

The Municipal World

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THE MUNICIPAL WORLD,

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ST. THOMAS APRIL 1, 1903.

Mr. A. J. Brewster, clerk and treasurer of the town of Hespeler, died last month.

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Mr. J. E. Jones, of Stamford P. O., has been appointed clerk of the township of Stamford to succeed the late Mr. F. A. Hutt.

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Mr. Edward Godin, of Griffith, P. O., has been appointed clerk of the township of Griffith, in the place of Mr. John Holly, of Balvenie.

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The county council of Elgin has petitioned the Ontario Legislature to provide for the election of one-half of the members of township and village councils annually, the Reeves to be elected each year as at present.

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Mr. Patrick Hart, who for thirteen years past has been clerk of the township of Bromley, has resigned that position to accept a situation as book-keeper for a large lumber firm in the town of North Bay and Mr. J. E. Dooner has been appointed clerk in his stead.

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We received last month five sets of questions unaccompanied by the names of the senders. We call the attention of our readers to the conditions on which we will answer questions submitted to us, printed at the head of the first column of our editorial page. It will thus be observed that SUBSCRIBERS only are entitled to replies to their questions on municipal matters, and unless correspondents send in their names with their communications, we cannot tell whether they are entitled, under our rules, to answers or not, and therefore must refuse to answer or publish them.

Right to use Adjoining Land When Highway Impassable.

From questions and enquiries we have received from time to time an erroneous idea seems to exist, generally, as to when, and to what extent, persons travelling along a highway can enter upon adjoining lands when, by reason of obstructions or lack of repair, the highway has become impassable. We therefore deem it advisable to draw attention to the law on the subject as it at present exists in the Province of Ontario. The case of Carrick vs. Johnston, reported in 26 U. C. Q. B. Reports at page 65 contains a clear and concise exposition of the present law in the matter. This was an action brought by the plaintiff against the defendant for trespassing upon his lands. The alleged trespass appeared to have been the entry by the defendant upon the lands of the plaintiff by reason of the highway adjoining them being out of repair and thus impassable. The defendant pleaded that at the time of the alleged trespass there was a highway adjoining the plaintiffs' lands which said highway was in certain places impassable and out of repair, wherefore, the defendant, for the purpose of using said highway, necessarily deviated a little therefrom on to the plaintiff's land, going no further from the highway than was necessary and returning thereto as soon as practicable and doing no damage in that behalf. The plaintiff demurred to this plea and on the hearing of the demurrer, the court, by Mr. Justice Haggarty held the plea to be good. Lord Mansfield, in the case of Taylor vs. Whitehead (Douglas 749) remarks that "highways are for the public service and if the usual tract is impassable it is for the general good that people should be entitled to pass in another line." Mr. Justice Haggarty in the course of his judgment in the above case of Carrick vs. Johnston, states as follows: "the usual question that arises in most of the cases is whether, in the case of private ways which had become "founderous" and impassable, there could be a deviation through the adjoining lands and in the case just cited (i. e. Taylor vs. Whitehead) the distinction is pointed out, but no one seems to have questioned the right to deviate in the case of "founderous" highways." In Woolrych on Ways, 2nd Edition, page 78, it is laid down that "with respect to a highway it seems to be made clear that if there be any obstruction a passenger may go over the adjoining land. If the ordinary track be so dangerous as to compel them to leave the road, they may go *extra viam* passing as soon to the original way as possible." Burns, Justice, 29th edition, vol 3, page 529 says, "If the highway be impassable from being out of repair, or otherwise the public have a right to pass in another line, and for this purpose can go on the adjoining ground, and it makes no difference whether it be sown with grain or not." It is to be observed that if a person travelling

along a highway finds it necessary to deviate and enter upon the lands of adjoining owners in order to overcome an obstruction in the highway, or to pass by a space which is dangerously out of repair, in doing so he must occasion as little damage as possible to the lands of the adjoining owner. He is expected to do only what is absolutely necessary in order to enable him to reach the other side of the dangerous or obstructed highway.

Grand Rapids has rejected private ownership in its water service, light service, and telephone service, and has adopted a form of public ownership unique in many respects. In its water service municipal ownership, as usually adopted in other cities, has been resorted to. The local telephone service, while not under municipal ownership, is under a plan of public, co-operative ownership which is unique, there being only two other cities in the United States which have the same plan. The saving resulting to the people from this system is calculated at \$7,000. The plan of lighting service grew out of it, and is similar to the plan of the telephone service, and the rates, without making allowance for dividends, are forty-five per cent less than the rates charged by neighboring cities for similar service. The saving resulting from the system is calculated at \$5,000 annually, as compared with what would be paid if the rates of neighboring cities were charged. The telephone and light service plans, thus make for the city an annual saving of \$12,000.

* * *

A recent decision of the Supreme Court of Minnesota, in a telephone company case, is interesting. It holds that the company need not remove its poles and wires from the streets after the expiration of its franchise. The telephone company was granted the exclusive right to put up poles and wires for the period of ten years. After the time limit had expired the council, in event of the said company refusing to submit a bid for a new franchise, granted a franchise to another company and ordered the removal of the first mentioned company's wires and poles. The court sustained the defendant company's refusal to remove its property on the ground that the company, having established its plant under the provisions of the general law, has acquired the right to extend its system within the city as occasion might require, and had thus obtained vested rights which could not be revoked by the city except within the exercise of its police power.

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Mr. Henry Elliott has completed his 50 years as treasurer of the township of Darlington. A fact that seems almost incredible is that every page in the treasurer's books during the whole term is in Mr Elliott's handwriting. Half a century of unremitting and efficient service is almost without a parallel in municipal government.