The Municipal World

PUBLISHED MONTHLY IN THE INTERESTS OF EVERY DEPARTMENT OF THE MUNICIPAL INSTITUTIONS OF ONTARIO.

Volume XVII. Number VII | ST. THOMAS, ONTARIO, JULY, 1907. | Whole Number CXCIX

CONTENTS

Calendar for July and August, 1907

LEGAL, EDUCATIONAL, MUNICIPAL AND OTHER APPOINTMENTS.

JULY

1. Dominion Day (Monday)
   All wells to be cleaned out on or before this date.—Section 122 Public Health Act, and section 13 of by-law, schedule B
   Last day for council to pass by-law that nomination of members of township councils shall be on third Monday preceding the day for polling.—Consolidated Municipal Act, 1903, section 125.
   Before or after this date Court of Revision may, in certain cases, remit or reduce taxes.—Assessment Act, section 112.
   Last day for revision of rolls by county council with a view to equalization.—Assessment Act, section 81.
   Last Day for establishing new high schools by county councils.—High Schools Act, section 9
   Treasurer to prepare half-yearly statement for council.—Section 292, Consolidated Municipal Act, 1903.
   Treasurer to prepare statement of amount required to be raised for sinking fund to be laid before council previous to striking annual rate.—Consolidated Municipal Act, 1903, section 418, (4).
   Last Day for completion of duties of Court of Revision, except where assessment taken between the 1st July and the 30th September.—Assessment Act, section 65, sub-section 20.
   Trustees to report to Inspectors regarding Continuation Classes.
5. Last day for service of notice of appeal from Court of Revision.—Assessment Act, section 68 (2).
   Make returns of deaths by contagious diseases registered during June.—R. S. O. 1897, chapter 44, section 11.
10. Inspectors' Reports on Continuation Classes due.
15. Last Day for making returns of births marriages and deaths registered for half year ending 1st July.—R. S. O. 1897, chap. 44, section 11.
20. Last day for performance of statute labor in unincorporated townships,—4 Ed. VII., chapter 25, section 27.
31. Last day to which judgment on appeals, Court of Revision, may be deferred, except as provided in The Act Respecting the Establishment of Municipal Institutions in Territorial Districts.—Assessment Act, section 68, sub-section 7.

AUGUST

1. Notice by trustees to municipal councils respecting indigent children due.—Public Schools Act, section 65, (8), Separate Schools Act, section 28, (13).
   Estimates from school boards to municipal councils for assessment for school purposes due.—High Schools Act, section 16, (5); Public Schools Act, section 65, (9); Separate Schools Act, section 28, (9); section 33, (5).
   High school trustees to certify to county treasurer the amount collected from county pupils.—High Schools Act, section 16, (9).
   Inspectors' Report on School Premises due.

The Municipal World

Published Monthly in the Interests of Every Department of the Municipal Institutions of Ontario

K. W. McKAY, Editor
A. W. Campbell, C. E. J. M. Glenn, K.C., LL.B. Horace F. Jell
Associate Editors.

TERMS.—$1.00 per annum. Single copy, 10c.; Six copies, $5.00, payable in advance.
EXPIRATION OF SUBSCRIPTION.—This paper will be discontinued *at the expiration of term paid for*, of which subscribers will receive notice.
CHANGE OF ADDRESS.—Subscribers who may change their address, should give prompt notice of same, and in doing so, give both old and new address.
COMMUNICATIONS.—Contributions of interest to Municipal Officers are cordially invited.
HOW TO REMIT.—Cash should be sent by registered letter. Draft, express or money orders may be sent at our risk.
OFFICES—334 Talbot Street, St. Thomas. Phone 189.
ADDRESS all communications to THE MUNICIPAL WORLD, LIMITED, Box 1321, St. Thomas. Ont.

ST. THOMAS, ONTARIO, JULY 1, 1907.

The seventh annual convention of the Union of Canadian Municipalities will be held at Port Arthur on August 13th to 16th.

* * *

The mayor of Ratherham (England), presented the town clerk with a very beautiful silver inkstand engraved with the borough coat of arms, as a token of appreciation of many acts of kindness rendered to him during his mayoralty, 1904-7.

* * *

The annual meeting of the Ontario Municipal Association will be held at the city hall, Toronto, August 28th and 29th. It is expected that the attendance of delegates will be larger than usual, as expenditures for the purposes of the association have been approved by the Legislature.

* * *

The Conmee Act, behind which many public services corporations are entrenched, was badly shattered at last session of the Legislature, when section 15 of chapter 19, The Power Commission Act, was passed. The Conmee sections of The Municipal Act being clauses (a) to (a9), both inclusive, following paragraph 4 of section 566 and sections 567a and 567b do not apply to a corporation which has entered into a contract with the commission.

* * *

Apart from the fact that every man gets abused, no matter whether he is in public or private life, the man in public life who does the right thing without fear or favor can richly afford to snap his fingers at "abuse" because time will justify his actions and put to confusion his ignorant or malicious critics. No man worth his salt ever escaped criticism, and—what is worse by far—the temporary ingratitude of those he labored to benefit.

* * *

The Ontario Rural Municipal Association met at Guelph on the 5th of June during the session of the Wellington county council. Warden Dulmage presided. Among those present were: Editor Smith, of the *Farmers' Son*; Mayor Hood, Chairman Kennedy and Alderman Simpson of the Guelph Board of Works; James Laidlaw, Colin Cameron, John Gilchrist, Councillor Wilkinson, of Puslinch, and others. A. W. Campbell, C. E., Deputy Minister of Public Works, delivered an address on "County Roads" and emphasized the importance of drainage and the appointment of one permanent official as road commissioner. Before adjourning a change in date of municipal elections was considered and a resolution adopted recommending the Government to change the date of the municipal elections to some date near the end of January, so that a proper audit of municipal accounts could be then presented.

* * *

It is understood that a strong desire has existed that official conferences on education, consisting of representatives sent by the various governments throughout His Majesty's Dominions, should be held at regular intervals, and that the first of such conferences should be convened by the Imperial Government. We are officially informed that an announcement was made on behalf of the Government to one of the conferences of education representatives of various Colonial and Indian Governments and of the Home Government, held recently by invitation of the League of the Empire at Caxton Hall, that His Majesty's Government considered it desirable to arrange for an official education conference to be held in the year 1911. The Secretaries of State for the Colonies and for India are preparing to send out intimations to that effect.

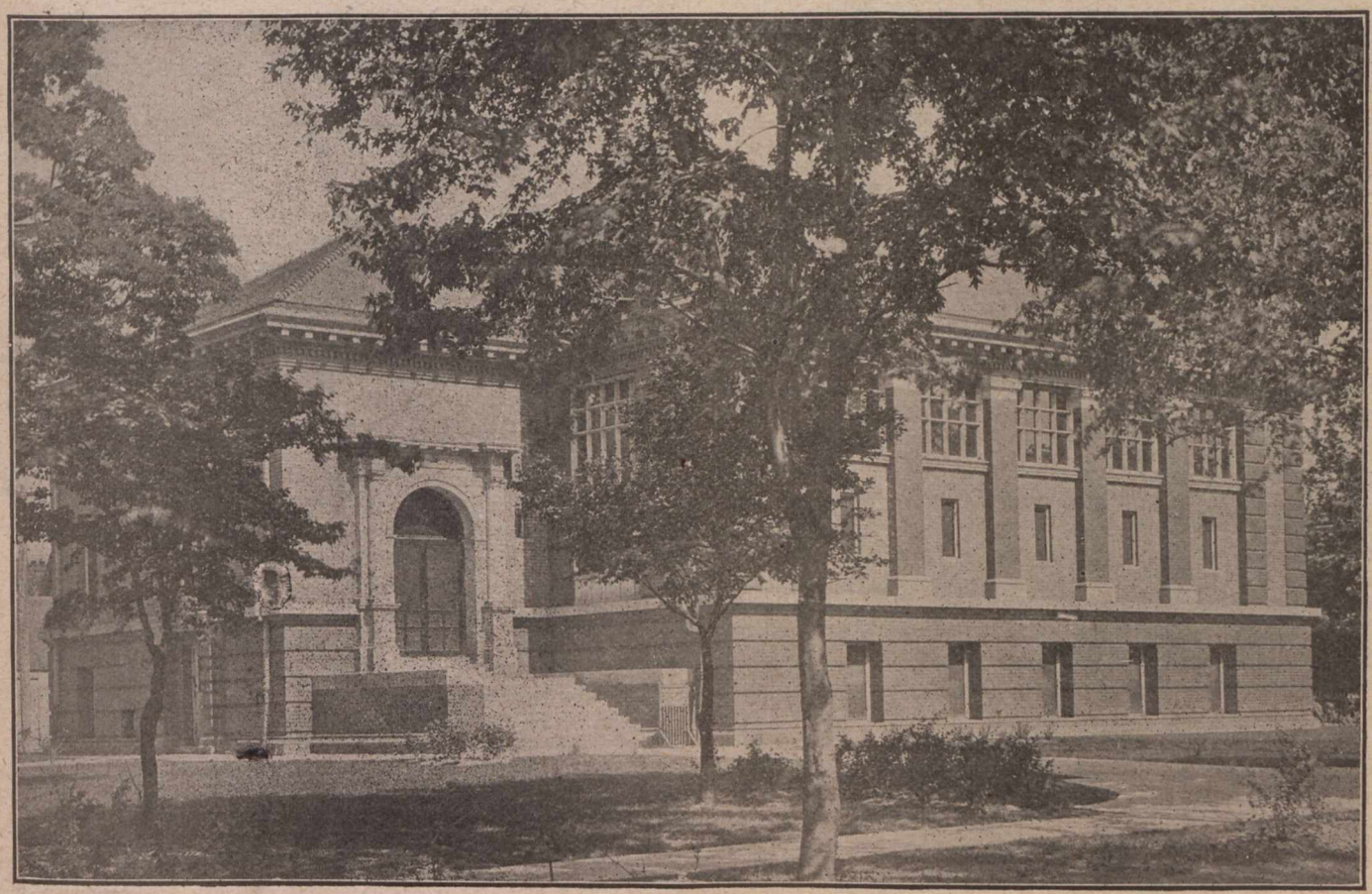
MUNICIPAL CREDIT

Mail and Empire: It is undeniable that Canadian municipal securities are not in the high class they were some years ago. It may be said, however, that no variety of securities is now at its maximum price, and that the depression alike of municipal debentures, national bonds, prime railway issues and the best industrial securities is the result of money stringency. But municipal bonds are no longer relatively as good as they were. Up or down, they ought to hold a leading place in the list of bonds dealt in. But other classes of bonds are in greater demand and at higher prices. The truth is, there has been a departure from the conservatism that was adhered to by municipalities in the past. As the Provincial Treasurer pointed out in his budget speech, the mnnicipalities have become very prodigal. Their affairs are no longer so generally in the hands of economists as they formerly were. Public works cost too much. To keep the tax rate down borrowing is resorted to, and expenditures that out to be met out of current revenue are charged to capital account, the standing liabilities being thus steadily increased. When the debt begins to look large proportionately to the assessment, the latter is hoisted up for appearance sake as well as for the effect on sentiment. The confidence of lenders is supposed to be less reserved when they see the margin growing between liabilities and assessment and citizens are inclined to be a little prouder of their town when they see its taxable property swelling into larger figures; moreover, they are not uncommonly thus beguiled into payiug higher taxes under the superficial form of a lower rate. The Legislature has by judicious amendments in the rules of the House, made the Railway and Municipal Board the judge as to the merits of all private bills affecting the credit of municipalities. This change in the mode of dealing with applications and bills for the issuing of new municipal debentures is certain to prove salutary. It will arrest the growth of municipal debt in Ontario and force municipal councils to abandon the ways of extravagance.

Protecting Scenery by Law

A GOOD EXAMPLE FOR ONTARIO TO FOLLOW: The German Government has for some years exercised a parental care in protecting the best sites of its cities from misuse or depravation. Venerable or picturesque historical buildings are kept safe from destruction or thoughtless alteration. The squares and streets are not left to the whim or bad taste of the property-owners to mar or disfigure by works of architecture or sculpture of offensive ugliness or inharmonious design. The new bill recently passed by the Prussian Parliament goes further and provides against anything in the way of building or advertising placards which tend to destroy the beauty of mountain, meadow, or river scenery. Germany, by such legislation, is practically leading the world, and those whose sensibilities are jarred by the gaudy advertising signs which are becoming more numerous and more hideously obtrusive along our railway lines every year will applaud the action taken by the Prussian Parliament and pray that it may be taken as an example by other countries, including our own. The Prussian law is very sweeping in its effect, says *The Continental Correspondence* (Berlin) and will restore to their primitive beauty many landscapes hitherto vandalized by the introduction of frightful blots. Such natural features have been in many instances desecrated by the erection of unsightly factories, board-signs and ugly hotels, says *The Correspondence.* To quote the words of this journal:

"That the beauties of country scenery also need legislative protection was sadly proved by some industrial installations on some beautiful spots of the famous banks of the Rhine River. The naturally pretty valley of the Upper Spree immediately above Berlin has already been spoiled by encroachments of industry beyond any hope of recovery, and the lovely country between Dresden and Meissen is losing more and more of its charms by inconsiderate constructions. These are only the best known instances among many, and it can be no question that in Germany the time has come for a superintendence, as Ruskin demanded it for England."



WINDSOR PUBLIC LIBRARY

The new Windsor Library was completed in 1903. The cost, exclusive of lot, was $25,000 and $1,600 for furnishings. The building is of brick with stone facings, and interior finish of red oak and hard maple. On the first floor is a vestibule, delivery room, general reading room, reference room, librarian's office and stack room. On the second floor is the board room, while in the basement is an auditorium, a committee room, two storage rooms, a fuel room, and boiler room. The system of heating is low pressure steam.

IRA M. BINKLEY, clerk of the township of West Flamboro: "THE WORLD is growing better. I think it is true, whether take it as referring to THE MUNICIPAL WORLD or the old globe in which we live. I know it is true in regard to THE MUNICIPAL WORLD. It was always good, but is growing better as it grows older. May it ever continue thus."

COUNTY ROADS

The following county road statistics are from the last report of the Provincial Highway Commissioner.

	Year of Starting	Total Mileage	Total Expenses	Gov. Aid to Date
			$ c.	$ c.
Lennox and Addington	1906	160	18,999 53	6,333 18
Middlesex	1906	200	21,424 07	7,141 36
Peel	1906	102	.....	.....
Lincoln	1904	36	27,380 91	9,126 97
Oxford	1904	271	53,034 71	17,678 27
Wellington	1903	170	53,531 12	17,843 70
Hastings	1904	472	67,316 26	22,438 75
Lanark	1903	98	91,378 56	30,459 53
Wentworth	1902	140	260,400 74	86,800 24
Simcoe	1903	427	293,816 74	97,938 91
Totals		2076	887,282 64	295,751 91

DONALDSON v. TOWNSHIP OF DEREHAM.

Drainage Along Highway—Flooding of Plaintiff's Lands—Damages.

Judgment on appeal by defendants from judgment of ANGLIN, J., dated 23rd April, 1907. Action against the corporations of the Townships of Dereham and Bayham for damages on account of the flooding of plaintiff's lands owing to the wrongful construction of drains along the highway bordering upon plaintiff's farm. At the trial judgment was given for plaintiff for $50 damages, and defendants were directed to forthwith clear the ditch and maintain it in good order and repair. Counsel for defendants undertaking that the defence of the Statute of Limitations will not be set up in any action or other proceeding to be taken at any time hereafter, such undertaking may be inserted in the judgment, and with this undertaking the appeal is allowed with costs and the action dismissed with costs, without prejudice to any action or other proceeding to be taken against either township or both for any future wrong.

J. D. FISHER, clerk of the township of North Easthope: "Your paper has become so useful to the council as well as the other officials, that they would not think of being without it."

BRADLEY v. TOWNSHIP OF GAINESBORO'.

Excessive Seizure for Taxes—Liability of Township.

Judgment in action tried without a jury at Welland. Action for illegal and excessive distress for taxes. Defendants asserted that plaintiff's taxes for 1905 were $32. Plaintiff insisted that they should be only $29.75. The disputed amount involved a dog tax and statute labor. Plaintiff tendered $29.75, which was refused, and on January 9th, 1906, the collector seized a pair of valuable horses, said to be worth $375, notwithstanding that there were cattle, hay, grain and the like on the premises. Plaintiff was deprived of the use of the team for upwards of a week, when the collector abandoned the seizure and accepted payment of the $29.75. This, however, was done without the sanction of defendants, and only, as the collector said, to save further trouble. Held, that the defendants had the right to destrain for the $32, but that the seizure was excessive. Judgment for plaintiff for $75 damages, with costs on the County Court scale, without set-off to defendants.

