

unnecessary one. However, since nothing happened during your absence, that would effect the result of the election, and no person interested could be aggrieved by such absence, the penal sum mentioned in section 194 could not be recovered from you in proceedings taken under the Act. The Act does not appear to impose a penalty on the deputy-returning officer for absenting himself from the polling-booth, in terms.

We think you had a right to vote for school trustee if you had the qualification required by section 12 of the Public Schools Act. Section 58 entitles the Board of School Trustees, of any urban municipality or township, to have the election of school trustees held by ballot and sub-section 3 of the same section provides the mode of conducting elections by ballot. The people who are threatening you with proceedings are, no doubt, of the opinion that because the election, in this case, was by ballot, you had no right to vote because a municipal clerk has no right to vote for a councillor at a municipal election, except in the case of a tie. We do not, however, agree in that view and in addition we may say that even if you did not have the right to vote for trustee, you are not liable to an action.

**Dismissal of Municipal Officers.—Form of By-Law Commuting Statute Labor.**

**93—P. G. T.—1.** Can municipal officers appointed by by-law at the first meeting of the council be removed from office at any time before the end of the year?

**2.** Would you kindly print a form of by-law for a municipal council to commute statute labor and remove pathmasters from office?

**1.** Assuming that the officers were hired for a year, we do not think the council can dismiss them in the absence of sufficient cause, without rendering the municipality liable for damages.

In *Broughton vs. Brantford*, 19 U. C. C. P., p. 434, a municipal officer was held entitled to damages for wrongful dismissal. He was dismissed in month of September. Hagarty, J., at page 437, said "Assuming then that plaintiff, in 1867, continued an officer of the corporation appointed under their seal, and that his office was such as was usually the subject of a yearly hiring, could he be dismissed during the year at the defendants' pleasure?"

My impression is, that unless he held the appointment at the yearly salary under the corporation seal, he could be so dismissed, and that his claims would be limited to compensation for services actually rendered. As I consider that plaintiff remained up to the date of his dismissal the defendants' officer under their corporate seal, I think he is entitled to compensation for a wrong dismissal, in like manner as if employed by an individual. Again, in the case of *Davis vs. Montreal*, 27 S. C. R., p. 539, it was held, under a statute substantially the same as the above provision, that when the engagement has been made indefinitely as to duration, the council has power to

dismiss summarily and without previous notice, upon payment only of the amount of salary accrued to such officer up to the date of such dismissal. The language used indicates that such power does not exist in the case of a definite engagement, and we think that a contract with municipal officers, engaging them for a year, is a definite engagement.

**2.** On pages 68 and 69, of the May issue of MUNICIPAL WORLD, 1900, we published such a by-law as you enquire about. It was passed by the council of the township of Pelham.

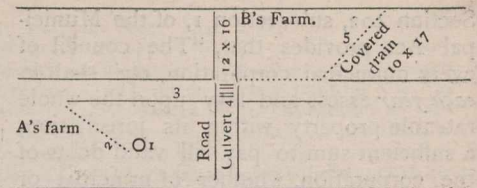
**Collection of Deficiency in Amount to Pay Drainage Debentures.**

**94—C. W. B.—**The municipality of —, on a petition from a number of ratepayers, borrowed money on debentures for drainage purposes. A certain number of lots were included in the by-law. The engineer, in laying out the work, made a distribution of the taxes to be paid by the owner of each lot. Shortly after the drains were completed some of the applicants abandoned their land. Their lands were not patented. We are unable to recover the tax on those lots, consequently a deficiency occurs yearly in the amount of money we should pay to the government. It seems that Crown Lands cannot be sold for taxes. The municipality is at a loss what steps they should take to recover the deficiency.

Assuming that your council borrowed money from the government for drainage purposes, under the provisions of the Act respecting municipal debentures issued for drainage works, (chapter 40, R. S. O., 1897,) the debentures "shall not be questioned and shall be deemed to be valid to all intents and purposes." See section 7 of the Act. If the council, for any reason, cannot collect from the parties originally assessed for the construction of the drainage works, the annual sum necessary to meet the debenture payments, the deficiency will have to be made up from the general funds of the municipality, and levied against and collected from the ratepayers generally. See section 8, sub-section 1. A laying out of the facts of the case before the government might result in the relief of the municipality.

**Can Council Initiate Proceedings Under the Ditches and Watercourses Act.**

**95—J. M. D.—**A requests the council to put in a large culvert on the road at (4) as the present culvert is not large enough to take the water as fast as it comes in the spring, or during heavy rains, sometimes flooding his lands and the road for three or four days. The road is graded up higher than his land. The natural outlet for the water before he dug the ditch (3) was along the line (2) to basin (1) which has a sand and gravel bottom, allowing the water to soak away very rapidly. A won't take action under the Ditches and Watercourses' Act, but threatens council with an action for damages if they don't enlarge the culvert. On the other hand, B will enter an action for damages if a larger culvert is put in, as it would let the water through faster than his covered drain (5) would take it. Can the council initiate and adopt the Ditches and Watercourses' Act? Would A, under it, be liable to pay part of the cost of enlarging B's covered drain? What course would you advise the council to adopt under the circumstances?



A does not appear to us, to have any right of action against the municipality. The council was not bound to put in a culvert at all for his benefit, and the fact that there is one now does not give him any right to have it enlarged. The law is, that an owner of land has no legal right to an easement for drainage purposes, over adjoining lands, in the case of surface water, that is, water which does not flow in a channel having defined banks. We understand this to be a case of surface water, and if that is so, A has no right to conduct water either on to the highway or B's land, so as to cause damage. Either B or the municipality have the right to erect an embankment to keep the water off their land. If the council enlarge the culvert and assist A in bringing down water upon B's land, we have no doubt but that the municipality would render itself liable to B for such damages as could be shown he had sustained. Unless the council really find it necessary to drain the highway to keep it in proper repair, we would advise it to leave things as they are and perhaps A will then find it necessary to take proceedings under the Ditches and Watercourses Act. With regard to this Act we have considerable doubt whether a municipal council can initiate proceedings under that Act. "Owner" includes a municipal corporation as regards its highways, but it seems anomalous that a municipality should bring in its own engineer, as an arbitrator, to act as judge in a matter which is the municipality's own affair; and the language of section 7 of the statute seems ambiguous. The first subsection of that section may mean that a municipality has the right to initiate proceedings without first filing any declaration of ownership, or the sub-section may mean that any owner "other than a municipality" may commence proceedings by filing this declaration of ownership and that a municipality shall not commence such proceedings at all. The point has not, so far as we are aware, been decided by any high court judge, but we understand that the county judge of Welland, has held that a municipality has no right to commence proceedings under this statute.

Some townships in the county of Brant will petition the legislature to fix a maximum sum to be paid for registered sheep destroyed by dogs. Legislation of this character would discourage high-class sheep breeding in the province and should not be considered. A higher dog-tax regulation to be properly enforced would be in the best interests of both rural and urban municipalities.