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The Municipal World

PUBLISHED MONTHLY

In the interests of every department of the Municipal Institutions of Ontario.

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ST. THOMAS SEPTEMBER 1, 1901.

Mr. Ezra W. Lane, who a few months ago was appointed to succeed Mr. James B. White, as clerk of the town of Prescott, was drowned on the 12th of August last, with two companions, in the Gallops Rapids of the River St. Lawrence. The capsizing of a steam launch was the cause of the regrettable disaster.

* * *

Mr T. G Meredith, solicitor for the city of London, recently gave the council of that city an opinion to the effect that it could not legally pass a by-law pursuant to section 6 of chapter 26 of the Ontario Statutes, 1901, abolishing the use of trading stamps within the limits of the municipality, until after the first day of January, 1902.

* * *

The people of Paris are protesting against the rates charged by municipality for electric light. The town manages and owns the electric light plant and has issued a new schedule of rates which it is claimed are twice as high as those of the old private company who made twenty per cent. profit. Municipal ownership in this case appears to come high.—Dundas *Star.*

* * *

The change in the Assessment Act by the Ontario Government at the last session of the legislature has added to the assessment of five companies in Toronto $2,446,069, which with a rate of 19 mills on the dollar would add $46,475 to the city's revenue. The increases are as follows:—Toronto Railway Co., $1,156,060; Consumers' Gas Co., $550,000; Telephone Co., $475,000; Electric Light Co., $100,-Incandescent Light Co., $165,000; total, $2,446,069. Whether or not the Assessment Amendment Act adopted at the last session of the legislature really ended the Act, or whether the "scrap iron" interpretation till holds good, will probably be decided before long in Toronto. Assessed as "scrap" the Toronto Street Railway Company's property was valued at $90,-000 ; this year the civic assessment department raises the valuation to about $1,506 000. The property has been assessed in only one ward, and, as the new Act, provides, "valued as a whole."

Assessment Appeals.

We are indebted to Mr. Geo. G. Albery, clerk of the town of Meaford, for the following report of the decision of the county judge on two interesting questions of assessment, heard by him recently on appeal from the Court of Revision of the town :

A court for hearing appeals from the court of revision, was held by His Honor Judge Creasor, last Saturday forenoon at 9.30 a. m., at the town hall. Mr. John Findlay had appealed against the provisions of by law No. 20, passed under authority of section 8 (2) of the Assessment Act, on the ground that the by-law did not exempt his lands from taxation for waterworks, street lighting and sidewalks, although he had on 31st of May notified the council, claiming exemption in respect of the improvements mentioned. At the time of passing the by-law the notice given by Mr. Findlay was considered as being filed too late, and not within one month from the date fixed for the return of the assessment roll, namely 30th April. The council, however, subsequently, and before the hearing of the appeal ascertained that the notice was in time and passed a by-law partially exempting the appellant's lands on Montgomery street from taxation incurred for the improvements above mentioned. The second by-law was satisfactory to the appellant and satisfied the appeal which accordingly lapsed. There was room for some nice points of law in the computation of the time for giving the notice to the council, which was involved in this appeal.

Considerable interest was shown in the appeal of Mr. M. A. Pigott against the assessment of his dredging and railway plant, which is assessed at $5,000. The town court of revision on Mr. Pigot 's appeal in the first instance confirmed the assessment and dismissed the appeal, and Mr. Pigott subsequently appealed to the county judge from court of revision. His grounds of appeal were (1) that personal property so assessed is not assessable, or in the alternative (2) that the dredging plant is not his property and is not assessable as against him and (3) that if assessable at all is not assessable at Meaford, his office being at Hamilton. Mr. J. S. Wilson appeared for the town and Mr. Tyrville appeared for Mr. Pigot. After arguments by the counsel, section 7 of the Assessment Act, which exempts steamboats, sailing vessels, tow barges and tugs from taxation, was held not to include the dredges, scows, etc., assessed in this case. Evidence was tendered as to value of the plant and to the effect that the remainder of the plant without the dredge was worth at least $5,000. His Honor accordingly fixed the assessment of the plant including "steam dredge No. 7 and steam shovel, scows, derricks, scrapers, wagons, engines and other appliances on harbour and railway works" at $5,000. This assessment will mean about $125 in taxes for the town treasury.

The "Scrap-Iron" Assessment Again.

Two decisions have recently been given involving the construction and effect of the amendment to the Assessment Act, passed at the last session of the local legislature. One was delivered by Judge Morgan, one of the judges of the County of York, in an appeal of the Metropolitan Railway Company against an assessment of $4,500 in the town of Aurora. In reducing this assessment to $1,500, His Honor made the point that the amendment of last session, intended to do away with the "scrap-iron" mode of assessment, is of little effect in the case of railways operating in a number of municipalities, because railways so operating cannot be assessed in any one of them as a going concern, in the same way that the Toronto Street Railway or a similar road confined in its operation to one city, can be assessed. This judgment in affect, means that while the larger cities will be able to get a reasonable amount of taxation from street railways, within their limits, the smaller places must still suffer from the injustice of the "scrap-iron" system, under which the plant is valued, not at what it is worth to the company as a concern in active operation, but at what it would bring if torn apart and sold to a junk dealer.