JAS. HONOR, clerk of the township of Malden: "The renewal of our subscription is the best evidence that we can give you of our appreciation of your paper."

Re WYNN AND VILLAGE OF WESTON

Local Option—Polling of Unqualified Votes.

The plaintiff appealed from order of Meredith, C. J., dated 2nd May, 1907, dismissing application for order to quash a local option by-law of the village of Weston. The local option by-law, together with other questions, was submitted to the ratepayers on 7th January, 1907. The vote, according to the clerk of the municipality, stood 227 for the by-law and 148 against. The by-law was attacked on the ground that the voters' lists used on the voting contained the names of 37 persons not appearing on the last revised assessment roll to be entitled to vote on the by-law, and of the 37 persons, 29 persons voted on the by-law, contrary to the provisions of sec. 348 of the act. There were a number of other irregularities urged. Appeal dismissed with costs.

Re RICKEY AND TOWNSHIP OF MARLBOROUGH.

Local Option—Insufficient Publication of By-Law

Judgment on appeal by H. J. RICKEY from order of MABEE, J., 9 O. W. R. 563, dismissing without costs a motion to quash a local option by-law of the Township of Marlborough. The only ground of appeal not disallowed on the argument was that the by-law was not published in a public newspaper as required by section 338 of The Municipal Act, 1903, sub-section 1 of which provides that "the day fixed for taking the votes shall not be less than three, nor more than five weeks after the first publication of the proposed by-laws." The paper selected was a semi-weekly, published every Tuesday and Friday; the first publication of the by-law was in the issue of Friday, 14th December, and the second and third in those of Tuesday, 18th, and Tuesday, 25th, respectively.

Held, that the intention of the Legislature was that the period of the publication "for three successive weeks" shall embrace three successive periods of seven days each, beginning on the first day of actual publication and not on the first day of the biblical week in which the first publication appears, and that there should be at least one publication in a newspaper in each of the seven-day periods. The publication for only two when the statute requires three successive weeks is not such an irregularity as can be cured by section 204 of the Municipal Act. Appeal allowed and by-law quashed with costs.

JOHN RICKABY, clerk of the township of Clarke: "No money is better spent by any municipality than this. Your paper is invaluable as a guide in municipal affairs."

The city solicitor of Ottawa has given his opinion that the city can pay membership fees to the Ontario Union of Municipalities, but not to the Federal Union.

* * *

The town of Clinton again voted to guarantee the bonds of the Clinton Thrasher Co., who suffered so severely in the disastrous fire on May 13th. By a vote of 400 to 5 the town will guarantee bonds to the amount of $20,000, repayable in twenty annual payments.

* * *

A resident of Toronto was assessed in 1902 for $10,000 on personal property and $1,990 on realty, for the year 1903. In 1903 he paid taxes on the $1,990, but objected to pay on the whole of the $10,000, as he was not residing in Toronto in 1903, and had invested part of that sum in real property in another municipality. Under the above circumstances the Judge of the County of York recently held that the person taxed was liable to pay taxes on the whole assessment.

Assessment Decisions

We are indebted to Mr. W. H. ELLIOTT, clerk of the Town of Fort Frances, for the following interesting judgments on assessment questions, recently delivered by His Honor Judge CHAPPLE of the Rainy River District. We wish that other municipal clerks would favor us with copies of judgments delivered in their particular localities in cases involving matter of a municipal nature, as it is important that they should be preserved, and they can very rarely be found in the regular law reports :

IN THE THIRD DIVISION COURT OF THE DISTRICT OF RAINY RIVER.

BETWEEN

The Municipal Corporation of the Town of Fort Frances. *Plaintiff*

and

Herbert Williams *Defendant.*

This is an action brought by the Town of Fort Frances to recover from the defendants the sum of $32.73, being the amount of the business assessment levied against him for the year 1905, which he refused to pay on the ground that the buildings in which he carried on the business of a retail merchant were destroyed by fire on the 16th day of June of that year, and that he did not afterwards carry on any business in any other place in the town during the balance of the year.

The facts concerning this matter are not in dispute, and it is wholly a question of law as to the liability of the defendant, and being a matter of public interest, I decided to give a written judgment herein. Under section 402 of The Municipal Act, the council of every municipal corporation is empowered under the head of "By-laws respecting yearly rates" to levy and assess in each year on the whole rateable property within its jurisdiction a sufficient sum to pay all valid debts of the corporation falling due within the year, with certain limitations in accordance with the machinery provided by The Assessment Act. The meaning of the words *to assess* has been clearly defined by authorities as "to consider and determine the whole amount necessary to be raised by rate." (See Mogg v. Clark, 162 B. D., page 79, and other cases cited in *The Municipal Manual*).

Section 5 of The Assessment Act sets out fully what property shall be liable to taxation, subject to certain exemptions, which is *all real property* in this Province and *all income*, and the meaning of "real property" or "land" is fully explained by sub-section 7 of section 2 called the interpretation clause of the Act.

Section 10 of the Act says that irrespective of any assessment of land under this Act every person occupying or using land in the municipality for the purpose of any business mentioned or described in this section, shall be assessed for a sum to be called "Business Assessment," to be computed by reference to the assessed value of the land so occupied or used by him ; and the different kinds of businesses are set out and the rate to be levied thereon.

This is entirely a recent section in our Assessment Act, and first came into force in 1905, but it is quite clear that the tax is :

(1) Irrespective of any assessment of land.

(2) The person assessed must occupy or use the land.

(3) He must carry on a certain business thereon.

The authorities, both in our own courts and the English courts, clearly establish that all "taxing acts" must be construed strictly, and any ambiguity will entitle the subject to be exempt from the tax, see Cox v. Rabbits, 3 A. C. 473, and many others in this line, where it is laid down beyond doubt that a statute granting to a municipality authority to levy taxes must be strictly construed. It being presumed that the Legislature, in granting the power, has clearly indicated its intention, and doubts and ambiguities arising from the terms used by the Legislature must be resolved against the Legislature and in favor of the tax-payer.

The business assessment is to be for each business of the same kind, a certain fixed percentage of the assessed value of the land occupied or used. The percentage is different for different kinds of business, but the same for every business of the same kind.

The plaintiffs contend that by section 66 of The Assessment Act, the assessment roll as passed by the Court of Revision is final, unless it is amended on appeal to the County Judge. This no doubt is correct as far as any complaint as to the amount for which the property is assessed, or as far as any defect, error, or misstatement in the notice required by section 46 of the Act, or the omission to transmit or deliver such notice, are concerned.

A "business assessment" is, however, different from a tax arising out of the assessment of land or real property. Sub-section 8 of section 10 says : "Every person assessed for business assessment shall be liable for payment of the tax thereon, and the same shall not constitute a charge upon the land occupied or used." Thus making the business assessment a personal liability or debt due to the municipality and collectable by action under the provisions of section 90, and it does not become a lien upon the land as mentioned in section 89 of The Assessment Act.

This action being brought in this Division Court to recover a debt, I am of the opinion that the defendant is entitled to set up any *bona fide* defence, the same as in any other action ; as herein he claims that he is not liable for the amount sued for, for the reasons stated in his dispute.

The evidence being undisputed that the defendant *did not occupy or use* the land referred to *for the purpose* of *carrying on any business* mentioned or described in section 10 of The Assessment Act after the 16th day of June, 1905, I find that he is not liable for "business assessment," as claimed, after that date, but only till then, and I accordingly give judgment for the plaintiff for $16.00 and the costs of the court.

I may add that the facts in this case are entirely different from those of the cases of the Town of Fort Frances v. Scott & Baker recently decided by me in this court, and brought to recover "business assessment" under somewhat similar circumstances. There the defence raised was that the notice referred to in section 46 of the Act was not served upon them, which being cured by section 66 of The Assessment Act, I gave judgment accordingly. There the defendants continued their business in another portion of the town with only a slight interruption, here the defendant did not.

(Signed) T. W. CHAPPLE, Judge.

Kenora, May 25th, 1907.

IN THE THIRD DIVISION COURT OF THE DISTRICT OF RAINY RIVER.

BETWEEN

The Corporation of Fort Frances.

and *Plaintiff*

W. A. Baker *Defendant.*

This action is brought to recover the amount of "Business Tax" for which the defendant is alleged to have been assessed for in 1905.

The defendant disputes payment of the same on the ground that he did not receive any notice of the assessment, and consequently had no chance to appeal therefrom, and further that the amount was not mentioned in his tax bill for that year.

Section 5 of the Assessment Act shows what property is taxable, namely: "All real property in this Province, and all income derived either within or out of the Province by any person resident therein, or received in this Province by or on behalf of any person resident out of the same." And in addition thereto there is a business tax levied under section 10 of the Act which reads as follows: "Irrespective of any assessment of land under this Act, every person occupying or using land in the municipality for the purpose of any business mentioned or described in this section, shall be assessed for a sum to be called a "Business Assessment," to be computed by reference to the assessed value of the land so occupied or used by him."

The sub-sections of section 10 fix the basis of this business assessment according to the nature of the business in which the occupier is engaged, the minimum amount being fixed by sub-section 3 at $250 (in 1905).

Now, as the defendant admits that he was carrying on business as a tailor at the time the assessment was made in 1905, he would be liable for the business tax, and as he was only assessed for $250, the minimum amount of business assessment, he could not even on appeal have had the amount reduced. He, however, claims that he was entitled to notice of his assessment, which he clearly was by section 46 of the Assessment Act, which reads as follows: "The assessor before the completion of the assessment roll of the municipality shall, in manner hereinafter provided, leave for or transmit to every person named in the roll, a notice according to the form given in schedule "F" of the Act, of the sum or sums for which such person has been assessed, and the other particulars in schedule "F" mentioned, and shall enter in the roll opposite the name of the person, the date of delivering or transmitting such notice, and the entry shall be *prima facie* evidence of such delivery or transmission.

While this section clearly points out the duty of the assessor, from which he is not relieved in any way, still by section 66 of the Act, after the roll is finally revised, which was in this case done on the 27th day of July, 1905, it is valid and binding on all parties, notwithstanding any defect or error or omission to deliver or transmit the notice of assessment, unless the party has actually requested the clerk of the municipality in writing, in accordance with sub-section 6 of section 46, that such notice shall be transmitted to him.

Now, while the letters *Ap. 29* appear opposite the defendant's name on the assessment roll in the column marked (date of delivery of notice under section 46), and I am of the opinion upon the evidence that the defendant never received any notice of being assessed for business assessment, which was a new assessment in 1905, still by section 66 the assessment is none the less binding upon the defendant. I am strongly of the opinion that section 66 should be amended so that all parties assessed would not be prejudiced by any neglect or omission of the assessor, but while the law stands as it is, the Court must follow it as they find it.

I therefore must find that the defendant is liable for the amount of said business assessmeut, and as it is the minimum amount he is not much prejudiced by the want of notice, as he might otherwise have been.

The costs, however, being in my discretion, I will not make him pay the costs of this action, for while section 66 makes the assessment binding notwithstanding the want of notice, still it does not in any way exonerate the assessor from the performance of his duty as required by section 46. The defendant swears that he never received any notice, and in support of his contention he produces the assessment notice that he did receive, and his tax notice from the collector, in neither of which is there any business assessment mentioned, and upon that evidence it does appear that the assessor did not serve the notice as required by section 46, and he being a servant of the municipality, the plaintiff must be responsible for his acts or omissions to the prejudice of third parties, although as between themselves he may be responsible, I must add that the assessor was not called as a witness, and therefore there was only the entry in the assessment roll as to service of the notice, which is only *prima facie*, or presumptive evidence at most.

I therefore give judgment for the plaintiffs for $6.29, but without costs for the reasons above given.

T. W. Chapple,

Nov. 6, 1906. Judge.

ARE LUMBER CAMPS NOT ASSESSABLE?

The judges of the Ontario Court of Appeal recently gave their opinions on the appeal from the decision of the Court of Revision by the J. D. Shier Lumber Company, of Bracebridge, who objected to being assessed by the Township of Lawrence on the value of their licenses, camps, slides and dams in the said township. The value put on the Shier property by the township was $17,900. This was confirmed by the county judge of Victoria.

The questions for the opinion of their lordships were:

Are the holders of timber licenses liable to be assessed thereon?

Are lumber camps assessable?

Are the owners of lumber camps assessable to a business tax under the conditions mentioned with respect to the camps only?

Are slides and dams assessable under the conditions mentioned?

Chief Justice Moss and Justices Osler, Garrow and Maclaren answer all the questions in the negative. The learned judges hold that the license, camp outfit, slides and dams are all covered by the sub-section in the assessment Act, which exempts from taxation all Crown interests in lands.

Mr. Justice Meredith takes a contrary view. His Lordship says: "The fifth section of the Act decrees that all land in the Province shall be taxed, this includes the Crown lands in question; but by the first sub-section of that section the 'interest' of the Crown in all lands is made exempt, and this sub-section, therefore, exempts from taxation the whole of the interests of the Crown in the lands in question; and, if such interests comprise everything, the whole of the lands are exempt; but if not, if there is any other interests in the lands, it is taxable, unless otherwise exempted.

"Take out of the lands in question the whole interest of the Crown, and there yet remain interests of value, the interests of the licensees, and it is immaterial whether such iuterests are inheritable estates or not; or whether they are demises or not; they are interests in the land which are not exempt as interests of the Crown, and so are taxable, not being otherwise exempted.

"It is not contended that the timber which the licensees have the right to cut has been, either in fact or in law, converted into chattels; it is yet part of the land.

"If the licensees carry on any taxable business upon these lands they are liable to a business tax, based upon the value of the taxable interest in them; but merely cutting down the trees and cutting them into logs where they are felled, so that they may be conveniently moved, would not, in my opinion, be such a business.

"All structures owned by the licensees and which increase the value of their interests in the lands are taxable as part of such interests, not separately."

The case of Messrs. MICKLE, DYMENT and Son, who were assessed by the townships of Sherbourne, Livingstone and McClintock at $28,400, were also disposed of by the Court of Appeal in the same manner as the J. D. SHIER Company's case. The questions submitted with regard to the MICKLE, DYMENT and Son's camps were three only, and corresponded with the first three in the other cases.

[ED.—With all due deference to the learned judges of the Court of Appeal, who decided the above appeals, we feel constrained to express our opinion that they are in accordance with neither the letter nor the spirit of the the Assessment Act, 1904. We entirely agree with the opinion of Mr. Justice MEREDITH and the learned judge of the County of Victoria. This is a case where the Legislature should be asked to amend the Act, so that it would be clear, for the future, that the property which was the subject matfer of these appeals, is assessable.]

BOOKS RECEIVED

Procedure in Criminal Cases Before Justices of the Peace.

(By CHAS. SEAGER, Esq., County Crown Attorney, County Huron.)

We are in receipt of a copy of this valuable work, and are of the opinion that Justices of the Peace will find it most practical and helpful to them in the performance of their magisterial duties. It contains an immense amount of the most useful information, and very full and plain direction for their guidance, in a form readily understood and easily followed.

The numerous forms provided will be found especially valuable, and the book consists of more than 250 pages of just such information as is required by those administering the criminal law, or by those desirous of informing themselves on the subject.

By members of the legal profession, also, it will be found to be a most useful, handy book of reference upon points of practice arising in cases before Justices of the Peace; and to the authorities and decided cases up to date, bearing upon the same.

The work has been considerably enlarged beyond what it was at first contemplated, but the price is only $3.00, a small price for a law book. This work is published by the Canada Law Book Co., Toronto.

Revised By-Laws of the City of Kingston, 1907.

We are indebted to the Corporation of the City of Kingston and its solicitor, Mr. DONALD M. MCINTYRE, K. C., for a copy of this interesting work, which has just been completed by the committee to which it was entrusted. This committee was composed of Aldermen D. A. GIVENS, T. G RIGNEY, W. F. NICKLE and Mr. MCINTYRE, the city solicitor. The volume contains lists of all the members of the council since incorporation in 1838, of the principal officials of the town and city during that period, a table of all by-laws passed since 1838, the revised by-laws having general application, eleven appendices containing all the legislation, agreements, etc., affecting the corporation, and by-laws having application in special instances, and an exhaustive index. Every page bears the stamp of thoroughness and intellectual industry. The book is from the press of *The British Whig* and does ample credit to the mechanical skill of that well-known printing establishment.

