### Hefferman v. Town of Walkerton.

Counsel for plaintiff moved to continue injunction granted by local Judge at Walkerton restraining the defendants from paying $125 to the Mayor for his services to the town as Mayor. The parties agreed that the motion should be turned into a motion for judgment. The by-law was first introduced in June, 1902, but was not finally passed until December 13. It was objected (1) that there was not the necessary majority in favor of the by-law under section 85 of the procedure by-law of the town, which required that in the case of money by-laws there should be a vote in its favor of two thirds of the members present at the meeting; (2) that the by-law was not referred to the committee of the whole, as required in the case of money by-laws passed after the adoption of the estimates, and (3) that the by-law was not sealed when acted upon. There had been seven members present at the meeting, among them the Mayor, who did not vote. The by-law had been carried by four to two, the Mayor not voting, presumably under another section of the procedure by-law. The check had been written out by 9 a. m. on the morning of December 14; the by-law was not sealed at 11 a. m. Held, that the money appeared to have been paid to the Mayor for his costs of a law suit, and to have been included in the estimate. On the question of the reference to the committee of the whole it appeared that it was a mere matter of procedure, which this court would not interfere with, when it had been considered by the whole council. On the point of the majority the procedure by-law made it clear that the Mayor need not vote if he did not desire to, the by-law distinguishing the Mayor from the members. His ruling as to the majority was final and it seems that the vote was a two-thirds vote. The objection therefore failed. The objection as to the sealing of the by-law was a technical one, and the by-law having been sealed on the same day as the transaction was carried out, the day would not be divided into parts, but the transaction would be considered to have been sufficiently authorized. Action dismissed with costs.

### Wilmot School Trustees (13) v. Zimmer.

Judgment (oral) in action tried without a jury at Berlin. Action for damages for trespass and for an injunction. The defendant was employed by plaintiffs as a teacher, but the plaintiffs, as they allege, dismissed him, after which he attempted to keep his place as teacher, and they were obliged to bring this action. Counterclaim for $250 for salary and for a declaration that one Shantz was not legally a trustee, and that all acts performed by him were void. Judgment for plaintiffs for $5 damages and perpetual injunction, with full costs. Counterclaim dismissed without costs

### Holmes vs. Town of Goderich.

Judgment on appeal from judgment of Robertson. J., at trial dismissing the action. This was brought by plaintiff, on behalf of himself and all ratepayers of the Town of Goderich, to restrain the defendant corporation, its mayor, and treasurer, and the Bank of Montreal from discounting, or in any way dealing with a note or the proceeds thereof, made to the Bank of Montreal to provide funds to pay into the Supreme Court of Canada $2,000 security on an appeal taken by the town from a judgment of the court of appeal in another action, in which the present plaintiff was plaintiff, and the town defendants. During the course of the present action the money was paid into the Supreme Court, which heard the appeal, and allowed it with costs, whereupon the $2,000 security was taken out and repaid to the Bank of Montreal. The only question in this appeal was, therefore, one of costs. Held, that the court was bound to hear and decide the merits of the appeal (Fleming vs. city of Toronto, 19 A. R. 318), and that the plaintiff's personal interest was no bar to his bringing the action. Held, on the merits, that the town had no power to procure the loan, for two reasons: First, because, looking at sub-section 4 of section 435 of the Municipal Act (R. S. O. ch. 223), it was clear that, in order to ascertain the amount which a municipality may borrow for current expenses under that section, the amount of taxes collected for school purposes in the previous year must be deducted from the whole sum collected, and 80 p. c. of the difference only borrowed. Since the town had, in 1900, only collected $21,774, deducting school rates, they could in 1901 only borrow for current expenses $17, 419; and since, before this loan was made, they had already borrowed $17,000, this loan caused the legal limit to be exceeded. Secondly, because the borrowing power, under section 435 (3) is limited to what is required for the ordinary expenses of the municipality, and an outlay which had not been contemplated when the estimates were prepared, and for which no provision, ei her special or as a possible contingency, had been made in the estimates, could not possibly be deemed part of the "ordinary expenditure" for the year. Appeal allowed, costs of action and appeal against defendants, other than the Bank of Montreal.

### Rex v. Alford.

This was a motion for an order nisi to quash a conviction of defendant under a by-law of the City of Stratford for refusing to pay $10 for damages done to a vehicle hired by him from C. Brothers, keeper of licensed livery stable. The consolidated by-law provides, sec. 343, that "no person hiring any horse or horses and vehicle from any person licensed under this by-law shall . . . refuse to pay . . . for . . . any damage done which any such horse or vehicle shall have sustained while in his use or possession," and a penalty clause provided for a fine of not more than $50 for an infraction of any section of the by-law. It was contended (1) that the conviction did not disclose any offence. and (2) that the by-law was ultra vires of the Municipal Council. Order made quashing conviction on second ground with costs.

## QUESTION DRAWER.

*(Concluded from page 97.)*

the school section for 1902, nor is the taxation thereof legal for that year.

2. By sub-section 3 of section 25 of the Public Schools Act, 1901, any person in a school section in an unorganized district whose place of residence is more than three miles in a direct line (that is "as the crow flies" and not by the usually travelled road) from the site of the school house of the section, shall be exempt from all rates for school purposes, unless a child of such ratepayer attends such school."

### Moving and Improving Public Hall in Village—Vote Necessary to Carry Resolution.

**334**—H. W. E.—1. In our village is a public square with a number of roads leading to it. A number of years ago the council erected a town hall on one of these roads. They now propose to enlarge the hall. It being on the road allowance can any ratepayer object to their enlarging it, or can the property holder opposite the hall object to having it opposite his property?

2. The council at its last meeting also decided in case of objection, to move it on the square and expend about $1,000 repairing it. Can they do so withot a voice of the people?

3. At this meeting three of the council decided to move it and enlarge it, and two objected. Would this motion be legal?

1. If this Hall is erected and standing on a road allowance, which has been regularly established and dedicated to the public for use as a public highway as we infer to be the case, the council has no authority to keep it or build additions to it there, and it is a nuisance for which an indictment will lie.

2. Sub-section 1 of section 534 of the Municipal Act empowers the councils of villages to pass by-laws "for erecting, improving and maintaining a hall" therein, and it is not necessary to submit a by-law of this kind to the vote of the electors of the municipality before its final passing. If however, the $1,000 proposed to be expended in making the improvements to the public hall in this case, is not to be repaid within the municipal year in which it is expended, a by-law providing for raising it must be submitted to the vote of the electors pursuant to sub-section 1 of section 389 of the Municipal Act.

A by-law to grant a loan of $25,000 to R. J. Disney, of Hanover, to assist him in establishing a furniture factory in the town of Collingwood, was defeated, owing to the fact that the requisite number of votes was not cast in favor of the by law.