The other one, was handed down by Judge Liddell, one of the judges of the united counties of Stormont, Dundas, and Glengarry, in an appeal by the Bell Telephone Company against the assessment of its poles, wires and other property in the township of Winchester. The township Court of Revision had assessed the property of the company at its face value as a going concern, and against this the company appealed on the ground that the amendment to the Assessment Act above referred to, although very wide in its language, is still not effective to render nugatory the decisions of the Ontario courts, which previous to its passage had held that these properties must be assessed on what is known as the "scrap-iron" basis. His Honor, after going fully into the matter, comes to the conclusion that the contention of the company is quite correct, and that the language of the recent amendment cannot be said to have overridden the Ontario decisions on the question, and he therefore directed the property to be assessed at its value as "scrap-iron".

Engineering Department

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

Wagon Tires.

Vehicles designed for carrying loads of a ton or more should have tires at least four or, better, five inches wide. With expensively built stone roads the effect of narrow tires may be so r paired as to keep the road in a fairly go.d condition though at very great cost. But broad tires are particularly necessary on roads such as are constructed in this country. Narrow wagon tires are the greatest destroyers of gravel and broken stone roads, built and maintained as they are in Ontario. Even with the traffic, which is not excessive, our country roads will not be kept in a moderately good condition so long as they are subjected to the strain placed upon them by narrow tired wagons.

There are two aspects of the question of tire widths to be considered :

(1) The relation of the tire to the amount of horse power needed to move load.

(2) The effect of different widths of tires on the ro d.

With respect to the first of these, the tractive force required, the effect of the width of the tires varies with the condition of the road. On a smooth, hard, unyielding pavement there is practically no difference. With soft roads, deep with semi-liquid mud, the advantage is slightly in favor of the narrow tire, since th wide felloe has a tendency to carry the mud with it. It is with the intermediate stage, such as exists on a good gravel or dirt country road, that the benefit arises. Through such surfaces the narrow tires cut, and the load is, in effect, being constantly drawn up hill, but the broad t res roll smoothly along the top. A wagon having tires wide enough to keep the wheels from cutting into the road will plainly draw more easily than one which plows through the mud instead of running over it. Experiments have shown that the loads, which on narrow tires sink to the axles, can be drawn without difficulty when broad tires are used. The broader base takes the firmer hold of the road, and the wheel revolves more easily and perfectly. It is admittedly the case that wide tires are an advantage on farms, but there appears to be a persist nt effort put forth to prevent their use on the roads.

It is urged against wide tires that they do not roll freely in the ruts made by the smaller tires. So long as the narrow tires are commonly used, this will be the case to some extent ; but, on the other hand, if wide were generaly used, the ruts would not exist. In any case, with narrow tires the bottom of the ruts made by the narrow tires are uneven, and the narrow rims are constantly grinding against the sides of the ruts, creating the greatest friction, so that the objectionable difference is not so great as appears on first sight, if it exists at all.

It is further contended that the wide tires come in contact with more or less loose stones than do those with a narrow tread. The greater resistance offered in this way is more than counter-balanced, however, by the loose stones dropping in the narrow ruts. In the one case the wheel goes to the stone, in the other the stone gets in front of the wheel. The irregular bottom of the ruts, and the stones in the narrow ruts keep up a consta t vibration of the wagon, which transmits a swinging motion to the tongue, galling and annoying the horses and destructive to conveyances.

Broad tires actually improve a road by rolling it down hard, and leaving it smooth so that water runs off without doing injury. Narrow tires cut and grind, burst and plow their way into the road, leaving ruts and holes to catch and hold water. The difference between the two is on a par with the difference between a pick and a pounder. The one tears up, the other consolidates.

The narrow tire is a rut producer. With a load of two thousand pounds each wheel must support five hundr d pounds. Then, a narrow straight line, the width of the tire, must support five hundred pounds. With macadam, gravel and dirt roads the narrow tires commonly used must have a greater bearing, and so, the width of the tire being fixed, the wheel sinks into the road so as to extend the bearing along its circumference. In this manner the rut is commenced. Other narrow wheels follow, deepening the rut and loosening the earth around it. After a rain water lies in the hollow to assist the work of destruction.

Broad tires on the contrary are a benefit rather than a detriment to the road. They do very largely the work of a roller. Instead of a bearing of one and a half or two inches, the width of a narrow tire, this is increased to four, five or more inches. The advantage is at once apparent. The broad tires do not sink at all so deeply into the road as do the narrow, but distribute their weight across the road as well as lengthways. Their broad bases do not slip from protuberances so readily. and the consequent jolting is avoided. They do not push loose stones before them, tearing up the road as do narrow tires, but pass over them, pressing them into the road. Grinding, upheaving and fracturing do not take place as with narrow tires, the road is compacted and compressed, and rendered thereby less pervious to moisture. This means that at all times the road is better while the cost of maintenance is greatly reduced, were the benefit of broad tires understood in Ontario, our unimproved roads would be more cheaply kept in repair.