CRACKS IN CONCRETE

Cracks in concrete structures of rny kind are always more or less disturbing. It is ordinarily expected that a material so substantial will show absolutely no sign of weakness. Cracks in stone masonry, particularly rubble or quarry-face work, are less noticeable than in concrete, and cause less comment, but very commonly appear immediately after the work is completed. Cracks are of two classes, the one of little moment, the other of a serious character. Under certain conditions cracks of the former class are unavoidable, and result from expansion and contraction under differences of temperature, from a slight irregularity of settlement or other unforeseen cause. Such partings of the material as a rule do not detract from the value of the structure except in appearance. Where the cause of the cracks, however, is due to defects in design, and where the stability of the structure is evidently insufficient, cracks are of serious consequence. But cracks of themselves, while they are necessarily objectionable to the eye and should be avoided as much as possible, yet they do not necessarily imply defect in design, workmanship or material.

The use of concrete, however, and concrete reinforced with steel, is growing to such an extent that a warning is advisable. Arch bridges in particular are not a structure which "practical" men are to be trusted to design. Span, rise, depth of fill, character of foundation, strength of reinforcement, and many other details are all so important in their relation to the proper design of an arch, that only a man with the mathematical training of an engineer is capable of proportioning an arch to the stresses to which it will be subjected. It is a remarkable fact with regard to the arch, that if not properly designed, even if of apparently sufficient thickness, the strains may be so situated that the arch cannot support its own weight. Concrete arch bridges are growing greatly in popularity, and their great durability marks them as the coming bridge. But they stand in a class with steel, that requires much care in design. The average man understands timber, in a practical way he can build a wooden bridge, and he knows when it is safe. But steel and concrete are materials requiring a mathematical training and scientific knowledge, when used in bridge construction.

WHERE DECLARATION OF MUNICIPAL ELECTION SHOULD BE MADE.—This point was involved in the case of Rex ex rel. ARMOUR v. PEDDLE, in which judgment was given on motion by relator to set aside the election of the reeve and council of the township of Onondaga, upon the ground that the public declaration of the election was not made at the township hall, but at another place. It was held that what took place was not such a defect as necessarily voids the election, but at most an irregularity within the meaning of section 204 of The Municipal Act, and cannot be assumed to have affected the result of the election. The motion was dismissed without costs.

COMMUNICATIONS

[This paper is not responsible for opinions expressed by correspondents. All communications must be accompanied by the name of the writer, not necessarily for publication, but so the publishers will know from whom they are received]

PROCEDURE AT COUNCIL MEETING

To the Editor of The Municipal World:

Dear Sir,—Re your reply to No. 343 in June number, nearly all municipal clerks hold the same view on this question, viz., that if the minutes are correctly transcribed they must be signed, and in so far as the clerk's duty is concerned, that is correct; but is it good procedure on the part of a council to give its approval and confirmation to a motion, or recommendation, after they have learned that the minutes contain that which is *ultra vires* of the council? I hold it is not; that the first consideration is, has there been any error in the matter contained in the minutes? Our procedure by-law provides that if the minutes are approved they shall be signed, a much wider expression than "correctly transcribed." The head of our council asks: "Is it the pleasure of the council that the minutes be confirmed by my signature?"

"Must we approve and confirm that which is wrong before we can begin to do right?" "Is the thing done greater than he who does it?" "A unanimous council has entire control over their own procedure."—Speaker Brand in the English Commons. See Bourinot on "Procedure," page 314, grants this, Disraeli, and Speaker Blanchet; also the 32nd Rule of the House of Commons provides: A motion may be made by the unanimous consent of the House without notice.

Respectfully yours,

J. C.

[Ed.—We are sorry we cannot agree with our correspondent's view of this matter. We are still of the opinion that the answer he refers to is correct. It is as follows:

"The minutes of a council meeting are simply a true record of what business was actually transacted at the meeting. If they have been correctly transcribed, they should be confirmed as read at a subsequent meeting. A motion to adopt or confirm the minutes should not embody or be supplemented by any original matter, for instance the alteration or expunging of any resolution passed or report adopted at the meeting, of which the minutes are under consideration Matters of this kind should come up at a subsequent meeting in the way of a motion for the reconsideration of the resolution or clause in the report to which objection is taken."

The plan suggested by our correspondent, besides being in our opinion erroneous, would, if followed, in a great measure divest the minutes of a council meeting of their value as a true and complete record of its proceedings. The course outlined in the above letter may be shorter, easier, and more convenient than the procedure that should be followed, as stated in the reply given above. It must be remembered that labor-saving and celerity are not always consistent with accuracy and safety and that a departure from proper methods for the sake of convenience often proves to be a very expensive experiment.]

C. H. Wright, clerk of the Township of Sophiasburg: "The councillors of this township have found your journal very valuable, and would not think of doing without it."

MOLASSES v. VINEGAR FOR CITY OFFICIALS

Highly to be commended is the practice followed by citizens' clubs of a number of the larger cities of publishing periodicals dealing solely with civic affairs; and the call for such papers is indicated by the private publication of them in certain of such cities where they are not issued by the local municipal league or civic club. Such papers can have their greatest value, and their only real reason for existence, however, when they are absolutely non-partisan and impartial, or as nearly so as human nature can make them. It should also be their aim to improve civic conditions in all directions. This much all admit, and many live up to. But the methods employed by many of them we consider open to criticism.

It was the fashion many years ago to produce once a week from behind the kitchen door a "tickler" which saw service in an interview in the woodshed between the head of the family and his younger male offspring, on the theory that the latter had in all probability done something, known or unknown, to merit its application, with the result that its effect as a correction was nil when most richly deserved. Acting on this principle, certain of these papers feel that it is their duty to assume that every man "in politics," or even holding a municipal office, has probably at the best done less than his duty, and so should be accorded only suspicion and discredit. As both the cause and the effect of this, citizens have come to feel that unless a paper assumes this attitude it is concealing some misdoings through friendship or less justifiable favor for the officials spared. Do not these same citizens know and practice in private life the advantages of suggestion? Commend a man for his upright bearing, and he will square his shoulders and endeavor to merit your praise; but call him a thief and treat him as such, and his moral vertebrae must be more than ordinarily rigid if he does not ultimately deserve the stigma. The great need of the day is for papers whose editors and managers are broad enough, impartial enough, and—most difficult of all—discerning and wise enough to ascribe where it is deserved both credit and blame to public officials and departments. We have learned that the best work in other fields is done, not under fear of the lash, but in the hope of praise, popularity or other forms of approval. It is also true that those establishments in which certain who are favorites can never be wrong, while others are never worthy of praise, cannot get the best results from their employees. Must it always be that we can retain as public employees only those whose epidermis is impervious to criticism, and who consequently cannot, on the other hand, be reached and inspired by the commendation of intelligent citizens?—*Municipal Journal.*

William Sutherland, who has been Treasurer of the Township of Ekfrid for the past 33 years, died recently in his 83rd year, and John A. W. Taggart has been appointed to fill his position.

* * *

The by-law to grant a loan of $12,000 to the Wolverine Brass Goods Manufacturing Co., of Grand Rapids, Mich., was carried by the ratepayers of Chatham a few days ago by an overwhelming majority.

* * *

Jno. B. Powles, clerk of the Township of Fenelon: "We believe that a careful study of the pages of your paper from year to year cannot but result in giving our municipal legislators a better understanding of the duties devolving upon them, and by putting this knowledge into practice The Municipal World and the municipalities will be the gainers. Wishing you continued success."

Engineering Department

A. W. CAMPBELL, O. L. S., C. E., M. C. S. C. E.

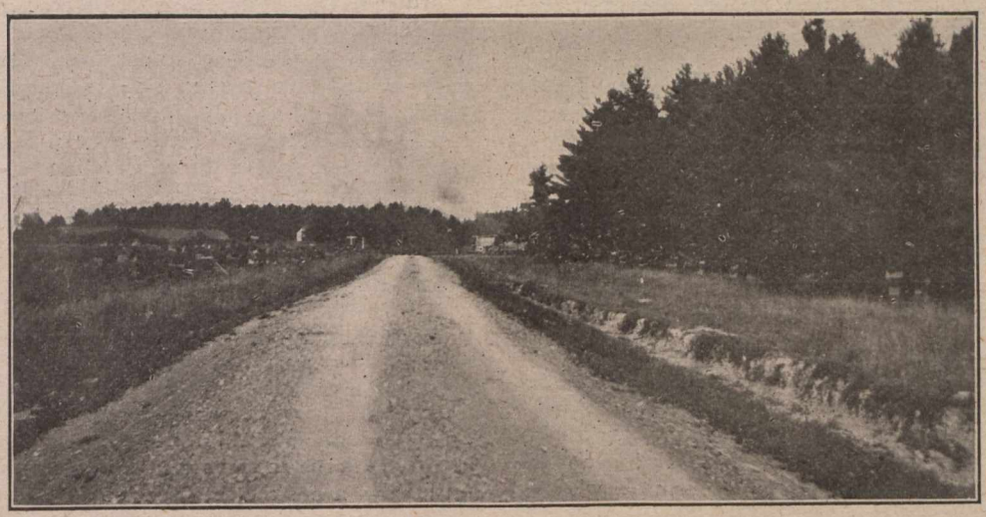
GRADING THE ROAD

Good grading is the basis of permanent roadwork, for good grading implies at least good surface drainage. Grading is the cheapest part of roadmaking, yet it very often is badly done or neglected altogether. In grading, points requiring emphasis are :

(1) See that the longitudinal slopes follow the flow of the water.

(2) Never gravel or stone the road until the grading is properly done.

(3) Old gravel or stone roads will usually derive more benefit from cutting away high shoulders, and rounding the road off from the top outward, than from additional coatings of stone or gravel.



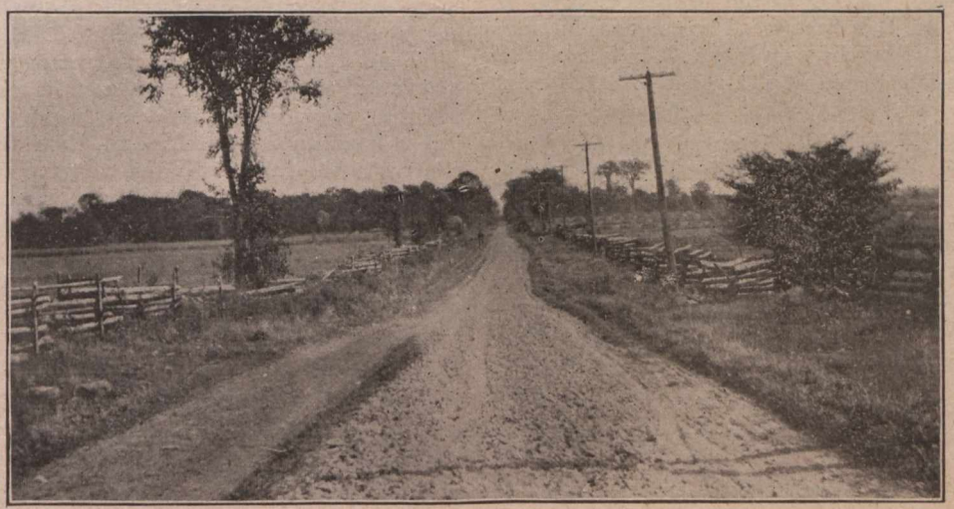
Properly Graded Before Being Macadamized—When Roads Are Properly Graded Before Broken Stone or Gravel is Put on, the Durability is Vastly Increased.

(4) Always grade away the sides of old roads before putting on new metal. Never draw this soft material to the centre.

(5) Grade to a high crown, as the constant tendency is for the road to spread and flatten. A newly graded road settles rapidly in the first year. If not made too high at first, it will soon be too flat.

(6) Do not make the graded roadway wider than is necessary, and straighten crooked roads so as to have the roadway in the centre of the allowance.

(7) Use a grading machine for this work.



DEFECTIVE GRADING.—Broken Stone is Scattered Along an Ungraded Roadway in Alignment nearly as Crooked as the Rail Fences. There is no Crown, no Drainage, and the Stone Can Only be Lost in the Mud.

Do not try to form a gravel or stone roadbed till the grading has been properly done. It is a "penny-wise and pound-foolish" policy. Grade the roadway, cut down the knolls, fill the hollows, conform the slopes so as to drain to natural watercourses, crown the road with a good fall from centre to side. When this is done, gravelling and stoning will be a matter of permanent benefit.

Gravel and broken stone are largely wasted when the roads are not graded and crowned before the metal is placed on them. Before gravel or broken stone is put on the road, the roadbed should be put in right condition by using the grading machine. The water-tables should be given regular slopes to natural outlets crossing the road. Hollows should not be left on the roadway or in the open drains, in which water will stand. Drains from which the water does not flow away are merely elongated ponds to hold water, permitting it to soak into and soften the roadbed. They make mud underneath the road, where it does more harm than on the surface ; the dry crust is easily cut through. See that the road is so graded that there is a constant fall along all open drains or water-tables to natural outlets.

Old roads, with a good bed of gravel or stone, are usually too wide and too flat in the centre, with square shoulders at the sides. These shoulders are of soft material, earth, dust, sod, and should be cut off and turned outward, never brought to the centre to cover the hardened drain ; and if the roadway is too wide, as many old roads are, the grading machine will do all the work, carrying the shoulders outward and shaping the water-tables. When this is done, if the roadbed is sufficiently high, it should be restored to shape and crowned by a new covering of metal. If not high enough, it should be plowed or picked up, then graded and crowned with the machine, and new material spread on top to the desired depth. It is a mistake to make the graded roadway too wide. Twenty-four feet is ample ;

eighteen is sufficient for most country traffic. A wide roadway looks well and is more convenient for traffic—if kept in good condition. But a wide, well-built, well-kept roadway means money. A narrow roadway in good condition is better than a wide, but poor road. Near towns and cities, where travel concentrates, it is well to provide a roadway suited for two lines of traffic so that vehicles can pass without going off the metal and sinking in the mud ; but away from the town, eight feet of metal for a single line of travel is sufficient.

The graded roadway should be straight and located in the centre of the road. Ontario roads have grown up largely from pioneer conditions, when it was necessary to wind in and out to escape stumps and logs, sloughs and boulders. These conditions no longer exist, and before any road can be permanently made, before the first step to permanency can be taken, the roads must be straightened.

To delay straightening the roads merely means that much of the work now being put on them will be thrown away, will be torn up when the straightening of the road is undertaken. Keep the metal straight and in proper alignment. From the appearance of work done in some townships, one would think the roadmakers were trying to follow the crooks of the rail fences along the road.

SKILLED ROADMAKERS

It would seem almost unnecessary to discuss the value of skill in any kind of work ; but there are certain classes of work which seem to the ordinary observer so simple and easy that we are apt to fail to appreciate the skill and effort required to accomplish them. In looking up the question of good roads and trying to determine what is the cause of the present condition of the roads in this State, any one who studies the subject seriously will come to the conclusion that the main trouble is the lack of skilled supervision. Certainly we all know that roads may be built and kept in much better shape than are our present roads with the expenditure of the amount of funds that is now put upon them. This being the case, we see that there is something wrong with the system, that there is something lacking in the proper control of our road work ; and this fact has become so generally known and appreciated by the people that it has caused a lack of public confidence in the management of road work, and makes very difficult the appropriation of any money or the expenditure of any funds for the purpose of road improvement. We can accomplish very little in road improvement until we have such a system and such management of the roads as will inspire confidence on the part of the people. When we have that, the funds necessary for the work will come.

The construction of a road is an engineering problem, very much like any other kind of construction in many particulars, and requiring of the men who have charge of it a knowledge of the ordinary methods of construction used for such work, and a knowledge of the materials of construction, of the methods of using materials, and good judgment and horse sense.

This element of good judgment and horse sense is the most important as well as the most rare quality that we find in the ordinary man who undertakes such work. For instance, if we take up the question of road drainage—the question of when to drain a road and when not to—it is a question of economy, of course ; that is, if your road needs draining, then it is a waste of money to build a road without the drainage ; if the road does not require drainage, then it is a waste of money to put underdrainage in, because not needed.

All these questions are questions of judgment and skill, a knowledge of conditions and ability to judge conditions and know when to do certain classes of work and when not to. Now, we are too much inclined always to follow some set rule and to do the same thing everywhere. The idea is that a man who is skilled, who becomes familiar with work of this character, will do the things that are needed and will leave undone things that are not required in particular parts of his work. No two pieces of road will be exactly alike, and need the same treatment. A man must know the ordinary methods of construction and know when to apply them.

There is another point that I might put in here, and that is, that I am not intending to criticize the men who have had charge of our roads ; there are a great many good men among those who have been in charge of our roads. But road work—particularly with earth roads—in order to be effective, must be continuous, and a man in order to handle such work and do any effective work in the way of supervision, must have the power to do the work when it is needed and to keep the road work in shape.

It is this element of being able to control the situation and being able to get the work done when the work is needed that is most important in this kind of work ; that is, we must not only have skilled men, but those men must have the power to do the work in the right way and at the right time.

