case his vote is objected to. If he will not do this, a ballot should not be given to him by the deputy-returning officer. A choice of oaths is not given to a voter as is the case at a municipal election.

8. These three persons should be placed on the voters' list provided that the property is assessed for \$300 or over, and they possess the other necessary qualifications to vote on a money by-law. Both residents and non-residents possessing the necessary qualifications are entitled to vote on a by-law of this kind if their names are on the assessment roll.

#### Disqualified Persons on Voters' Lists.

**363**—TOWN CLERK.—Last year in preparing my voters' list, I placed in part 2, thereof such persons as are disqualified from voting under sec. 4, of The Ontario Elections' act, who are resident here. On appeal by some of them to the District Judge, he ordered that all such officers and persons should be placed on part 1, in the face of my contention to the contrary. I am not satisfied that the District Judge is right, and in preparing my voters' list again this year, before placing these persons on part 1, I desire an opinion from you thereupon. The only possible reason underlying the judge's action is that in the event of resignation or dismissal from office, they would be deprived of a legislative vote if placed in part 2. It seems to me that this remote contingency is not contemplated by the statute, and looking at the matter afresh, as to the manner in which the lists should be made out, vide sub-sec. 3 of sec. 6 of The Voters' List Act, I see that the second part shall contain the names of the various persons enumerated to vote on municipal elections only, and not at elections for members of the legislative assembly. This seems to me an express contradiction to include such disqualified persons as I have mentioned. If you agree with me, I shall be compelled to make my lists out in accordance with what I believe to be the law and leave the parties to appeal if they desire to do so.

2. What is the practice in regard to the placing on the voters' list of non-resident owners? Kindly refer me to the section governing same.

1. We agree with your contention, provided the cause for the disqualification appears on the assessment roll. In preparing the voters' lists you should be guided by the evidence on the assessment roll. If, for example, the name of a person specially disqualified appears upon the roll, the disqualification does not appear, you should put his name in the proper place on the voters' list, even though you

happened to know that by reason of his holding a certain office he was disqualified. We do not agree with the learned district judge that a person whose name appears on the assessment roll but whose disqualification also appears, should be put in the voters' list, so that in case of his ceasing to hold office, he might not be disqualified. If you leave such a person's name off the voters' list, and he appeals to the judge, and the evidence disclosed in his application to have his name placed on the list shows that his office disqualifies, the judge ought not to put him on the list. Sub-section 1, of section 6, of The Voters' Lists' Act, (chap. 7, R. S. O., 1897,) requires the clerk to make out a voters' list in three parts, immediately after the final revision and correction of the assessment roll. Sub-section 2 provides that part 1 shall contain the names of all persons entitled to vote at both municipal elections and elections to the legislative assembly; and sub-section 3 that part 2 shall contain the names of all persons entitled to vote at municipal elections only. The persons named in section 4 are not entitled to vote at legislative elections, but may be possessed of the qualifications of a municipal voter, and if so, have the right to vote at municipal elections. If by the assessment roll they appear to possess the latter qualification, but to be disqualified under section 4, of the Ontario Election Act, the clerk in preparing his voters' list should place their names in part 2 of the list.

2. Non-residents, if their names are on the assessment roll, and they possess the necessary qualification as owners, should be placed in part 2 of the voters' list. Both the Dominion and Ontario Election Acts contain restrictions as to residence, which are not embodied in the provisions of the Municipal Act relating to voting at municipal elections. (See sub-section 1, section 86, of the Municipal Act, under heading "Firstly.")

#### Maintenance of Townlines by Adjoining Municipalities.

**364**—W. E.—Are townlines between counties according to law kept in repair by grants from County Councils of the different counties, or do the township councils have to grant money for that purpose? My opinion is that the county has to keep them up.

Section 621 of the Municipal Act provides that "township boundary lines forming also county boundary lines, and not assumed or maintained by the respective councils interested shall be maintained by the respective TOWNSHIPS bordering on the same, except where it is the duty of the county council, under the provisions of this Act, to erect or maintain bridges over rivers, streams, ponds or lakes forming or crossing boundary lines between two municipalities.

#### Authority of Head of Council Under Civic Holiday Proclamation.

**365** SUBSCRIBER.—A requisition is sent the Mayor asking for a holiday by proclamation. If therequisition is signed by a majority

of voters, can the mayor or reeve compel all to observe the day?

No.

#### Council's Power to Lease Town Hall Lot.

**366**—C. T.—Kindly inform me if the council has power to lease a part of the lot on which the town hall is situated for building purposes, and is there any specified number of years for lease to run, if given?

If the lands were bought by the council free from any trust, we think they can lease such part thereof as is not required for the purpose of their town hall, and the Municipal Act does not limit the term during which the lease may run. If, on the other hand, the land is subject to any trust they cannot do so. See section 637 of the Municipal Act.

#### Liability for Accident Through Absence of Bridge.

**367**—J. B.—A teamster and owner of the team were going to market with a load. They took a public road, one which is not much used, but was in a good state of repair the last time they went through the road, but on coming to a small creek they found the bridge had been washed away some three or four months. There were tracks of rigs that had gone through the creek at the side where the bridge had been. The water was 5 or 6 inches deep and about 7 feet wide with gravel and stones in the bottom. There was no notice of anything to show that the creek was dangerous, and teamster and owner decided they could drive through. The teamster was on the front end of the load and the owner on the back end, and when the front wheels went into the water, the one wheel went down over the axle-tree, pitching the teamster into the water, striking his head on a stone. He will probably recover, but will not be able to work for at least six months and will be badly disfigured for life.

1. Is the owner of the team liable for damages?

2. Is the municipality liable for damages? If the municipality is liable, what would be a reasonable amount for it to pay, providing it could be settled out of court?

1. No. The teamster was not bound to drive the team through the place of danger. He, as well as the owner, appeared quite willing to try the experiment, and he cannot recover any damages from the owner for the injury he sustained.

2. No. These parties drove into, and attempted to cross the dangerous place, with a full knowledge of its existence and condition.

#### Liability for Injury to Hedge Fence by Sheep Running at Large.

**368**—W. D. M.—A ratepayer of this township, owning 100 acres of land, has a honey locust hedge fence planted along the front of his farm. This, until this year, has been protected by a rail fence, but the party now has it trimmed and lashed with four strands of wire and considers it of sufficient size to take the place of a fence. He has therefore removed protecting fence from same, and sheep on the roadside, which are allowed in this municipality to run on the highway are attacking this hedge and eating all the young leaves off it, and he claims will eventually destroy it. He has protested to the council and in fact, threatens them, that if they do not give him sufficient protection, he will hold them liable for damages. So far a hedge fence has not been recognized as a legal fence in this township. Would the party therefore have any claim for damages? If so, against whom could he lay