In descending hills with heavy loads, it is a frequent practice with teamsters to lock one or more wheels. It is evident that the injury resulting to the road, which is very great in any case, is much increased when the road is supported by cutting tires. Hills, even under ordinary traffic, are expensive to maintain, and the width of the tire used with l cked wheels becomes a very important consideration. In nearly every part of the province, this is the case to some extent. But there are districts where hills, many of them steep, are of common occurrence. In such localities the practice of locking wheels is very common, and the necessity for wide tires is of the utmost consequence.

While a width of four or five inches is very satisfactory on farm wagons, the drays and tonnage wagons used for the transportation of excessively heavy freight in towns could reasonably be twice this. England, and all the progressive European countries, have laws regulating the width of tires according to the load vehicles are designed to draw. Sometimes the width is regulated by the size of the axle. In France, a country which presents some of our most perfect models in roadmaking, tires on market wagons range from three to ten inches, the majority being four to six. The gage of the wheels is sometimes set so that the track of the front wheel comes inside the track of the rear wheels. In New York State the turnpike law grants reduced rates of toll to vehicles with broad tires. The Michigan road law provides that users of wide tires are entitled to a rebate of half their road-tax.

That wide tires are not more generally used in this country is to some extent the result of prejudice. People are not accustomed to seeing them, and wide tires appear strange and awkward. When wide tires are generally used, as they certainly will be, the reverse will be the case and narrow tires will be looked upon as an oddity and a very objectionable one. As a means towards overcoming this practice, town and city municipalities could well afford to provide their watering carts, garbage wagons and other vehicles used in corporation work with wide tires.

City and rural municipalities cannot too soon set laws in motion in this regard. Obviously the use of wide tires cannot be made immediately compulsory, without working injustice. Provision could be made. however, that a by-law regulating the matter could come into force after a term of years ; fair warning would, therefore be given and little inconvenience would be felt. Before the time for enforcing the by law had arrived, the use of wide tires would in anticipation, have gradually become more common. The beneficial effect of wider tires would then be apparent to all, and public opinion would demand and sustain the enactment.

The people are competent to judge in this matter, as in others affecting personal and public interests. The great reason that wide tires are not now used

that the public has not had an opportunity to judge of their merits in a practical manner. Further, the users of the road have in the past looked at the matter of draught only. They prefer wide tires on the farm because the fields and lanes are not so cut up by them. The roads, however, have been regarded as public property and the users have not felt a personal interest in their condition.

Acetylene for Municipal Lighting Plants.

The course of an ordinary criminal case, when brought into court, is that the lawyer for the prosecution presents all the facts as they appear to convict the prisoner; while the lawyer for the defence arrays all possible evidence in the most favorable light. It is anticipated that an impartial judge or jury will carefully balance the two classes of evidence, and that thereby a just decision will be reached.

A recent number of *Municipal Journal and Engineer* contains an article by Augustine Davis on "Acetylene for Municipal Lighting Plants," which may be regarded as the case for acetylene. There are weaknesses in Mr. Davis' argument which the prosecution might present less favorably, while the case for coal gas and electric light remains to be presented. Mr. Davis' method of comparing cost, and his assumption that the superiority of acetylene as an illuminant is admitted, are both essential to the conclusion he reaches; but unfortunately both of these admit of qualification. Mr. Davis' views, however, are instructive, but as pointed out, it is the case for acetylene. The article is as follows:

"The municipal official who makes a thorough and unbiased investigation will learn that acetylene gas offers one of the best and cheapest means for town lighting. No one who has compared acetylene light with other illuminants will dispute its marked superiority.

That it is lower in cost in nearly every locality is readily demonstrated by making actual comparisons."

If it is true that acetylene lighting is better and cheaper than any other method of illumination, the sooner the advocate of municipal lighting satisfies himself of the fact, the more quickly he can benefit his constituency by his knowledge.

As to cost, calcium carbide can now be obtained by the ordinary user in a large portion of the United States for $3.75 for 100 pounds, or 3¾ cents per pound. For municipal use in large quantities it can, of course, be purchased for considerably less. One pound of good carbide will produce five feet of acetylene gas, which, in turn, will yield 240 candle power for one hour. Four pounds of carbide would then yield 960 candle power at a cost of 15 cents. Allowing for the reduction in the cost of carbide when bought in quantities for municipal use, it would be perfectly safe to calculate the cost of 1,000 candle power, by use of acetylene, at 15 cents.

It requires five feet of ordinary gas to produce twenty candle power, or 250 feet for 1,000 candle power, which at the low price of $1.00 for 1,000 feet—a rate made only by the largest cities—would cost 25 cents.

The ordinary charge for electricity is one cent per hour for 16 candle power incandescent lamp, and it requires more than sixty two such lamps to produce 1,000 candle power at a cost of over 62 cents.

If such a state of facts does exist, it will be asked why acetylene is not in more general use?