The question of how we are to get skilled men trained for this purpose comes up here. Could we start right out with a new system and have everywhere trained men for handling the work ? Of course it is evident that we must adopt some system by which we can train the men up to the work ; that is, the thing that we need is to get men who have been trained by experience in the work until they are skilled. We could not start out at once with a lot of skilled men, because we haven't the men.

When we take up the question of higher class roads, the building of rock roads, we find that we need good judgment in the selection of materials. There is often the question arising as to the value of various materials for different kinds of construction. You will often have to compare material close at hand with that which is imported from a distance. There will be differences of cost, and the question of which material should be used must be decided.

Then the first step is to secure some organization which will develop a class of men in charge of roads who will give their time to road work and will study the subject of road improvement, and then to give those men control of the work. When we have succeeded in establishing such a system and have such a class of men in charge of our road work, the confidence of the people will come to that system and management, and to those men in such a way as that road improvement will have removed from it the greatest obstacle that it now meets. —*From Proceedings Missouri Good Roads Convention.*

PETERBOROUGH GARBAGE DISPOSAL

Peterborough City Council has under consideration a by-law providing for the systematic collection and disposal of ashes, refuse and garbage within the city limits. In its preparation the Brantford garbage by-law was used as a guide. The Brantford measure, at its commencement, was as a test put in force in one district only, but at the end of a year was found so satisfactory that it was adopted for the whole city.

The service is an exceedingly useful one, and could profitably be employed by other municipalities of Ontario which have not yet adopted it. It is of value not only to the individual citizen, but to the community at large, tending to cleaner and more sanitary conditions.

Under the proposed Peterborough by-law, the city

may enter into a contract with a person or firm for the collection and removal of ashes, garbage, tins, crockery, metals, grass, weeds, boots and shoes, waste paper and all kinds of refuse. The contractor is to furnish a specified number of wagons, horses and men for the work, and keep them constantly employed.

The council are permitted, however, to decide by resolution, to carry on the service by men employed directly by the corporation. Under either method the sanitary inspector will have control of the system.

Collections are to be made from all premises within the city limits according to a fixed schedule as follows :

(a) From all factories, hotels, hospitals and ruit stores, three times each week.

(b) From all stores and shops within the fire limits, twice each week.

(c) From all residences, rooms, offices, stores and other premises not otherwise provided for, once each week.

(d) From residences in outlying districts, once each fortnight.

The cost of the service is to be collected with the ordinary taxes, being levied as follows :

(a) Hotels, fruit stores, hospitaln and factories other than those employing more than fifty persons, the sum of 45 cents per month.

(b) Stores and shops within the fire limits, the sum of 30 cents per month.

(c) Residences and all other premises not especially provided for, 15 cents per month.

(d) Stores and shops not within the fire limits, and boarding houses having more than five boarders other than members of the family, 25 cents per month.

(e) Offices and rooms not used for meals, 10c per month.

(f) Residences in outlying districts, 10c per month.

(g) Factories employing over 50 persons suce sum as may be fixed by the sanitary inspector with the approval of the Health Committee of the City Council, having regard to the quantity of refuse removed.

COUNTY ROAD SYSTEMS

The Act for the Improvement of Public Highways, in view of the general revision of the statutes, was consolidated at the last session of the Legislature, a number of important changes being made. When the Act was first passed in 1901, county and township councils were distinct bodies, and it was therefore provided that the roads to be assumed in the county system should be mutually agreed upon by the county and townships interested. With the change in the composition of county councils, whereby they are now made up of reeves and deputy reeves, it was felt that the townships were fully represented in the county councils, and that reference to township councils was therefore unnecessary. County councils have, therefore, now the privilege of establishing a county system of roads under the Act, without the assent of the township councils.

A number of counties are now on the eve of establishing county systems. Those which have previously done so, and the amounts earned from the Provincial fund are :

Lennox and Addington	$ 6,338.18
Middlesex	7,141.36
Lincoln	9,126.97
Oxford	17,678.27
Wellington	17,843,70
Hastings	22,438,75
Lanark	30,459,53
Wentworth	86,800.24
Simcoe	97,938.91

The regulations under which roads and bridges are to be constructed are as follows :

"All road improvement under the provisions of 7 Edward VII, Chapter 16 and amending Acts is to be done under the supervision of a capable commissioner appointed by the council.

"Improvements are to be of a character suited to the requirements of the district, as regards the amount of travel, nature of the soil, quality of road metal available, and other local conditions.

"A proper system of keeping road accounts is to be adopted showing the extent and location of each work of improvement, and the cost of labor and materials used. Time sheets or time books are to be used for the payment of men.

" 'Old' roads herein referred to include such highways as have been previously well graded and metalled with gravel or broken stone, and which have a solid and deep road-bed. Former toll roads, and roads of a similar character, will usually fall within this class.

" 'New' roads in general include earth roads which may or may not have been previously graded, and which have had little or no gravel placed upon them.

"Work on old gravel or stone roads of the nature of re-construction or repair may consist of :

(a) Grading by cutting away shoulders of earth and sod at the sides, and improvment of drainage.

(b) Grading, draining and resurfacing with gravel or broken stone.

"Work on new roads may consist of :

(a) Grading and draining.

(b) Grading, draining and gravelling.

(c) Grading, draining and metalling with broken stone.

"It is essential that roads be properly graded and crowned before putting on gravel or broken stone. In this see that old gravel and stone road-beds are not ruined by being covered with earth and sod from the sides. In general, the work should comply with the following requirements :

1. The steepness of hills should not exceed a rise of one foot in twelve.

2 The roadway graded for traffic should be in the centre of the road allowance, and should have a uniform width between the inside edges of the open ditches. The width of the roadway on cuts and fills should not be less than eighteen feet. Main roads should be graded to a width of twenty-four feet, and roads of least travel should not be less than eighteen feet.

3. Side slopes in cuts and fills should be one and one-half feet horizontal to one foot vertical.

4. The crown given the newly-finished roadway should be uniform and have a rise of from one to two inches to the foot from the edge of the ditch to the centre of the road, giving the metalled portion a crown of 1:12, and the earth sides 2:12. Roads on hills should have a sharper crown than the longitudinal slope, otherwise water instead of flowing to the side drains, will follow the wheel tracks, washing and deepening them to ruts.

5. When gravel or broken stone is used, it should

Municipal Officers of Ontario.

WILLIAM NELSON

CLERK TOWNSHIP OF SCOTT.

MR. NELSON was appointed in 1866, and is one of the few municipal officers in Ontario who have been in office for over 40 years.

be placed in the centre of the grade to a width and depth sufficient to form a serviceable road, having due regard to the character and extent of traffic.

6. The gravel or broken stone used on the road should preferably be obtained in the vicinity of the road, but must be of good quality.

7. As a rule the gravel or stone should not be of a less width than seven feet, nor of a less depth in the centre than six inches.

8. Where roads have heretofore had gravel or broken stone placed on them, they should be re-constructed or repaired by cutting off shoulders, with a grader, and adding a sufficient amount of gravel or broken stone to fill ruts, depressions, properly crown and make a road sufficiently strong to accommodate the travel. The sod and soft material should be thrown outward, never drawn to the centre.

9. The gravel or broken stone placed on any road should be thoroughly rolled, otherwise the grade should be maintained by raking or scraping until compacted by traffic. In applying gravel containing many large stones, have a man on the road to rake the large stones forward from the loose gravel, spreading them so as to be underneath the next load and in the bottom of the road.

10. Good drainage is of primary importance. Provide open drains at the sides of the road, with a constant fall to a free outlet, to carry away surface water.

11. Durable sluices and culverts should be built when necessary. Bridges must be substantial in character, preferably of concrete or steel, and built under a proper specification.

12. Tile underdrains should be laid, so as to carry away excessive sub-soil water, lower the water-line, and secure a dry road bed wherever a moist, damp, or springy condition of the subsoil exists.

13. Modern machinery and implements should be used, as far as possible, to secure the greatest results from the expenditure, and to provide the best work.

14. Where, owing to special local conditions, any radical departure from the foregoing regulations may be desired, upon application of the council, an examination of the road or roads in question will be made, free of charge, by an engineer of the Highways Branch for the purpose of deciding upon a suitable plan.

TILE DRAINAGE

Tile drains will do as much for roads as they will for farm land. Some roads can never be good roads until they are under-drained. Roads tiled without gravel will be better than if they are gravelled without tile. This applies to practically all roads except those on pure sand. Points of importance in this regard are :

(1) Tile drains lower the water-line and thereby make a deeper stratum of dry, and consequently solid earth underneath the road. In this way they take the place of deep and dangerous open drains.

(2) Lay the tile at the side of the road under the bottom of the open drain, at a depth of 2½ or 3 feet.

(3) A line of tile on one side of the road at a good depth will do nearly all that tile on both sides will do. If one side of the road is higher than the other, lay the tile on high side.

(4) Lay the tile on an even grade with a constant fall to a good outlet ; the fall being not less than three inches in one hundred feet.

(5) Always use tile to under-drain hills or wet spots where springs come to the surface, running a blind drain into the heart of the spring.

(6) A three-inch or four-inch tile will meet most conditions, but the size must depend upon the length of the drain, fall, and amount of water to be carried away. The larger tile are less apt to become stopped through uneven laying.

(7) In quicksand, surround the tile with sawdust, sods or straw.

Tile drains are permanent. They take the place of deep open drains and cost less to maintain. Their effect is most noticeable in spring, causing the roads to dry up quickly. In this way, and throughout the year, they save the gravel or stone covering, as there is less mud for it to sink into.

Tile drains offer no difficulty to lay except in quicksand. In cases where the sand is troublesome, the tile may be surrounded with sawdust, sods, or straw to keep out the silt. If settlement is at all likely, boards should be laid in the bottom of the trench and firmly pressed down, and the tile laid on these. The roots of trees, particularly the willow, are apt to enter and, in time, block the tile. Where this is to be anticipated, the joints of the tile should be cemented for a distance likely to be reached by the roots.

Their location with respect to the road should be varied with circumstances. The most effective type of drainage employed is a system in which there is a tile drain on each side of the roadway underneath the open gutters, with V-shaped drains at intervals from the centre of the roadbed to the side drains. From this the scale descends to drains at the side of the roads only; then a drain at one side only, or in the centre of the road ; then only an occasional drain at springy or damp points.

If municipalities cannot undertake to at once underdrain all their roads in this manner, they should place tile drains where they are evidently needed most, in low-lying sections, where water is seen to remain longest on the surface in the spring, after a heavy rain, where springs have a tendency to appear, or where the ground is found to be cold and wet duriug the summer.

STATIONARY ENGINEERS' CERTIFICATES.

The Legislature of Ontario at its recent session passed an act respecting stationary engineers in which engineers and employers are alike interested. Briefly stated, its provisions are that, after the first day of July, 1908, no engineer will be allowed to operate or have charge of a stationary steam plant of 50-horse power or upwards who does not hold a government certificate. There are three classes of engineers to whom certificates will be granted without the applicant having to undergo an examination, first, those who, on the 20th of April, 1907 (the date on which the Act was passed), held certificates from an association of sfationary engineers in Ontario, or a marine or locomotive engineer's certificate ; second, engineers who on the above date were in charge of a plant of 25-horse power or over in Ontario ; third, engineers who at any time previous to the passing of this Act, had not less than two years' experience in the operation of such a plant in the Province. Those who cannot qualify as above will have to pass the examination which will hereafter be prescribed by the Board of Examiners.

Those interested may obtain a copy of the Act and application forms for certificates by addressing The Secretary, Department of Agriculture, Toronto.

By-laws granting exemption and land to the Stanley Lead Company, Toronto, and the Gray & Hadley Zinc Company, on smelters to be established in Kingston, were carried recently. The vote stood 1,636 for and 21 against. The two companies will use part of the city's water lots below Cataraqui bridge. Buildings to cost $140,000 will be erected, and work will start at once. Lead and zinc will be received from the mines in North Frontenac within easy distance of Kingston.

QUESTION DRAWER

Subscribers are entitled to answers to all Questions submitted if they pertain to Municipal Matters. It is requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions, to insure insertion in the following issue of paper, should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamped-addressed envelope. All Questions will be published unless One Dollar is enclosed with request for private reply.

Effect of Failure of Assessor to Return His Roll in Time.

395—D. D.—The assessor has not yet returned his roll, and I would like to have your advice in reference to the matter.

1. Will the fact of its not being completed according to statute on or before April 30th render it invalid ?

2. Will it affect the validity of the voters' list ?

3. In case it is not completed by May 14th, will any person assessed have, after that date, any right to appeal ?

1. No, but the assessor has rendered himself liable to the penalty mentioned in section 197 of The Assessment Act, 1904.

2. No.

3. Yes. Sub-section 2 of section 65 of the above Act provides that notices of complaint of any error or omission in an assessment roll, "shall be given to the clerk within fourteen days after the day upon which the roll is required by law to be returned, or *within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose.*"

Liability of Council to Open Roads and Streets.

396—H. C. G.—1. A ratepayer living on a concession line (unopened) about 1½ miles from a public road has applied to have said line opened. He is the only one at present living there. Is the council obliged to open said line or find him a road ?

2. A ratepayer living at end of a street in an unincorporated village, the streets of which have been taken over by the township municipal council, has applied to have an obstruction, a large rock, removed. This rock closes the road. Is the council forced to remove this rock ?

1. The council cannot be compelled to open this road, and it should not do so simply to accommodate one or two private owners. The council should remain passive in the matter, unless it deems that the interests of the general public require the opening of the road.

2. The council cannot be compelled to remove the rock, but since the street has been assumed by the council as a public highway, and opened for traffic, care should be taken that the stone is not so located on the highway as to render it dangerous to persons using it, otherwise in the event of the happening of an accident, caused by the presence of the stone, the municipality would probably be held liable for the injury sustained.

Assessment of Commercial Wires of a Railway Co.

397—E. B.—The C. P. R. Co. having been assessed by the township of C. in the year 1905 for telegraph at $40.00 for one wire per mile and $5.00 per mile for additional wire, as provided by sub-section 5 of section 14 of The Assessment Act, 1904. The C. P. R. Co. appealed to the Court of Revision and from Court of Revision to Court of Appeal, to the Judge, and judgment has been rendered against the C. P. R. Co. for the amount aforesaid.

Will the amendments of The Assessment Act for 1906 of sub-section 5 of section 14 of The Assessment Act of 1904 affect the judgment, as it is stated in section 45 of The Assessment Act, 1904, when an assessment has been made under the provisions of section 44 of said Act ?

Section 45 of The Assessment Act, 1904, applies only to an assessment made pursuant to the provisions of section 44 of the Act. The company was assessed for its telegraph wires used for commercial purposes under sub-section 4 and following sub-sections of section 14 of the Act. Therefore we are of opinion that section 45 does not apply to this portion of the assessment, and that the wires of the company used for commercial purposes must now be assessed as provided in the amendment to sub-section 5 of section 14 of the Act enacted by section 8 of chapter 36 of The Ontario Statutes, 1906.

Qualification of Voters on a Money By-Law.

398—W. H.—In taking a vote of a by-law authorizing the purchase of a public park and the issue of debentures therefor, should the last revised voters' list of the municipality be used, or should the clerk prepare a poll-book for the deputy-returning officers under section 348 of the Act ?

The list to be used when taking a vote of this kind is one to be specially prepared by the clerk pursuant to the provisions of section 348 of The Consolidated Municipal Act, 1903, from the last revised assessment roll of the municipality, and wholly without reference to the municipal voters' list. Only the names of persons who appear by the last revised assessment roll of the municipality to possess the qualifications prescribed by sections 353 and 354 of the Act should be entered in the special list.

Consolidation of Township Debt—Varying Assessment for Repair of Drainage Works.

399—T. C.—1. Last fall, by a judgment of the High Court, we lost the O'Connor drain suit, and the cost was put against this township, which is over $4,000.00, and the late council left a floating debt of about $2,000.00 more, which means $6,000.00 unprovided for. Have we power to put this debt in debentures or must we levy the total amount this fall besides our present expenditure for 1907 ?

2. We had a drain surveyed in 1897 known as Doyle Creek, which was to be maintained on the basis of same assessment. Last fall one man asked the council to have some sand removed from said drain. They sent on an engineer, who abandoned the first assessment and made a new one to suit himself. When there was no objection to first assessment, has the engineer power to change it without a petition ?

I understand he was sent on under section 75. I think that is to repair upon report of engineer. I maintain he should have been governed by first assessment, as it calls for said drain to be maintained by same assessment. He also reduced those who were on for benefit about four-fifths of first cost. That means they are one-fifth of first cost, and doubled the outlet tax where we have to dig our own drain to get to said drain at all.