It is in use far more extensively than the ordinary citizen is aware, and its introduction on wrong principles has been so rapid that improper gas generation and the consequent unsatisfactory results are to-day the chief obstacles in its progress. Chemists, from its inception, have warned us that the proper generation of the gas can only be obtained by dropping carbide into water and not by dropping water on to carbide, yet there is one manufacturer who claims to have disposed of 20,000 generators, all of them of the objectional type. Hundreds of other makers have been pushing the same kind of generators, almost invariably styling them as the "only perfect machine," until the clogging of pipes, smoking of burners, stench of over-heated residuum, and the expense caused by the waste from after generation, has created a smudge of discredit about acetylene lighting which requires a little persistent investigation to clear it of unjust criticism.

Something like seven years of general effort has greatly improved the quantity of gas generation, as well as burners and other accessories, and acetylene lighting is now just as practicable and certain as is illumination by any of the long established methods.

Rivals will tell you that it is "dangerous," "expensive," and a "failure," and will in many cases offer to prove it by citing instances where defective apparatus has been employed.

The insurance authorities have an established laboratory for the rigid examination of acetylene apparatus, and that it is safe when passed at the laboratory is backed by the cold-blooded commercial fact that no additional charge is made for insurance because of the installation of such plants.

Unfortunately, all the "safe" generators, from an insurance standpoint, are not by any means ideal from a gas producing view, and it will not do to accept insurance approval alone as a guide in purchasing.

A good town plant must be of the carbide-feed type, operate positively and infallibly, have a sufficient supply of water to absorb the heat of generation, contain all the gas after generation, and should be automatic in operation, not only as to feeding the carbide, but as to water supply and disposal of residuum also.

A good acetylene plant, of say 2,000 light capacity, can be purchased for approximately $2,000. Compare this with the cost of installing an electric plant of the same capacity. Any intelligent laborer can operate an acetylene plant, while it requires high priced experts to run either an electric or water gas plant. The moment the power ceases in an electric plant, that instant the light fails, while with an acetylene plant the light is always "on tap." Acetylene gas having from twelve to fifteen times the illuminating power of water gas, can be conveyed through much smaller pipes and mains, and consequently the cost of piping is much less. It requires no skilled attendance and employs no heat or power. No lighting, while no city is beyond its town is to small too employ this method of capacity.

Its superiority as an illuminant is acknowledged. With cost of installation only a fraction of that of water-gas or electricity, expense of operation merely nominal, and easily adapted to the smallest and largest requirements, the persistent, unprejudical investigator will find in acetylene the most promising factor in solving satisfactorily the problem of municipal illumination.

The Good Roads Train.

The work of the good roads train in Eastern Ontario is proving a revelation to those who have witnessed the working of the graders in shaping the travelled roadway; the crushers in breaking stone; the rollers in consolidating the material and leaving it ready for use—doing in a few days the work which, under the old methods, could only be accomplished in several years. The cost, too, is proving much less than opponents of the movement have prophesied, and the concrete culverts are regarded with admiration.

Sample sections of road have been completed at Gananoque, Lansdowne and Iroquois. Writing to Mr. H. B. Cowan, secretary of the Asssociation, John A. Webster, county councillor of Lansdowne, says:

DEAR SIR,—

Yours requesting my opinion of the work that is being done by the Good Roads Train is at hand, and in reply I might say that I am well pleased with it.

Owing to the recent heavy rains the section at Lansdowne is not yet completed, but as far as it is finished, it is very fine, perfectly smooth and apparently solid. A month ago the township built a stretch nearly adjoining it and the contrast between the two is very great; while people take the muddy side in preference to driving on the stones on the portion built by the township, they can drive at full speed on that made by the train.

As for the concrete culverts, there is no question but that they are fine. On the whole I am well satisfied.

Sincerely yours,

JOHN A. WEBSTER.

Altogether the good roads train promises to accomplish everything that was at first hoped for it. The only trouble which seems likely to arise is through

the various townships trying to insist on too much work being done in their sections. This may make it difficult for the train to make as rapid progress as is desirable.

Prevention of Water Waste.

The question of waste prevention is so complicated with that of the methods of assessing and collecting rates that they must be discussed together in some of their phases. If meters are in use the question of water waste takes care of itself. Each customer is at liberty to waste as much as he is willing to pay for, and if the rates have been fixed properly he will be the only loser. The water department must then look out for the excess of pumpage over consumption, locating and and repairing leaks in mains and public connections which waste undue amounts of water.

If meters are not in general use, several courses of proceedure are open. The first one usually suggested is the introduction of meters, and in many cases this is the proper one, practically as well as theoretically. It is undoubtedly true, however, that occasionally a few large users or wasters of water being placed on meters as exceptional cases, the remainder of the consumption is within reasonable limits, and the saving in cost of pumpage by metering all services is too small to pay the expense of installing the meters, reading and maintaining them. In the case of small plants, the only saving probable upon a reduction of consumption is in the amount of coal used. This is not apt to be proportional to the reduction in pumpage, for, either the pump must be shut down, and kept in readiness for use at any moment, or it must be run at a rate farther below its economical rate, so that it will use more coal per million gallons pumped. When the consumption approaches the limit of the capacity of the smallest pump in a plant, this argument will have much less force. It is not always a certainty, therefore, whether the saving in coal would pay the cost of reading and maintaining meters. Close study of the exact actual condition would be necessary to determine this point definitely.