1. Sufficient particulars are not given to enable us to form an opinion as to whether the costs in the O'Connor drain matter can be levied *pro rata* on the lands and roads in any way assessed for the drainage work as provided in sub-section 1 of section 95 of The Municipal Drainage Act (R. S. O., 1897, chapter 226) or not. If the municipality was in default, as mentioned in sub-section 1 of section 95, and the court directed that the whole of the cases should be borne by the municipality, and be payable out of its general funds, and this, with the floating debt of $2,000, would make the direct debt of the municipality $6,000 in all, we do not think the council can issue debentures for this amount, without first obtaining special legislation enabling it to do so. This, we are of opinion, is what the council should do, as the levy of a rate in any one year sufficient to discharge the whole indebtedness, if not a transgression of the provisions of section 402 of The

Consolidated Municipal Act, 1903, would be a very heavy burden on the ratepayers.

2. Section 72 of The Municipal Drainage Act (R. S. O., 1897, chapter 226) empowers councils to vary the assessment for maintenance of a drain, on the report and assessment of an engineer. As to whether, in this instance, the report of the engineer is a just one we cannot say, not having seen it, and not being familiar with the circumstances of the case. If any owner feels himself aggrieved, he has the same rights of appeal to the Court of Revision and Judge as in the case of an original assessment (see sub-section 4 of section 72).

Rights of Wife Under Husband's Will.

400—G. Q.—A. dies testate, leaving no children, but leaving three brothers and his widow. Seven years ago he made a will, leaving all his real and personal property, consisting of 75 acres of land and chattels to his wife. Now what I want to know, can the widow sell the property or will it to her own friends, or should his brothers have a share in the property ?

If the will was properly prepared and executed (and as to this we cannot say, not having seen it) and devises and bequeaths all the real and personal property of the testator to his wife absolutely, she is the owner of the property under the will, and can legally dispose of it by deed, will or otherwise as she sees fit. Under the circumstances stated the brothers of the deceased testator are not entitled to any share in the property.

Adjustment of Claims When New School Section Formed.

401—H. G.—Where a new public school section, A is formed from part of two existing sections, B and C, can the trustees of new section A demand a percentage of the value of school and grounds belonging to sections B and C, from which they withdrew to form new section ?

This is a case where all matters in difference between the new school section and the sections out of which it was formed, should be adjusted under section 43 of The Public Schools Act, 1901, which provides that "on the formation, dissolution, division or alteration of any school section in the same township, in case the trustees of the sections interested are unable to agree, the county inspector and two other persons appointed by the township council as arbitrators, shall value and adjust in an equitable manner all rights and claims consequent upon such formation, etc., between the respective portions of the township affected, and determine in what manner and by what portion, or by whom the same shall be settled; and the determination of the said arbitrators or any two of them shall be final and conclusive."

Beneficiaries May be Executors of Will.

402—H. S.—Can heirs act as executors to a will, and is it legal for all executors to be heirs ?

We assume that by "heirs" is meant the beneficiaries under a will. If this is so, there is no legal objection to the participants in the distribution of property under a will, acting as its executors.

Licensing of Butchers.

403—H. W. E.—For the past few years we have had no local butcher in our village, outsiders coming in and peddling meat. We advertised for a butcher to open up a shop in the village, but no person would start unless the council would protect them from non-residents peddling in the village.

Can the council pass a by-law imposing a license on non-residents peddling meat in the village ? What amount of license can they impose ?

Since this municipality is a village the provisions of sub-sections 14 and 16 of section 583 of The Consolidated Municipal Act, 1903, are inapplicable. The council may, however, under the authority of sub-section 5 of section 580 of the Act pass a by-law "for regulating the place and manner of selling and weighing meat, etc., and the fees to be paid therefor," or under the authority of sub-section 1 of section 581 of the Act it may, subject to the restrictions and exceptions contained in section 579 pass a by-law "for granting annually, or oftener, licenses for the sale of fresh meat in quantities less than by the quarter carcase, and for regulating such sale, etc., and for enforcing the payment of the sums fixed by the by-laws of the council of the municipality to be paid for such licenses, and for preventing the sale of fresh meat, in quantities less than by the quarter carcase, unless by a person holding a valid license, and in a place authorized by the council, etc." The council cannot legally discriminate between residents and non-residents.

Assessment of Hired Help—Expenditure of Commuted Statute Labor Money.

404—Tenant—1. A is owner of 100 acres and resides on same. He has B working for him, paying him so much a year and furnishes house and garden free (also on the farm). The assessor has entered them on the roll as follows :

(A.)	F. M. F.	Lot 10, Con. 6, etc.	$5,000
(B.)	T. M. F.		

Is this correct, and would B be entitled to vote at municipal elections, or should B be assessed separate for the value of house and garden, or should B just be assessed as M. F. ?

2. Have police trustees (not incorporated) any claim to commutation money for statute labor that has been paid either to the pathmasters or in taxes by those residing within the limits of the village ?

1. We are of opinion that this assessment is not sufficient to give B the right to vote at municipal elections, and it has been so judicially held. There is no valuation placed opposite his name, so that practically he is assessed for nothing. He should be assessed for the house and lot of which he is actually the tenant, and the assessed value placed opposite his name on the roll. If this value is sufficient to give him the right to vote at municipal elections as provided in section 87 of The Consolidated Municipal Act, 1903, he should be entered in part one of the voters' list.

2. No. This matter is regulated by sub-section 2 of section 15 of chapter 25 of The Ontario Statutes, 1904. This sub-section provides that "in every such case (that is where commutation money has been paid in lieu of performance of statute labor) the clerk shall notify the overseer of highways, who may be appointed for such division in the following year, or after it has been collected, of the amount of such commutation, and the overseer shall expend the amount of such commutation upon the roads in the statute labor division where the property is situate, and shall give an order upon the treasurer of the municipality to the person performing the work."

Council May Increase Rates of Statute Labor—Council Should Look After Treasurer's Bond.

405—G. B. S.—1. Has a municipal council the power to increase the number of days statute labor to double that set for in The Assessment Act in Revised Statutes of Ontario of 1897. Would it require a vote of the ratepayers in order to pass such by-law, and should it not be advertised for some time in some newspaper in the district as required to pass all money by-laws ?

2. Is it not the head of the council who is to see that the township treasurer gives the proper bond for the office before the township money is handed over to him ? Or is the whole council to blame for their lack of duty ? Are they liable to civil action at law by the ratepayers of the township for wilful neglect ?

1. The law regulating the performance of statute labor will now be found in chapter 25 of The Ontario Statutes, 1904. Under the authority of sub-section 1 of section 9 of this Act "the council of any township may, by a by-law operatiug generally and rateably, reduce or increase the number of days labor to which all the persons rated on the assessment roll or otherwise shall be respectively liable, so that the number of day's labor to

which each person ir liable shall be in proportion to the amount at which he is assessed." It is not necessary to submit a by-law of this kind to the vote of the electors.

2. Section 278 of The Consolidated Municipal Act, 1903, provides, in part, that "every treasurer, before entering upon the duties of his office, shall give such security as the COUNCIL directs for the faithful performance of his duties." It is therefore the duty of the whole council to look after the matter. If the members do not attend to their duty they are not liable to any civil action for their neglect.

Place Where Statute Labor Should be Performed.

406—M. L.—The 5th and 6th concessions are both in two divisions for the statute labor work, and many houses of farmers on the 5th concession are built near the road of the 6th concession. Are they to work on the road of the 6th concession or on the 5th concession ?

Sub-section 4 of section 9 of chapter 25 of The Ontario Statutes for 1904, provides that "every resident shall have the right to perform his WHOLE statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council."

Correction of Mistake in School Levy—Protestant Separate School—Section in Which School Taxes to be Paid—Tenant to Detcrmine Disposition of School Rates.

407—M. B. G.—1. There is a union school section, a portion of which belongs to this municipality. There is another school closer to some of the ratepayers in said union than their own school. Above ratepayers had the assessor put them on the roll as supporters of school the closest and their school tax went to said school in place of the union for two or three years. Now the trustees of union school want the amount refunded that they were entitled to. Can they collect ?

2. There is a Protestant separate school formed here. Can supporters of adjoining public school become members and can a ratepayer in separate school bring the taxes of land within three miles of said separate school, but in the bounds of a public school ?

3. A ratepayer residing in S. S. No. A claims 3 or four years ago he applied to council, and was transferred to S. S. B. There is no by-law to show council took any action to make transfer ; said ratepayer sold his property. Does his agreement, if any in existence, hold the present owner liable for taxes in S. S. B.

4. According to section 13, chapter 36, Statutes 1906, a Railroad Co. can be assessed for station house, roundhouse, section house, etc. Can the agent and the section men living in above houses claim the school tax on said property to go to the school they belong, public or separate ? The sectionmen have to pay rent for section house ?

1. The council may adjust this matter under the authority of sub-section 3 of section 71 of The Public Schools Act, 1901, which provides that "every municipal council shall have power, and it shall be their duty to correct any errors or omissions that may have been made within the THREE years next preceding such correction in the collection of any school rate duly imposed or intended so to be, to the end that no property shall escape from its proper proportion of the rate, and that no property shall be compelled to pay more than its proper proportion of such rate."

2. Any Protestant in the municipality may become a supporter of the separate school, whether within three miles of the separate school house or not, but the Act contains no provision authorizing the support of a Protestant separate school by Protestants outside the limits of the school section in which the Protestant separate school exists.

3. No.

4. The tenants of the railway property may determine the application of their school rates. Section 53 of The Separate Schools Act (R. S. O., 1897, chapter 294) provides in part that "the occupant or tenant shall be deemed and taken to be the person primarily liable for the payment of school rates, and for determining whether such rates shall be applied to public or separate school purposes, etc."

Form of Appeal to Court of Revision.

408—A. H.—The enclosed paper has been handed to me as appeals to our Court of Revision. I expressed my doubts with the party of its legal form, being evidently meant for corrections for the voters' list by the Judge. I want to know can the Court of Revision accept the appeals and deal with them, though the form is improper, or must the whole matter be laid over for the Judge after my voters' list is posted up ?

The form sent us is that prescribed by The Ontario Voters' Lists Act to be filed with the clerk by the complainant as to errors and omissions in and from the *voters' list* of the municipality. It is not an appeal to the municipal Court of Revision, nor is there anything in the document to show that it is intended to be filed as a notice of appeal to that court. The complainant should put in a proper notice of complaint within the time and in the manner prescribed by section 65 of The Assessment Act, 1904, otherwise it is not necessary that the court should entertain the appeals.

Majority Required to Carry Park By-Law.

409—G. W.—What majority of the ratepayers is it necessary to give assent to a by-law authorizing the purchase of a public park ?

Sub-section 1 of section 576 of The Consolidated Municipal Act, 1903, authorizes councils of towns, etc., to pass by-laws for acquiring lands for public park purposes, and it is not NECESSARY to submit such a by-law to the electors of the municipality. The council MAY so submit the byliaw, under the authority of sub-section 1a of section 533 of the above Act. In the event of its doing so, the votes of a simple majority of the qualified electors is sufficient to carry it. If, however, it is necessary, to borrow any money for the purchase of the land, and to issue debentures for the repayment thereof, the by-law authorizing the loan must receive the assent of the electors qualified to vote on a money by-law, and a majority of the votes cast is sufficient to carry it.

Assessment of Hotel—Expropriation of Gravel—Collection of Taxes.

410—A. W. F.—1. A rented a hotel in 1906 up to May, 1907. A tells assessor he is quitting, and to assess B the owner. The assessor does so. We cannot collect business assessment from B, as he is worth nothing and living in Manitoba.

C owns furniture and takes out license. Can buslness assessment be changed from B to C by giving the statutory notices at Court of Revision ?

2. What are the proper proceedings to take to exropriate gravel pit ? Give all the information possible.

3. The collector for 1905 failed to collect taxes from A, although he had chattels to distrain to cover the amount. The council paid the collector in full. Collector collected taxes for 1906, but he refused to pay for 1905. Can we still collect those back taxes ? If so, how ? A is owner of the land, but is trying to sell.

1. We understand that reference is made to the business assessment for the current year (1907), and that B, the owner of the hotel, has nothing to do with carrying on the business of hotel-keeping on the premises. If this is so, B is not lieble for any business assessment. C, the present lessee, and B, the owner, should be assessed together for the premises and their names bracketed together in the roll as required by clause (e) of subsection 1 of section 22 of The Assessment Act, 1904, and the business assessment should be entered in the proper column of the roll oppesite C's name. The Court of Revision cannot add a business assessment if a notice of appeal was not given within 14 days from the 30th of April or within 14 days after the return of the roll, if it was returned after the 30th of April.

2. The council should pass a by-law for this purpose under the authority of sub-section 640 of The Consolidated Municipal Act, 1903. If the council and the owner of the gravel cannot agree as to the price to be paid the latter, the matter will have to be settled by arbitration under the Act. As to the appointment of arbitrators, see section 448 and following sections of the Act, and as to the procedure, see section 458 and following sections of the Act.

2. If it was owing to the neglect of the collector that the taxes for 1905 were not collected from A, the council will have to look to the collector and his bondsmen (if liable) for the amount. These taxes cannot now be collected from A.

Procedure at Court of Revision.

411—X. Y. Z.—1. An appeal has been sent to our clerk as clerk through the mail with the following heading signed by 11 ratepayers: "Notice of appeal May 10, 1907." We, the undersigned, appeal against the following assessments of farm lands in the township of M. after each name "too low" has been written apparently as grounds for appeal. Is it a legal form? Can the Court of Revision refuse to entertain the appeal or hear any evidence?

2. Twenty-nine ratepayers have been appealed against in this instance by eleven ratepayers. Five of the appellants have since written statements stating that they misunderstood the character of the appeal, and wish to withdraw their names, but express the opinion that their properties are assessed too high. Would the appeal fail because of their withdrawal? If only one of the appellants insisted that the appeal should go on, would the Court of Revision be forced to proceed on the appeal?

3. A ratepayer, in appealing on assessment notice, says in his appeal "overcharge of buildings, too high rating on land as a whole, and appeal against the entire assessment roll." Does that constitute an appeal against every property in the assessment roll? Or will the Court of Revision be justified in ignoring the latter clause?

4. Appeal has wrong name of party complained against, but has property described. Could Court of Revision entertain such appeal?

5. If properties be assessed at what the Court of Revision think is nearly at an equalized value throughout the township, even if about 20 or 24 per cent. below actual value, would it be just for the Court of Revision to increase the few appealed against when by so doing eight or ten times as many will be 20 or 25 per cent. below cash value on the roll?

1. The Assessment Act, 1904, prescribes no special form of notice of appeal. Although that referred to is informal, and somewhat indefinite, it contains sufficient to indicate the intention of the appellants, and to enable the clerk to prepare his list of appeals to the Conrt of Revision, and to prepare and serve all notices required by the Act. We therefore are of opinion that the Court of Revision cannot legally refuse to entertain this appeal, if it was filed within the time prescribed by the Act.

2. There is no provision for withdrawing an appeal, and therefore the Court of Revision must deal with the appeals in the usual way.

3. We are of opinion that this notice of appeal is too indefinite. It specifies no property appealed against, nor does it allege any ground of appeal in any case. We do not think the court can be compelled to entertain such an appeal.

4. Yes.

5. Section 36 of the above Act provides that real property should be assessed at its *actual value*, and this is the value that Conrts of Revision should place on property in deciding appeals properly brought before it. The court should pay no regard in this connection to the assessment of any property, with respect to which no appeal is regularly before it.

Possessory Title to Road.

412—G. W. T.—Some fifty years ago a by-law was passed establishing a certain road in the township. The road was to be sixty feet wide. Along the road some of the property owners have their fences, so that there is really little more than forty feet in some places.

Would the fact that no compensation was given for the land at the time this road was established, and the fact that the owner of the land adjoining the road have had peaceable possession for that length of time of the portion of road enclosed by their respective fences give them possession of the same?

If this road was laid out and established as a public highway by a by-law passed in accordance with the provisions of The Municipal Act then in force, then under the authority of sections 598 and 599 of The Consolidated Municipal Act, 1903, and similar provisions in previous municipal Acts, the soil and freehold of the road became vested in the Crown, and owners having fences on the highway cannot, by lapse of time, acquire a possessory title to any part of it. The fact that no compensation was paid for the land taken for the purposes of the road, does not now affect the question in any way, as the claim for such compensation should have been prosecuted within one year from the time the land was taken. (See section 438 of the above Act).

Form of Appeal to Court of Revision.

413—J. D. W.—Should an appeal be considered by Court of Revision when appellant does not specify any other property in comparison? If so, can the owners of other property be required to testify as to value of their property?

There is no reason why the Court of Revision should not consider this appeai, if it was filed within the time mentioned in sub-section 1 of section 65 of The Assessment Act, 1904. The appellant is not required to specify, in his notice of appeal, any other property in the municipality for the purpose of comparison with his. The court should require the appellant to adduce such evidence before it as will enable it to decide whether the property which is the subject of the appeal has been assessed too high or too low, as the case may be.

Admission of Non-Resident Pupils to Village School—Proceedings for Formation of Union School Section.

414—O. P.—1. A owns property in an incorporated village, and pays school tax on same, but lives in the township adjoining. Can the trustees of the village school object to A's children going to their (village) school providing he pays the necessary fee?

2. Five ratepayers in a school section of a township lying next to an incorporated village petition the township council to be put in the village section. Does the council so petitioned have to act if there is no counter-petition, or is it left to their option to do as they think best?

1. A is not a resident ratepayer of the village municipality, and if he desires to send his children to the village school he must procure the entering into of the arrangement mentioned in section 21 of The Public Schools Act, 1901. If the Minister of Education and the trustees of the village school will not approve of such an arrangement, A cannot compel the latter to admit his children to their school.

2. If it is desired to form a union between the village and a portion of the township municipality for school purposes, the proceedings mentioned in section 46 of the above Act must be taken and its provisions strictly observed. The basis of these proceedings as prescribed in sub-section 1 is a petition of five ratepayers for each of the municipalities concerned to their respective municipal councils, asking for the formation of the union school section as desired.

Union School Assessment to be Equalized Every Five Years.

415—J. R.—Is there any amendment to The Municipal Act saying that union school section assessments shall be equalized other than every three years as heretofore?

There is no amendment to The Municipal Act making this change, but the effect of section 3 of chapter 32 of The Ontario Statutes, 1903, is to require the assessments of union school sections to be equalized every FIVE instead of three years as formerly.

Liability of Owners of Church Hall for Business Assessment.

416—J. E. N.—The Anglican church has erected a buildinga for Sunday school purposes, also they advertised it for rental as r hall for the holding of dances, concerts, etc. They have a regula; schedule of prices. The assessment is as follows: Land, $275; building, $1,825; business assessment, $525; total assessment, $2,625. They appeal improperly assessed. Have I not done right in placing a business tax on this institution? Both dances, concerts, at homes, etc., have been held.

We are of opinion that this building is not liable to any business assessment.

Authority of Trustees of Police Village.

417—E. C. M.—1. We are a Police Village, and what will be the order of procedure to prohibit the use of Fire-crackers and similar explosives on the streets and public places?

2. How can we stop fast driving, profanity, etc., on the streets and public places?

3. If we require a preventive officer or constable, how can we have one appointed and what are his duties in general?

4. Do we require a corporate seal, and if so what should it con tain or what would be required on its face?

5. Can we compel each citizen to place ladders and approaches thereto on all roofs whether iron or not?

1. We are of opinion that the trustees of a police village have no power to regulate or prohibit the setting off of fire crackers or other explosives within its limits. The provisions of sub-section 9 of section 586 of The Consolidated Municipal Act, 1903, apply only to councils of townships, cities, towns and incorporated villages.

2. Sub-section 1 of section 746b of the above Act authorizes police trustees to pass by-laws "for regulating the driving and riding of horses and other cattle on highways and public bridges" under sub-section 7 of section 559 of the Act; and for prohibiting carriages, etc., from being drawn or driven upon sidewalks in the village under section 560 of the Act. Trustees of police villages have no power to pass by-law under section 549 of the Act to regulate public morals within the limits of the village.

3. Sub-section 1 of section 746a of the above Act provides that "the police trustees of any police village may appoint a constable, who shall have the same powers and perform the same duties within the police village as a constable appointed by the council of an incorporated village.

4. It is not stated whether this police village is incorporated or not. If it has been incorporated under section 751 of the above Act, sub-section 4 of the section (enacted by section 43 of chapter 22 of The Ontario Statutes, 1905) requires the board to procure a corporate seal. This seal should have inscribed on it the words: "The board of trustees for the police village of——"

5. Clause 1 of section 747 of the above Act provides that "every proprietor of a house more than ONE storey high shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of $1.00 for every omission, etc." The material of which the roof is made does not affect the question in any way.

Compulsory Erection of Fences—Definition of Lawful Fence.

418.—J. H. W.—A and B live on adjoining lands, which is mostly rocky and very rough. B keeps about 40 sheep, which A claims eat all his grass. A asks the council to pass a by-law to have line fences built to stop sheep. The council think. owing to the nature of the ground in question, it would be almost impossible to build fences to stop sheep. A claims he sold off all his sheep because he could not keep them at home, this B refuses to do.

1. What had the council better do? Can they pass a by-law compelling a resident to build such a fence on ground of this nature?

2. What constitutes a lawful line fence?

1. We would not advise the council to interfere at all in this matter. We do not think it has any authority to pass a by-law of the kind mentioned.

2. There is no provision of the law arbitrarily fixing the height and description of a lawful fence. The council may pass a by-law under the authority of sub-section 3 of section 545 of The Consolidated Municipal Act, 1903, "for regulating the height, extent, and description of lawful division fences," but unless and until such a by-law has been passed, the fixing of the height and description of such fences is the duty of the fenceviewers called in to arbitrate a dispute, pursuant to the provisions of The Line Fences Act. (R. S. O., 1897, chapter 284).

Authority of Road Commissioners—Size of Gravel to be Laid on Highway.

419.—HARDHAMMER—1. The council in our township is elected by popular vote. That is, the four receiving the largest number of votes are elected. At the first meeting, the five wards or polling subdivisions are appropriated by the Board appointing one of themselves to each division as commissioner. One duty is to oversee the roads in the way of new work and repairs, but by resolution he is not expected to do new work without the consent of the council. Just attend to repairs between seasons to prevent accidents. A and B are members of the council. A places what he calls gravel on the road as repairs in his division. The so-called gravel is composed largely of cobble stones, three, four, and in some cases perhaps five inches in diameter. B's attention was called to the stuff in the road, and he took A to task for putting such stuff on, saying that A was creating nuisance on the road, that the road would be better nine months in the year as a clay road, or even as a hole. A retorted and told B to go and attend to his own ward, that this ward was his and that he would do work in it as he liked, and would not be dictated to by B. In reply B said that even if it was not his ward he, as a member of the council, considered himself responsible to the public that no work should be done on a road that would be an injury to it. Under those circumstances has any councillor a right of his own accord to do work in his ward just as he likes and resent a protest made by another councillor as A did to B?

2. If a councillor or pathmaster lays gravel on a road that has an unreasonable amount of cobble stones in it, or upon the whole is entirely too coarse, can he not be indicted before a Justice of the Peace for committiug a nuisance on the road?

3. Could you name a size of stone that would be too large to pass as road gravel?

1. We see no objection to one councillor drawing the attention of another to work that he considers improperly performed. If the councillor whose work is open to criticism, refuses to change his method, the complainant should lay the matter before the whole council and allow it to settle the matter.

2. We do not think a councillor or pathmaster can be indicted under the circumstances mentioned.

3. It is a very difficult matter to lay down a rule as to this, which will have any general application. The grades of gravel required differ according to the nature of the soil and other conditions in different localities. The overseer of the work in each case should be the best judge as to what kind of gravel is most suitable.

Power of Shareholder in Stock Company to Contract with Council—Assessment of Income from Investment Outside the Province.

420—A. L.—Is it legal for a Reeve of a municipality who is a member of a Joiut Stock Company to sell goods or enter into contracts with the municipality?

2. "A" lives here in Ontario, but has large investments outside the Province. Is his whole income assessable in the municipality in which he resides?

1. Clause (a) of sub-section 2 of section 80 of The Consolidated Municipal Act, 1903, provides that no member of a council shall be disqualified "by reason of his being a shareholder in any iucorporated company having dealings or contracts with the council of such municipal corporation," but that "no such shareholder shall vote on any question affecting the company."

2. A is liable to assessment for this income in the municipality in which he resides under the provisions of sections 11 and 12 of The Assessment Act, 1904.

Council Cannot Remit Taxes—Member of Council Not Compelled to Vote.

421—ENQUIRER—1. I notice in THE MUNICIPAL WORLD you say that the council cannot remit taxes but that the Court of Revision can. I suppose you mean the Court of Revision on Assessment Roll; as that court generally meets in May in the township, there is hardly any of those cases come before it. It is later in the year that those cases come before it. When the Court of Revision completes its work at that time, is it not out of existence for that year?

2. I notice that you also state that when the yeas and nays are called it is not necessary for the Reeve to vote. I thought that when the yeas and nays were called that all the members had to vote. In that case it is not necessary for any member of the council to record his vote if he thinks proper to not vote.

1. A reference to section 112 of The Assessment Act, 1904, will be ample proof that our answer was correct. This sub-section authorizes the Court of Revision to remit taxes under the circumstances mentioned in the sub-section, *at any time during the year in which the assessment was made, or before the 1st July in the following year.* Nowhere is power given to COUNCILS to remit taxes.

2. The reeve or any other member of a council cannot be COMPELLED to vote on any question, whether the "yeas" and "nays" are requested to be recorded or not.

422—A.M.—1. At our township nomination Mr. A was a candidate for municipal honors. Mr. B was nominated also, but for the purpose of giving the electors his opinion of Mr. A., as he was opposed to him, and he stated that Mr. A was a liar, and that if the people wanted a liar to represent them to vote for him, and a liar they would have. After he had repeated those statements different times, Mr. A asked the electors if it was necessary to reply to those statements, and they said "No, no, no." Then Mr. B. again attempted to address the electors, but got the response from all parts of the hall, "Sit down, sit down, sit down." The chairman then stated to Mr. B that it was not the wish of the electors to hear him. What was the chairman's duty?

2. As windmills have become quite common in our vicinity, the question has arisen: Is it legal to assess windmills erected on farms?

1. The conduct of the speaker mentioned was, to say the least, very unseemly, and, we hope, very unusual, in a civilized community. We do not see that the chairman could do any more than he did, and the audience evidently seconded his efforts to get rid of the unruly orator.

2. By clause (d) of paragraph 7 of section 2 of The Assessment Act, 1904, the word "land" is made to include "all buildings, or any part of any building, and all structures, machinery and fixtures, erected or placed upon, in, over, under, or affixed to land." A windmill is a fixture erected on land, but if it is used for farming purposes, we incline to the opinion that it is exempt from assessment and taxation under paragraph 16 of section 5 of the Act.

Rights of Separate School Supporter.

423—G. H. M.—I am a Roman Catholic living six miles from the nearest separate school. Can I withdraw my support from the public school and become a supporter of said separate school, according to law?

By section 43 of The Separate Schools Act (R. S. O., 1897, chapter 294) "no person shall be deemed a supporter of a separate school unless he lives within three miles (in a direct line) of the site of the school house." If, however, a ratepayer living more than three miles in a direct line from the site of the school house, is desirous of becoming a supporter of a separate school located in the municipality in which he resides or in a municipality contiguous thereto, there is nothing to prevent his becoming a supporter of such separate school, if he gives the notice mentioned in sub-section 1 of section 42 of the Act.

Liability for Interest on Money Borrowed by Township for School Purposes.

424—P. E. G.—As amended by sub-section 1 of section 9 of The Municipal Amendment Act, 1907, sub-section 1 of section 435 of The Consolidated Municipal Act, 1903, now empowers township councils to borrow on the credit of their respective township corporations amounts sufficient to meet the request of the treasurers of the respective Public School Boards from time to time, upon requisition of the school trustees, as provided for by the Public Schools Act.

Now this is very clear, but in case a loan of that kind being made, who becomes liable for the payment of interest on such moneys, the public school or the township?

It seems to me that interest on such moneys, as applied to paying teachers' quarterly salaries for instance, and having thus to be borrowed and paid by township previous to collection of taxes, should be chargeable to the respective school sections benefiting thereby, those amounts being not due by the township when paid.

The amendment referred to makes no provision for the charging of interest on the sums borrowed under its authority against the school section or sections for which it has been borrowed, and we are therefore of opinion that the council has no authority to charge such interest against such school section or sections.

Electors' and Candidates' Qualification.

425—C. R.—If a man is assessed for $400 in No. 1 Ward and for $200 in No. 3, could he be qualified in either of them?

This question is very indefinite, but we assume that the qualification meant is that of mayor or councillor of a town in one of the territorial districts of Ontario, since this is such a municipality. If this is so, and the ratepayer is assessed as owner of the property, and possesses the other qualifications mentioned in section 76 of The Consolidated Municipal Act, 1903, he can qualify for election to either of the above officers, under the authority of clause (f) of sub-section 1 of the above section. If the qualification referred to is that of a municipal voter, under the above conditions, as the town has a population of under 3,000, he can qualify as a voter in either of both wards (if the councillors are elected by wards) under the authority of section 87 of the Act.

Township Councils May Pass By-Laws Allowing Cattle to Run at Large.

426—C. B. E.—Have township councils power by statute to pass by-laws allowing cattle to run at large upon the highways?

Yes.

Duties of Councils as to Building Approaches to Highway.

427—J. R.—Kindly inform a subscriber as to the duties of a township council in regard to approaches to highway.

1. Has the council to construct and maintain culverts at any or every person's approach to highway?

2. What would the existing conditions have to be to compe the council to construct and maintain the said culvert?

1 and 2. The council cannot be compelled to build approaches to the lands of private owners or culverts thereunder, but, if the council or its authorized agents has destroyed or injured existing means of getting from the highway to lands of a private owner, the private owner would be entitled to compensation for the damages he has thereby sustained, and the easiest and cheapest way out of the difficulty for the council would be to construct or repair (as the case may be) the injured approach or culvert.

Determination of Disposition of School Taxes.

428—P. G. D.—I am a trustee of the separate school. Most of our people are tenants. Our school taxes are high, in fact too high. Can the tenants or trustees make the owners pay the taxes for the houses they live in (the R. C. Separate S. S.) to the separate school and what steps should we take to do so?

The tenants have the determining of the disposition of their school taxes in their own hands. Section 53 of The Separate Schools Act (R. S. O., 1897, chapter 294) provides that "In any case where under section 24 of The Assessment Act land is assessed against both owner and occupant, or owner and tenant, then the occupant or TENANT shall be deemed and taken to be the person primarily liable for the payment of school rates, *and for determining whether such rates shall be applied to public or separate school purposes*; and no agreement between the owner or tenant as to the payment of taxes as between themselves shall be allowed to alter or to affect this provision otherwise, etc."

Steps to Prevent Loitering on Highways.

429—W. L. C.—About half a mile from town we have a road crossing about forty rods of water about four feet deep. This road is narrow, averaging twenty-four feet, with no railing. There are two small bridges here, and it is a good fishing ground for hook and line purposes. Now the people from town come here in crowds to fish, making it unsafe for women or children driving over those bridges with an accumulation of bicycles lying flat on the road, and boys, swinging their rods, they often strike the horse, and sometimes their hooks catch people's clothing. It is also a good place for shooting, and about two years ago our council passed a by-law prohibiting shooting on any of the municipal highways, and posted notices to that effect, also stating that all things dangerous to the driving public be stopped, but because this notice did not say "fishing" the people say they cannot be stopped. They also threaten if stopped fishing on roadway that they will bring boats close to the bridges and fish. This would be quite as bad and probably frighten horses more.

We do not think the council has any power to prohibit what is being done in this case.

Fees of Justices of the Peace.

430—W. McI.—1. Ontario Statutes, 1904, chapter 13, section 2, of an act respecting the fees of Justices of the Peace, is repealed, and the following substituted therefor:

2. In cases not provided for by the preceding section, Police Magistrates not receiving a salary, and Justices of the Police, shall be entitled to receive the sum of $2.00 for all services of every kind connected with the case where the time occupied by the hearing does not exceed two hours, and fifty cents for each additional hour above two hours, the said fee to be paid by the county.

3. Do you consider under this clause that a Justice of the Peace is entitled to the fee named therein, namely $2.00, for services rendered in committing a vagrant to the county jail.

We do not think so.

Payment of Fees of Chief of Police.

431—J. A. M.—In our town there was a theft, three foreign parties broke into a jewelry store, broke open the safe and stole in the dead of night about $3,000 worth of goods. The Mayor ordered the Chief of Police of the town to spare no time or money to capture the robbers, and ordered the Treasurer of the town to advance him $75 in cash without the authority of the council. He followed the robbers and located them at B., and handed the clue over to the Provincial authorities.

1. Has the Mayor any right to furnish the Chief with the money to pay his expenses to run down the robber unless same has been granted by the council?

2. Has the council in session a week after any authority to refuse to pass the account furnished them by the Chief for his expenses in the matter?