It will be possible to reduce the cost of pumping quite materially to make a close inspection of the system and stopping waste where found, and to add something to the income by putting meters on the connections of some large users whose cases are not covered by the regular schedule and who are now paying at too low a rate for the quantity of water they are using.

Waste may usually be stopped by a simple notice. The following form is in successful use in Erie, Pa.:

"1. Water takers must not permit their pipes or fixtures to remain in a leaky condition, or waste the city water otherwise, or allow it to be wasted."

"2. Every stop and waste must be readily accessible to the party for whose use it was designed, easy of operation, and provided with a key approved by the department, which shall either be attached to the stop or kept in a place where it will be convenient for use."

"3. Water takers must keep their pipes and fixtures in good repair and protected from frost at their own expense, and will be held responsible for any waste or damage that ensue from defective pipes and fixtures."

"4. For each and every violation of the by-laws, rules and regulations of the water department, the offending party shall, on conviction, be fined not less than $5 or more than $50 for the use of said department. The water commissioners may, also, at their own option, turn off the water from the premises of the party."

On an inspection of premises No....., ... street, occupied by ....., it is found that..... My instructions require me to notify you to have the same placed in proper condition on or before..... next, at which time another inspection of the premises will be made.

....., Inspector.

The character of the provisions of the ordinance quoted in notice will vary accordlng to local needs and opinions. The board of water commissioners should have the privilege of recommending the rules, the council or town board of trustees putting them into the form of an ordinance without power to alter or add, but having power to strike out provisions they consider undesirable. Inspections of premises must be provided for and should be made at irregular intervals at least once a year and wherever waste, willfully or otherwise, is suspected.

An International Good Roads Congress.

The National Good Roads Association of the United States has issued a call for an International Congress for Good Roads, to be held in Buffalo from Sept. 16th to 21st inclusive. Such a convention should, and we trust, will be well attended by representatives from Ontario. Occurring as it is during the Pan-American Exposition, an excellent opportunity is afforded of attending the Congress, while at the same time devoting sufficient time to the present unusual attractions of the Rainbow City. All who are interested in road and street improvements, or who may wish to be interested in the matter, will gain valuable information on the subject from the many experts who will be there, and they will discover the wonderful, enthusiasm which this important movement has aroused.

The National Good Roads Association, in co-operation with the Illinois Central Railroad, has just completed a very successful good roads campaign in the states of Louisiana, Mississippi, Tennesee, Kentucky and Illinois. Over twenty (20) miles of earth, gravel and stone roads were built and several large, enthusiastic conventions held. Thousands of people flocked to see the practical work of the "Good Roads Train" and to participate in the deliberations of these conventions. This work has aroused great interest and enthusiasm throughout the country for better roads, and the Buffalo Congress will further promote this interest.

The subject of Highway Improvement is demanding the best thought and action throughout the nations of the world. The National Association, recognizing the great importance of arousing attention, promoting discussion, stimulating scientific investigation, making practical demonstrations, collecting and disseminating information relating to the best methods of road construction and maintenance, have invited the various general governments of the United States and of the various nations of the world, the governors of the several states of the Union, mayors of all municipalities, presidents of Boards of Trade and Road Associations, and all other societies and bodies working for the improvement of the common roads, to appoint delegates to the Congress.

All sessions of the Congress will be held during the Pan-American Exposition. It is designed to devote a portion of the time included in dates above named to demonstrate the scientific methods of modern road construction by building sections of the various classes of roads including earth, oil, gravel, stone, tar-macadam, vitrified brick, etc. A splendid road train equipped with modern road-making machinery will be on exhibition, and practical road experts and engineers will have charge of the work.

The scope of the deliberations of the Congress will include general discussion and exemplification of the science of road construction and maintenance, together with experimental tests and experience of the several countries of the world and states of the Union, and the solution of the problems of roadmaking. Addresses will be made by prominent statesmen and officials, competent engineers and scientific experts fron the various nations of the world.

The Agricultural and Postal Departments of the various governments, the Agricultural Departments of the several States, the Industrial Divisions of the great railway systems, the National Highway Commission, and Automobile and Bicycle Associations, the manufacturers of all classes of road machinery, vehicle manufacturers, and other interests are invited and solicited to participate in this Congress.

This will be the first International Good Roads Congress ever held. It is designed to have an interchange of knowledge and experience between the Old and the New Worlds on the subject, and thus attract universal attention to road improvement.

Good Roads.

Every few months reports are published concerning exhibitions of road-building machinery or mass meetings to discuss road construction, held under the supervision of U. S. railway companies. It is of no small interest to examine into the reasons which have led one road to appoint a permanent good roads agent, another to tran port over its lines a train-load of machinery with which object lessons in economical road-building are given at various towns, and many companies to offer special rates for transportation of plant for highway improvement. Presumably these corporations are not doing this solely for philanthropic motives, but because they recognize that the high cost of transportation over poor roads, diminishes the farmer's ability to market all but the most valuable part of his produce and his power of purchasing return freight; or, in other words, good roads are a necessity to wealthy farmers, and without wealthy farmers, and many of them, the railway revenues on local business are small.

The census returns for the state of New York show that the decrease in population in the last decade was 2,261 in Wyoming, Livingston, and Alleghany counties. The special train which took the New York members of the American Society of Civil Engineers to the recent convention at Niagara Falls, passed through parts of these counties, and some of the members remarked on the fact that in spite of manifest advantages of soil and climate, farming is gradually decreasing, and lands formerly under cultivation are now going back to brush and weeds. The reasons for this may be complex, but one of the most influential is surely the defective roads, which not only put an additional burden on the cost of teaming, but isolate each farm and increase the difficulty of social intercourse. This latter influence is much greater than is usually recognized, for men, women and children are gregarious animals, and the hermit and recluse are rare.

Moreover the lack of good roads is depriving these countries of a very considerable revenue from tourists and pleasure seekers. Their scenery is beautiful, their climate attractive, but their highways keep out the visitor. Switzerland learned this lesson long ago, and has built up an enormous income from tourists by good roads and good hotels. Western New York has, of course, no Chamounix, Zermatt or Interlaken, but it has more picturesque scenery than that to be found along the Oberalp and Albula Passes from Andermatt to San Moritz. Hosts of tourists take the latter two-day journey who would never think of it if a magnificent highway did not make the long diligence ride as comfortable as the smoothest roadway and the easiest of stages permit. Throughout this entire distance, moreover, there is rarely a farm in sight, the hamlets are very small, and there are only a few villages. It is self-evident that without the high road and its well-kept branches the country would be deserted. If a similar road extended through the three retrograding New York counties, with less expensive but nevertheless good branches to the neighboring villages, it is safe to say that the income from travellers and summer visitors alone would soon pay the cost of maintenance and reconstruction, to say nothing of the increased wealth of the farmers through cheaper transportation.—*Engineering Record.*

Roads in New York State.

The history of the good roads movement in this country would be a record of a hard fight carried out under discouraging conditions at the first, and at the present time crowned with success in a number of the more progressive districts. In 1883, Massachusetts appointed a highway commissioner and adopted a definite system of highway improvement. It was fortunate in being able to secure the services of such eminent men as Thomas C. Mendenhall and Nathaniel S. Shaler. It needs no argument to show that roads can be built in a more intelligent manner under the direction of such men than when they are in charge of the average supervisor. Professor Shaler is the author of one of the best books on highway construction that has yet appeared. In many ways the Massachusetts commission has been of immense service to other sections that have been awakened to the importance of improved highways.

The greatest impetus to the good road movement, however, was given by the enactment of the New Jersey State Aid Law which was passed in 1891. This was an entirely new departure and it was found to work so well in practice that a number of other states, such as Massachusetts, Connecticut, New York and Rhode Island, embodied the principle in their own statutes. Under this law New Jersey has built a magnificent system of roadways which in time will cover the entire state. There have already been built no less than 532.11 miles of roads, towards which the state has contributed the sum of $863,318.55.

Considering its leading position in the sisterhood of states, New York was slow in adopting the State Aid Law. The Higbee-Armstrong law was passed in 1898. So far, the legislature has not been liberal in its appropriations, and, according to the last report of the state engineer and Surveyor Edward A. Bond, only fifty-three and a-half miles of road, located in twelve counties have been built. This, however, is a beginning and the roads have given such unqualified satisfaction to the taxpayers that it can be predicted confidently that highway construction according to the most improved methods will go steadily forward in the Empire State. Surveys and estimates have already been made, or are in progress for eighty roads in twenty-three counties, aggregating 406.46 miles.

Women and Civic Embellishment.

Everywhere women rejoice in neat, tidy, well-kept, ornamental grounds, walks, alleys and streets about their homes. One woman with good taste and energy in this direction will influence a whole city block. A cleanly, well decorated residence property soon stimulates the ambition of a whole street; a model street, an entire ward; a ward in truly elegant and becoming civic attire, a whole city. Cleanliness is expansive and conquering; good taste constantly creates opportunities for its own proper exemplification and expression.

The women of every city are deeply interested in the cleaning, purification and ornamentation of their home towns. They know that the way to clean up is to clean up, and when they undertake such a task to do it thoroughly. Men have the genius of construction, women the genius of ornamentation. To the latter every city government should look, not only for counsel as to how the thorough purification of the territory under its control should be carried out, but for practical participation in that very essential work of public management and genuine public betterment.

Woman's Clubs in many places have this summer pursued with success the work of ward improvement it wisely and generously undertook. This is but an initiative in the great movement of active and general participation in civic cleansing.

What the energetic civic beautifiers of other places can do the women of Chatham can do as well.