1. We are of opinion that the mayor had no authority to order the treasurer of the town to pay the amount mentioned to the chief of police for the purpose named, nor had the treasurer any authority to pay it. It was the duty of the chief of police to use his best endeavors to apprehend the culprits, charging and collecting his fees for so doing, as the statutes prescribe. As to whether the chief is entitled to retain for his own use the amount of these fees depends on whether the council has agreed, under the authority of section 496 of The Consolidated Municipal Act, 1903, to allow him to do so or not.

2. The council has the right to refuse to pass the account.

Assessment of Natural Gas Co.

432—F. B.—The Dominion Natural Gas Co. has leased a large number of farms for the purpose of having the right to bore for natural gas, paying from 20 to 40 cents per acre per year.

The company has a number of wells in operation for which they pay the owners of the land on which the wells are situated fifty dollars per year.

The company is assessed only for the value of the pipe in the wells and that laid through the township from the wells.

Is that a correct assessment?

We are of opinion that the assessment is correct as far as it goes. We think, however, that the company should be assessed jointly with the owners for the lands it leases, and their names should be bracketed together on the roll, in accordance with the provisions of clause (e) of sub-section 1 of section 22 of The Assessment Act, 1904. Opposite the name of the company there should be placed in the proper column of the roll the value of the income derived by the company from any gas well or wells in operation on the lands (which are mineral work) pursuant to the provisions of sub-section 3 of section 36 of the Act.

Payment of Compensation for Erecting Wire Fences.

433—A. B. R.—This township of A for a number of years has paid a bonus to parties building wire snow fences along the public highway. This was done by by-law.

This year's council annulled that by-law, and passed a new by-law to the effect that no bonus be paid for wire fences.

1. Would it be illegal for the present council to pay by resolution a bonus without amending the present by-law or passing a new one?

2. If illegal, can the present council be held personally responsible?

1. The council cannot legally make the payment suggested. It cannot by resolution do what its own existing by-law provides it shall not do.

2. If the councillors authorize this payment in the face of a by-law that prohibits their so doing, they will be wilfully authorizing an illegal payment of the funds of the municipality, and can be held personally responsible for its refund.

Business Assessment of Express Company.

434—W. A. R.—The Canadian Express Company has appealed to the County Judge against a business assessment of $700 made by Assessor of the village of C., and confirmed on advice of solicitor, by the council of said village at a Court of Revision held June 3rd, 1907. The Express Company conducts its business "mainly" at the G. T. R. Station. The Express Company claim to be a part of the G. T. R. system, and for that reason claim exemption of taxes.

Have you a record of similar cases, tried and tested by County Judges, and rulings or decisions thereon? If so, please fotward a copy to me at once, or any information bearing on like or similar cases, and oblige.

We agree with the opinion given by the solicitor to the Court of Revision as to the method of disposing of this appeal, and have several times so expressed ourselves in these columns in similar cases.

On page 251 of the issue of THE MUNICIPAL WORLD for September, 1905, there will be found a decision entitled "Re Dominion Express Company and the Corporation of the Village of Dundalk," which is in point. The decision was given by County Judge HATTON of Grey County, and is as follows:

The appellants herein base their appeal upon the wording of clause "C" of sub-section 1 of section 10 of the Act, and the argument has mainly centered about the

intention and meaning of the qualifying words: "Where such land is occupied mainly for the purpose of its business." I do not think that where the words of the Act are to me explicit and plain I should go beyond the express words and endeavor to read into them any other than their ordinary meaning. The antecedent of the words "such land" in clause "C" may be found in the first part of sub-section 1 and is there shown to be land used or occupied by any person. There is no doubt as far as this case is concerned that land is used and occupied in the municipality by the appellants. The evidence of their agents made this clear when taken in connection with the definition of land in the interpretation section. I have no doubt that the appellants come within the scope of the words "carrying on business or in connection with the railway company." It seems to me, therefore, that all the requisites to entitle the municipality to place, as they have done here, the minimum business assessment upon the appellants are to be found, and I therefore dismiss the appeal. From the evidence a portion of the building would seem to be set apart entirely for the use and occupation of the appellants.

Clerk May be Also Treasurer.

435—A. J.—Would it be legal for the township clerk to act as treasurer also when the taxes collected are all deposited in the bank and all money expended is paid by cheque through the bank issued by reeve and treasurer, which would save part of salary for an extra man? In former years, when we had no bank convenient, orders were issued by the reeve and clerk on the treasurer, who cashed them, which made it compulsory to have the extra man for treasurer.

The clerk of a township municipality can also legally hold and perform the duties of township treasurer.

Owner of Dock Liable for Business Assessment—Powers of Court of Revision.

436—J. W. K.—1. Is a dock liable for business assessment?

2. In 1905 dock was assessed by assessor, but not for business tax. The Court of Revision added the business tax and adjourned the Court of Revision, notifying the parties where changes were made. The manager of the dock claims he did not get his notice and will not pay the taxes. Can it be collected?

1. If the owner of the dock is carrying on the business of a wharfinger therewith and thereon, we are of opinion that he is liable to the business assessment mentioned in clause (h) of sub-section 1 of section 10 of The Assessment Act, 1904, calculated on the assessed value of the dock, and the land used and occupied in connection therewith.

2. The Court of Revision did not proceed as the statute authorizes. The omission of the business assessment was not such a palpable error as the court could correct of its own motion under sub-section 19 of section 65 of the above Act. The court should have extended the time for making complaints ten days further, and had the assessor or some other ratepayer file an appeal to have the business assessment added to the dock owner's assessment. We do not think the taxes on the business assessment can be collected under the circumstances stated.

Appointment of New Clerk—Procedure at Court of Revision.

437—J. B. N.—1. Clerk was appointed by by-law. Secretary was first appointed. Motion was put to appoint a clerk, "carried," one of the councillors took the chair and read by-law, after which vote was taken—"Yes" and "No" for candidates. Reeve called for one candidate voted "Yes," followed by two councillors who also said "Yes," thus electing first candidate. Now, sir, I would like to know if the reeve had a right to vote this, or if he is only privileged to give a casting vote when same would have been a tie. Should he not have waited until the councilmen voted? This seems to my mind to have been pre-arranged by Reeve and two councillors. If proceedings are not legal, what steps should one take to declare clerk not legally appointed?

The by-law was put through first, second snd third reading, and then passed.

2. What are the proper proceedings at Court of Revision and of entering names on roll?

1. The reeve has the same voting powers on questions considered by the council as any other member. Section 274 of The Consolidated Municipal Act, 1903, provides that "The head of the council, etc., may vote with the other members on all questions; and except where otherwise expressly provided by this Act, any question on which there is an equality of votes shall be deemed to be negatived." In this case, the clerk appears to have been appointed by a by-law of the council. If this by-law is properly framed and received the concurrent votes of at least three members of the council, as required by section 269 of the above Act, we think the clerk has been legally appointed. The occurrences mentioned previous to the passing of the by-law do not in any way affect its validity.

2. The procedure to be followed at courts for the revision of the assessment roll will be found in section 65 of The Assessment Act, 1904. Sub-section 2 of this section makes provision for the entering in the roll by the clerk of changes made by the court.

Business Assessment of Owners of Stallions Etc.

438—T. G.—1. Are owners of stallions, bulls, etc., who keep them for breeding purposes, and doing such business with them liable for business assessment and taxes?

2. Are owners of stallions who travel them for breeding purposes, and doing such business with them through the season, liable in every municipality they travel in to the amount of business they do for business assessment and taxes?

1. These cases are pretty close to the line. If, however, the owners of the animals use and occupy any premises for the purpose of carrying on the business, and are assessed for such, they are liable to the business assessment mentioned in clause (h) of sub-section 1 of section 10 of The Assessment Act, 1904, calculated on the assessed value of the land so used and occupied.

2. No.

Statute Labor to be Calculated on Business Assessment.

439—G. G. G.—1. Can statute labor be legally levied on business assessments in townships?

2. Is the Canadian Northern Railway exempt from statute labor on their assessment in townships?

1. Yes.

2. No.

Assessment of Saw Mill and Power Co.

440—Our assessor assessed a saw mill newly started, newly built (personally I have not seen it), and it employs about twenty to twenty-five hands, as follows: Mill land, $100 for three acres; building, $200; machinery, $200. On talking to some of the councillors he proposed to raise the assessment on Court of Revision day, but sent the owner no notice to be there, and the question came up then. He had returned the roll to me as Township Clerk before April 30. He also acknowledged the assessment was too low, but wanted to give the owner a chance.

1. Could the Court of Revision raise the assessment under the circumstances, no appeal having been made and no notice served?

2. What would have been the right steps to take to have had it raised?

3. Was his assessment on the saw mill, engine, etc., legal?

4. Was the assessor right in taking the view he did, or should he have assessed to full actual value?

We have a power company formed here who paid $4,300 for a certain piece of land and the power, on appeal the Court of Revision lowered the assessment to $2,500, considering it worth no more than it was last year when it was assessed as farm lands.

5. On what should the assessment be based? The price paid was actually more than it was assessed for, and the power is a good one but not yet developed.

5. Should the buying price rule, or were the council right in saying it should not be valued at much more than farming lands?

1. No. Sub-section 5 of section 65 of The Assessment Act, 1904, provides that "no alteration shall be made in the roll unless under a complaint formally made according to the above provisions.

2. The assessor or some other municipal elector should have filed the notice of complaint mentioned in sub-section 2 of section 65 of the Act, with the clerk, within the time mentioned in this sub-section, and thereafter the proceedings prescribed by the subsequent sub-sections of section 65 should have been taken.

3. The assessor should assess the saw mill, and the land used in connection therewith, at their actual value. The engine was exempt from assessment under the provisions of paragraph 16 of section 5 of the above Act, as it is fixed machinery used for manufacturing purposes, and the owners of the mill should also be assessed for the business assessment mentioned in clause (d) of sub-section 1 of section 10 of the Act.

4. We think the assessor erred in this view. He should have assessed the property at its actual value as required by section 36 of the act. The buying price is not conclusive as to this value, but, in this case, since the transfer was a recent one, it is good evidence of what the actual and assessable value of the property should be.

Payment of Veterinary for Inspecting Horse Suspected of Having Glanders.

441—J. H.—Information was laid before J. J. B. F., police magistrate for the town of B, that a horse in the township of H was in all probability afflicted with glanders, ordered a veterinary surgeon to inspect said horse. The veterinary inspected him and presented his bill to the council for $5.05 for examination and medicine. Will the council have to pay the bill?

Under the circumstances stated, we do not think the council can be compelled to pay this bill. The matter should come before the Court of Summary Jurisdiction as constituted by chapter 273, (R.S.O., 1897) and before the veterinary surgeon is entitled to his pay he should present to the treasurer of the municipality the order of the court mentioned in section 11 of the Act.

Powers of Road Commissioner Appointed by Council.

442—W. H. H.—Our council has appointed Mr. W. as commissioner at $3 a day to superintend the building of concrete sidewalks within the corporation. Mr. W. is a member of the council, he is also by occupation a contractor in concrete work, and when acting as commissioner he takes full charge of the job as if working on a contract of his own, and performs a great deal of manual labor, although he is not required by the council to do any more than superintend the job.

1. Is the appointment valid?

Clause (a) of sub-section 1 of section 537 of The Consolidated Municipal Act, 1903, authorizes the council to appoint one of its members a commissioner to oversee or superintend any work undertaken by the corporation, and to pay him for so doing. This provision does not, however, allow the councillor so appointed to supply material for, and actually do the work, or any part of it, and receive payment for same, in addition to his allowance as overseer or superintendent. If he does this, he is disqualified as a member of the council.

Liability of Municipality for Death of Horse.

443—P.—A ratepayer of this township named P was proceeding home from his work along the highway. He was driving a span of horses attached to a stone boat. A neighbor driving a team and waggon overtook him and P fastened up his horses' lines and got into the neighbor's wagon to ride home, allowing his own team to walk behind. Something scared P's horses and they dashed past the waggon in which P and his neighbor were riding, turned sharp off the road into another road running at right angles, crossed a bridge, and in doing so one of the horses broke through a defective plank at the extreme end of the bridge, and fell and broke her leg. The horse afterwards had to be shot. The council of this township cantends that if P had been driving his horses the accident could not have taken place, as the defective spot in the plank was at the extreme end of the bridge, almost under the railing, and no man driving a team would have allowed them to step so close to the end (or rather side) of the bridge. On the other hand, P contends that if there had been no defective spot in the plank his horse would not have broken through the plank nor got her leg broken.

Is the council of this township, in your opinion, liable for damages for loss of the horse?

Under the circumstances stated we are of opinion that the municipality cannot be held responsible in damages for the accident to this horse.

A Road Dispute.

444—E. G.—There are two ratepayers living in the back part of our townshlp, and their road out runs through another man's farm living along the Government road. This road is not in the line, but has been opened and travelled for over twenty years, and statute labor performed on it every year. Now this man wants the road changed, but still letting it run through his land, and the council told him he could make the change to suit himself as long as he made the new road just as good as the old one, and that he could have the old road in lieu of the new one, but at his own expense. This he refused to do.

There is a line which they say is possible running at the end of this man's lots, but it would cost the municipality from $200 to $300 to open it up, and would make the road longer. There were quite a few changes of roads made in the municipality, and that was what was done. Change road to suit themselves and at own expense.

1. Can the council hold this road, it being opened and travelled and labor done on it for over twenty years?

2. Can this man close this road and compel the council to open up a line?

1. We are of opinion that the council should not interfere in this matter. It cannot be compelled to open a road, simply to accommodate one or two ratepayers, as is the case here, nor should it open and establish a road unless the needs of the general public require it. If there is any dispute between the two ratepayers and the owner of this land through which the road at present used, runs, as to the right of the two ratepayers to use the road, or its location or otherwise, the council should leave it to them to fight the matter out amongst themselves.

2. We have not sufficient particulars to enable us to say whether the owner of this land through which it runs can close the road, as against the public, but if he does, the council cannot be compelled to open up an original road allowance, or any other road, in its stead.

Location of Fence Along a Highway.

445—F. M. O.—Has a person the right to put a road fence where he likes? This road is around a 20-acre swamp. It never has been fenced on one side. For a few years at the corner of the swamp which is on the concession, there was a saw mill; the mill is gone now. The swamp is sold now, and the buyer has put a fence on the one end, not more than 24 feet from the other fence. He says he will not move the fence.

Can a single owner force a survey on a township in a dispute over putting down a road fence?

This owner has no legal authority to erect his fence other than on the correct line. If the council deems it in the general public interest to cause the opening of the road to its full width, and the limit of the road upon which the fence should be erected has not been definitely ascertained, the council should engage a duly qualified land surveyor to locate it at the council's expense. When this has been done, the council may pass a by-law under the authority of sub-sections 3, 4 and 5 of section 657 of The Consolidated Municipal Act, 1903, requiring the adjoining owner to remove his fence from the road.

Payment of Cost of Building Cement Walks by Township Council.

446—E.R.B.—Has the council of a township power to pay out money out of general township funds to assist in building cement sidewalks either on public roads or village streets in small villages

in the township, in the absence of any by-law being passed by said township in the matter; or can they only pay for said sidewalks under a by-law by frontage assessment.

The council of a township municipality may pay out of its general funds the cost of constructing such sidewalks as it may deem necessary on the township roads, or on the streets in unincorporated villages therein. If it considers it best to construct these walks of cement, instead of plank or other material, it may legally do so. The council also has power to construct these walks, and cause them to be paid for by a frontage assessment, by a by-law passed pursuant to section 664 and following sections of The Consolidated Municipal Act, 1903 (the sections relating to local improvements).

Payment of Physician's Bill for Attending Small Pox Patients.

447—In 1905 we had a slight outbreak of small pox in our township. Dr. A. was appointed medical health officer. Small pox broke out in a camp of men working for the R. U. Lumber Company. Dr. A. was notified, and on his way to the camp met the manager of the R. U. Co., who told him that the company would settle for the expense. The camp became insanitary and the men were placed under quarantine and removed to the pest house. After the men got better Dr. A. sent in his bill to the R. U. Lumber Co., but they refused to pay it, claiming that as the men were removed from their camp to the pest house the company could not be compelled to pay for any of the expense incurred for medical attendance or anything else.

1. Who has to pay Dr. A's bill, the R. U. Lumber Co., or the council?

2. If the council has to pay the bill, can it collect the amount from the R. U. Lumber Co.?

1. We gather from the statement of the facts that the doctor was simply performing his duties as medical health officer of the municipality in going out to inspect the lumber camp. If this is so, all he could collect from the council would be the amount of the salary the council agreed to pay him when he was appointed.

2. No, but we do not think that under the circumstances stated the council should pay the account.

Liability of Council to Maintain Approach to Farm Gate.

448—J. C. Mc.—A number of years ago the concession road in front of A's farm was graded by the townshrp council. This work necessitated the placing of a culvert opposite A's gate leading to his farm. This culvert is now worn out, and A makes a demand on the council for a new culvert. The council refuses to act. Can A make them?

We do not think that the council is bound to rebuild the culvert.

Vacancy in Council by Resignation—Payment of Teachers' Salaries.

449—1. Is a councillor's seat deemed vacant after he has tendered his resignation and it has been accepted by his colleagues?

2. Is there any time limit when an election should take place after it is declared vacant?

3. As school teachers claim pay for summer holidays, should trustees include holidays when sending in their requisitions for school moneys to township council?

1. Yes.

2. Section 212 of The Consolidated Municipal Act, 1903, provides that "in case a vacancy occurs in the council by resignation, etc., the head of the council for the time being, or in case of his absence, or of his office being vacant, the clerk, or in case of the like absence or vacancy in the office of the clerk, one of the members of the council, shall FORTHWITH take the steps mentioned in this section for the holding of an election to fill the vacancy."

3. Yes, the trustees should take this into consideration when making up their estimates to be submitted to the council, as required by sub-section 9 of section 65 of The Public Schools Act, 1901.

Business Assessment of Nursery.

450—H. S.—How would you assess a nursery? Some trees are one year old, two, three and four years old. Say a man had ten acres of a nursery in connection with his farm, and makes a business of selling fruit trees. How would you assess this nursery? Say there are 100,000 trees on ten acres, and trees all ages.

Since this is not ground used as a nursery, located within the limits of a city, town or village, the assessment of which is governed by sub-section 1 of section 40 of The Assessment Act, 1904, the land, including the trees thereon, which are part of the land, should be assessed at their actual value, as required by section 36 of the Act. The owner of the nursery is also liable to the business assessment mentioned in clause (h) of sub-section 1 of section 10 of the Act, calculated on the assessed value of the land actually used and occupied by him in carrying on the business of a nurseryman.

Inaugurating System of County Roads.

451—W. W. D.—A system of county roads has been established in the county of Oxford (the particulars no doubt you are aware of).

1. Should the county council have submitted the scheme to the ratepayers before passing the by-law?

2. To what extent and for how long can a debenture for this purpose be legally issued?

3. If it is not legal, what proceedings are necessary to upset it?

1. Chapter 32 of The Ontario Statutes, 1901, and all subsequent amendments thereto were repealed by an "Act for the Improvement of Public Highways" passed at the session of the Ontario Legislature of the present year, 1907. We do not know whether the county road system referred to was adopted before or after the passing of the Act of 1907. In either case it was not necessary to submit the scheme to the vote of the ratepayers of the county. Under the provisions of section 3 of the Act of 1901, this was discretionary with the county council. The county council has the same discretion under sub-section 5 of section 2 of the Act of 1907. (The full text of the Act of 1907 will be found on page 101 of the issue of THE MUNICIPAL WORLD for May of the present year). Under the authority of sub-section 1 of section 389 of The Consolidated Municipal Act, 1903 (as amended by section 87 of chapter 18 of The Ontario Statutes, 1903) it was not necessary to submit a by-law for the purposes of the Act of 1901 to the vote of the ratepayers of the county, and under sub-section 5 of the Act of 1907 it is not necessary to submit a by-law for borrowing money for the purposes of that Act to such ratepayers.

2. Under the authority of section 9 of the Act of 1901 (as amended by section 27 of chapter 12 of The Ontario Statutes, 1902) and section 6 of the Act of 1907, debentures to be issued under the Act are not to exceed two per cent. of the equalized assessment of the county, and shall be payable in thirty years.

3. We have not sufficient particulars to enable us to reply to this question.

By-Law Guaranteeing Debentures—Application of Insurance Moneys.

452—A. T. C.—Authorized by a vote of the people, a by-law is passed by the town council guaranteeing the bonds of a loca company to the amount of $10,000, to be repaid in ten yearly payments, the town holding a mortgage on the entire plant and insurance to the amount of the guarantee payable to the town.

After being in business for two years and having paid one maturing bond, a serious fire took place and almost all work is stopped.

The company are anxious to continue in business if satisfactory arrangements can be made with the town. They are asking the town for an additional guarantee of $20,000, to be paid back in twenty yearly payments, and if this is granted they will proceed to re-erect the buildings destroyed.

What about the $10,000? Will this remain in possession of the town to redeem the bonds, as insurance to this amount has been paid to the town? Or should the insurance money be paid back to the company on completion of the new plant equal in value to those destroyed, and the company continues paying the bonds as they become due?

The insurance money should be retained by the town to meet the $10,000 debentures guaranteed in the first instance as they mature. This practically closes the first transaction with the company. If the town council is willing to guarantee a further issue of debentures to the extent of $20,000, this is a new transaction, and should be made the subject matter of a new arrangement, and an additional by-law passed for the purpose after being assented to by the qualified electors.

Proceedings for Re-consideration of Old Award.

453—J. B. M.—In this township there is an engineer ditch which was surveyed and awards given fifteen years ago, which drains parts of six different farms, also the corporation.

Ditch is not satisfactory to one of the landowners, There was a meeting called of all parties concerned to reconsider old award. All were present, corporation represented also except the one man who was dissatisfied with old award. All present agreed to abide by the old award and not have the engineer. The man who was not able to be present claims he can call the engineer on account of him not being satisfied with old award. Can he call engineer?

If this owner is not satisfied with the terms of the original award, he may take proceedings to have it reconsidered and a new award made, as provided by section 36 of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285.)

Liability of Council to Build Approaches to Farms.

454—N. B. T.—The road overseer has graded the road in front of one of my neighbors, and it is impossible to draw a load over the ditch. Is the road overseer or the municipality obliged to build approaches to his place, or will he have to build the approach himself?

If the grading of the road by the officers of the municipality has rendered necessary the construction of an approach to an owner's farm, the owner is entitled to compensation for the injury thus done his property pursuant to section 437 of The Consolidated Municipal Act, 1903. The easiest, cheapest and best way for the council to compensate the owner who has sustained the injury is to build the culvert for him.

Fees of Police Magistrates.

455—W. M.—In reference to question No. 430, (fees for justices of the peace, for which I thank you), will your answer apply also to police magistrates?

Yes.

Power of Physician to Prescribe Liquor.

456—W. W. S.—1. Can a physician (M.D.) keep liquor and deal it out to patients in six-ounce lots, or must he have a druggist's license?

2. Can he prescribe liquor to patients and fill the prescription himself, where there is a drug store?

1. It is not stated whether the physician makes a charge for the liquor thus delivered to his patient or not. If he is charging for the liquor he prescribes for them, he is selling liquor contrary to the provisions of The Liquor License Act (R. S. O., 1897, chapter 245) without a license, and is liable to the penalty prescribed by the Act for so doing. There is nothing in the Act to prevent his GIVING the intoxicating liquor to his patients, if he so desires. (See sub-section 5 of section 52 of the Act which applies to cases where a chemist or druggist is also a duly qualified medical practitioner.)

2. Not if he charges for the liquor he so supplies.

Council Cannot Dispense With Appointment of Collector.

457—A. H.—For some years past we have had no tax collector, simply a tax receiver.

This year the bank is receiving for us. The tax notices are delivered by our constable.

Must distress be made upon all who do not pay before the 14th of December?

If so, who would distrain in our case?

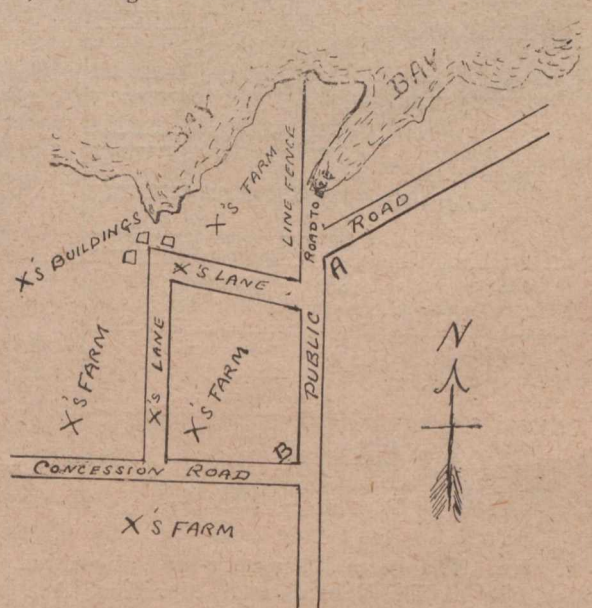
We are of opinion that the council of the town has no power to dispense with the services of a collector. Sub-section 1 of section 295 of The Consolidated Municipal Act, 1903, requires the council, as soon as possible after the annual election to appoint as many assessors and COLLECTORS for the municipality as they may deem necessary. Sub-section 1 of section 102 of The Assessment Act, 1904, authorizes the passing of a by-law directing payment of taxes either to the treasurer or collector, etc. If it becomes necessary to enforce payment of any taxes by distress of the goods of the delinquent, the collector or his bailiff, only has power to make the seizure. The bank has no such authority. It is not compulsory that the collector should seize the goods of all ratepayers who do not pay their taxes on or before the 14th December, but seizures may be made to enforce payment any time after the expiration of 14 days after demand or notice made or given pursuant to sections 99, 101, or 102 of the latter Act, and so long as the roll for the year for which the taxes are payable remains in the hands of the collector. The collector or his bailiff only has authority to make a distress to enforce payment of taxes.

Council Should Not Interfere With Private Lane.

458—W. J. M.—Our road follows the bay shore for several miles, bending when the bay bends. At the point marked A in the accompanying cut it turns sharply to the south and goes through to the other concessions. A spur from the extreme end of the point joins at B.

The trouble is X has a farm of two hundred acres and has his buildings in the centre. A lane crosses the east hundred from A. This is in very bad condition. In wet weather the milk wagon can scarcely go through. X belongs to the company, it being a stock factory, and the by-laws call for a sufficient road to every man's milk stand. X wants the council to fix his lane, claiming it is a public convenience, an outlet to the bay in winter. There has never been any statute labor done on it, and it has not been used as an outlet to the bay in over thirty years. Everyone goes straight down through his next neighbor's field, so that it accommodates no one but themselves, and they have another exit on the other road.

What I wish to know is, can he force the council to build his lane, and if we have power to mend it, have we not the power to close it, he having the other exit?



Under the circumstances stated X cannot compel the council to put the lane in repair and thereafter maintain it. It is evidently a private way, and the council has no power to interfere with it in any way.

Construction of Cement Sidewalks in Village.

459—N. W. B.—Enclosed find map of village. I will give you a clause of the by-law of our council, viz : "That granolithic or cement sidewalks be laid on the following streets, or portions of streets, namely :

1. On the north side of Main street from Gladstone street to Ottawa street.

2. On (here follows the description of street).

The following thirteen more streets, one of which is the west side of St. Lawrence street along lots 10, 11, 12 and 13 from Clarence street to the right of way of the C. P. R., as described on sketch. These blocks are used as farm lands. The built-up portion of the village is from the north boundary of corporation south as far as Clarence street, with a few residences on the east side of St. Lawrence street, as far south as May street. The owner of block 13 has been offered high prices for lots along the west side of St. Lawrence street, but refused to sell. The lands in block 11 are not likely to be ever required for building lots, and if so, not for many years. The portion of block 10, fronting on St. Lawrence street might be sold for building lots, but the balance of block 10, consisting of probably nine acres, will always be used as farm lands or pasture. The corporation is paying 60 per cent, and the lands benefited 40 per cent of the cost of said walks.

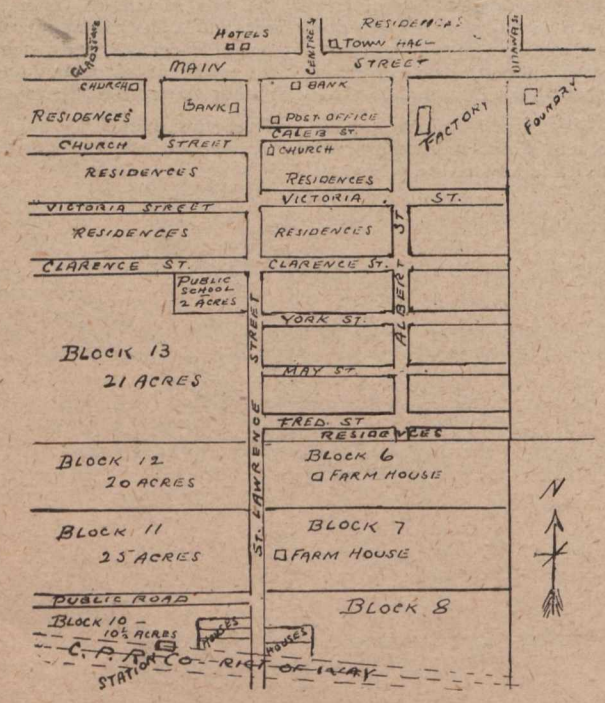
1. Can the public school grounds, block 13, block 12, block 11, and block 10, be assessed for the 40 per cent ?

2. Does section 39 of the Assessment Act, 1904, apply or affect the case, and if so, how ?

3. If said lands not wholly liable for 40 per cent, then what proportion or extent would be considered fair ?

4. Under section 39 as above, is it the duty of the council to, and can the council legally pass a by-law exempting farm lands if said council has not received auy notice from parties claiming exemption ?

5. If a majority of the owuers of property on the north side of Main street from Gladstone street to Ottawa street petition the council against said work, should the council dispense with the work on said street and withdraw same from the scheme ? Or, in other words, can a majority of owners, on an particular street, dispense with the work on that street and the balance of the work be carried out ?



1. No. The second sentence of sub-section 1 of section 684 of The Consolidated Municipal Act, 1903, provides that "this section shall not apply to schools which are maintained in whole or in part by a legislative grant or a school tax." We assume, of course, that the school premises are owned by the school board.

2. Section 39 of The Aesessment Act, 1904, applies to such of the blocks of land in the village as are used as farm lands only, and are owned by any one person, and are not less than five acres in extent.

3. Sub-section 2 of section 39 requires the village council to pass the by-law therein mentioned annually, at least two months before striking the rate of taxation for the year. The council must exercise its discretion as to what it considers a fair exemption of these properties. Its members should be the best judges as to this, as they are on the ground, and presumably familiar with all the circumstances of each case.

4. Sub-section 2 of section 39 makes it the duty of the council to pass the by-law therein mentioned. Persons claiming exemption under the by-law should notify the council as provided in sub-section 3, and owners affected by the by-law have the rights of appeal prescribed by sub-section 4.

5. Assuming that the council has initiated the local improvement works under the authority of section 669 of The Consolidated Municipal Act, 1903, if the majority of owners of the properties to be benefited on any particular street described in the by-law file the petition against the carrying out of the work, mentioned in sub-section 1 of this section, the council cannot proceed with that part of the work, but may proceed with the rest of the scheme. If the work was initiated under the provisions of section 677 of the Act, the council may complete the work, regardless of any petition that may be filed against it.

County Levy of School Moneys—Legislative Grants.

460—J. C.—1. Sub-section 1 of section 70 of The Public Schools Amendment Act, 1906, provides that the municipal councils of every organized county shall levy and collect by an equal rate upon the taxable property of the whole county in the manner provided by the Act, The Municipal and Amendments Acts, a sum which shall be at least the equivalent of all special grants made by the Legislative Assembly to the rural schools of the county.

In our township there is a separate school section and as there is no special reference made in the above sub-sections to the supporters of either public or separate schools, am I to understand that the supporters of the separate school should be refunded the portion of the equivalent (which was raised by them) pursuant to sub-section 1 of section 72 P. S. Act ?

If so, how then do we get the full equivalent of the special grants made by the Legislative Assembly to rural public schools ?

2. Are the legislative grants for schools distributed by the Government to the municipalities according to population, and by inspectors to school sections on the basis of attendance, teachers' salaries and character of accommodation ?

1. The levy to be made by the county council under sub-section 1 of section 70 of The Public Schools Act, 1901, (as enacted by section 39 of chapter 53 of The Ontario Statutes, 1906), is of "a sum which shall be at least the equivalent of all special grants made by the Legislative Assembly to the RURAL schools of the county. A separate school is just as much a RURAL school as a public school, if it is located outside of an urban municipality. Therefore the county grant should include the equivalent of the legislative grant to rural separate as well as public schools in the county. The county inspector, in performing the duty imposed on him by sub-section 1 of section 72 of The Public Schools Act, 1901, is paying the separate schools only what has been levied for them and paid by their supporters. The deduction of this from the amount of the county levy does not effect a reduction in the sum levied by the county for and paid by the public school supporters therein.

2. The method of distributing the legislative grants for public and separate schools will be found in section 23 of chapter 52 of The Ontario Statutes, 1906.