Guests cannot fail to be deeply, enduringly, permanently influenced by cleanliness, neatness, ornamentation characterized by good taste rather than gaudiness. Knowing that the city's beautification is due to its own intelligent, active, judicious and purposeful women, they will go home with the greatest respect for us all. They will want to come back again and bring their neighbors with them just to see what the women of this city can do to embellish a city, beautiful as to location and inspiring as to effort. In the hands of our women this city can be made look like the trim lawn of a model mansion. —Chatham *Banner-News*

Amherstburg has been very recently all torn up over a fight between electric light and acetylene gas, and the result of the special election on Tuesday, to fill a vacancy in the town council broke the deadlock and determined the winner in the contest. D. D. Wigle was the acetylene man's candidate, and defeated his opponent by 103 majority.

Question Drawer.

Subscribers are entitled to answers to all Questions submitted, if they pertain to Municipal Matters. It is particularly 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 atten ion will be answered free by post, on receipt of a stamp addressed envelope. All Questions answered will be published unless $1 is enclosed with request for private reply.

Disposal of Bodies of Persons Dying in House of Industry

395—UNDERTAKER.—Section 10 of by-law "county" governing county house of refuge, says sufficient ground shall be set apart for a burial ground, etc., for the burial of such of the inmates that may die whose friends do not claim their bodies for interment. The committee claim that such bodies must be delivered to an inspector of anatomy and that they cannot bury them in a poor-house plot.

1. What is the usual practice for disposal of such bodies at county house of refuge?

2. Which law governs, the county by-law or the provincial law?

3. If the committee decide to do so, can they bury such bodies in plot without putting the machinery of law into operation in respect to unclaimed bodies and Act governing inspector of anatomy?

1. There is only one course that can be legally pursued in disposing of the bodies of persons who die in a county house of industry, which are not claimed by relations or *bona fide* friends within twenty-four hours after death, and that is the course prescribed by sec. 2 of the Ontario Anatomy Act, (R. S. O., 1897, chap. 177). This section provides that such bodies shall be immediately placed under the control of the inspector of anatomy for the locality in which the house of industry at which the death occurs is situated, to be disposed of by him in the manner provided by the Act.

2. The Provincial law.

3. No. We might add that the Act applies only to the bodies of those who immediately before death had been supported in and *by* any public institution —the words "public institution" include, of course, a county house of industry.

Construction of Local Improvements Under Section 678, R. S. O., 1897, Chapter 223.

396—G. G. A.—I enclose a copy of a general by-law passed under section 667 of the Municipal Act, also a copy of a notice published in pursuance of section 669 and 671 (4). It is proposed to levy one-third of the cost of the works on abutting property benefited and remainder on the whole municipality. I was first in doubt as to the necessity of giving any notice of the council's intention to initiate the improvements under section 678 (1), but on reading subsection 2, it seemed to be nece sary to give the notice (under section 671, 4). The court of revision mentioned in the notice was held, but, there being no appeals, it was adjourned to await the completion of the works until the final cost can be apportioned and assessed. The court was perhaps unnecessary except to settle any frontage measurements in dispute.

1. Was the publication of the notice strictly necessary for works initiated under section 678 of the Act?

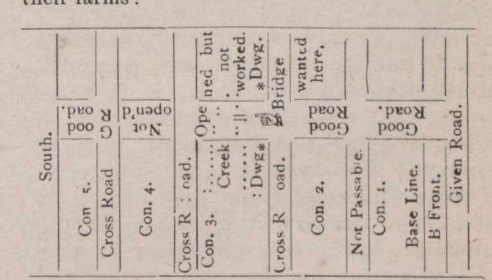
2. Would a three-fourths vote of the members of the council (678, 1) be sufficient to enable the council to proceed with the work and apportion the cost thereof notwithstanding any petition against the same, in other words, could the council have proceeded with the works without giving notice or regarding any petition received?

3. Where a number of diffierent works or improvements are included in one such notice as in this case, would a petition, in general terms, protesting against the works without specifying the several portions objected to, be held sufficient or applicable? (As to two or more works in one notice see Municipal Amendment Act, 1901, section 28.)

The meaning of sec ion 678 is not clear. Some time ago in considering it we came to the conclusion that it was not the intention to give the council power to undertake the works therein mentioned without regard to sections 668 or 669, but after a more careful consideration we are of the opinion that the works mentioned in this section can be initiated by the council. If you will look at sect on 677 you will find that that section gives express power to do the work th rein specified without petition. This section is quite clear. Then follows section 678, the heading of which is "or may pay part of cost of improved sidewalks." The heading of 677 is, "cities and towns may lay plank sidewalks without petition or notice." Taking the heading of 677 and the section itself, it is very simple and easily understood. This is not the case, however, with section 678. The heading says nothing about the power of the council to undertake any particular work. This heading, so far as a heading can be considered in interpreting a statute, simply says that certain councils may pay part of cost of improved sidewalks. Then when you consider the section itself it reads as if the legislature intended simply to give the council power to raise funds in a particular way and to charge part of the cost against the municipality at large, rather than to give the council power to initiate work independently of sections 668 and 669. There is no express power given as is given by section 677. The only words in the whole sec ion which can be referred to as giving the power to undertake works independently of sections 678 and 679 are the words, "Where sidewalks or streets have been or are hereafter made or paved under this section, etc." There is nothing in the section before these words, giving the council power to do the work. These words naturally imply that there are words preceding them which give the power, but, as we have stated, there are no such words. The words above do not expressly give the power They pre-suppose a power already given. The question is, did the legislature intend to give the power to councils to initiate works under it? If it did it can only be said to have done so impliedly, by force of the words beginning with "Where sidewalks, etc." Though the legislature has expressed its intention in a clumsy, inartistic manner, we have come to the conclusion that it intended to give the council power to initiate work under this section, though we did not at first think so. This disposes of the first question which appears to have given you some difficulty. The next question then is, "Is it necessary in a case under the section to give the notice provided by section 671 (4). In answer to that, we say yes. That appears necessary under subsection 2 of section 678. The intention appears to be that the property owners should have the same notice and the same rights as in other cases, to complain of their assessment. In regard to the third question as to whether a petition in general terms against the proposed works, wi hout specifying the several portions objected to, is good or not, we are of the opinion that it is not good; but the safer course for the council in such a case is to treat it as good and not undertake the particular work which they no doubt know, apart from the notice, is the part of the work objected to. This course would be fair, and is the one which ought to be taken.

Council Should Build Bridge or Close Road.

397—A. C.—Enclosed please find a diagram of a certain road allowance which is crossed a number of times by a creek. I have marked the parts of road opened and not opened; there is also a little over a quarter of a mile opened that has never been improved more than clearing off the timber. Then where the creek crosses just south of the dwellings on the top of the hill there has been statute labor performed by the owners of the farms in concession 3. Now one of these is asking that a bridge be built over said creek. The council decided to grant the request on the ground that statute labor had been done on the road and consequently should be kept up. The bridge, if built, would not add to the convenience of any one getting to and from market, but to and from work on their farms, drawing grain, hay, manure, etc. Now the question has been asked, is it legal for the council to build the bridge seeing the want of it does not keep any one from market or other convenience or necessity except that connected with the working of their farms?



Statute labor has been performed on both hills immediately adjoining bridge.

The council should either build the bridge, or, if it is not necessary for the convenience of the public that it should

remain open, close the road. The allowing of the road to remain open is equivalent to a tacit invitation to the public to use it as a highway, and it should be kept in a reasonable condition of safety. If the council neglects or refuses to build the bridge or close the road, it is running a double risk—that is, an indictment may be preferred against it, or, if an accident happens by reason of the absence of the bridge, the municipality would be liable in damages.

Law as to Setting Apart of Hamlets.

398—T.—We have in our municipality a summer resort for campers, etc., containing some ten houses which are occupied for six or eight weeks each year by people who are resident freeholders in other places and are not in this except for the time named. Few of them are rated sufficiently high to have a municipal vote ; there are also some two families who constantly reside there. At a recent council we received a petition signed by one of the resident freeholders asking the council to set aside this summer resort as a hamlet, Municipal Act, chapter 223, section 37, subsections 1, 2, 3, 4.

1. Can a council set apart a summer resort as a hamlet, said summer resort being non-resident for ten months in the year ?

2. Is not the provision in the Act for hamlets intended for places too small for incorporated villages that are peopled by residents ?

3. Are we correct in assuming that the Act does not apply to the case above named ? and are we right if we decline to act on petition ?

1. Sub.-sec. 1 of sec. 37, of the Municipal Act, empowers the council of a township to set apart a hamlet, by by-law, upon the petition of a *majority* of the ratepayers within the area to be set off, *one-half* of whom shall be *resident* ratepayers, that is who have their domiciles or continuous residences within such area. Thus, if there are ten ratepayers within the area proposed to be set apart as a hamlet, at least six of them should sign the petition to the council under this sub-sec., and three of them should be resident ratepayers. We are therefore of opinion that the petition presented to the council in this case is not sufficient for the purpose intended.

2. Not necessarily ; but a sufficient number of persons who are permanent residents within the area, must sign the petition required by the act, before the council can pass the necessary by-law.

3. We are of opinion that under the circumstances you state, your council cannot legally pass a by-law under this section. In any event, and even if a legally sufficient petition were presented to the council it is not *bound* to pass the by-law setting apart the area described, as a hamlet—this is discretionary with the council. The language of the sub-sec. is: "When the residents or the inhabitants are, in the *opinion* of the council of the township, sufficiently near to each other to render the same desirable, the council may, by by-law, etc."

Closing of Road Allowance.

399—READER.—Can a municipal council close a public road that has been travelled for thirty years ? If so, what would be the legal steps to take providing a petition signed by fifteen or more ratepayers was handed in praying that said road be not closed ?

It is discretionary with a municipal council whether it closes any road in the municipality or not. If, under the circumstances of the case, the convenience of the public requires the road to remain open, the council should not interfere. Sec. 637 of the municipal act provides that township councils *may* pass by-laws closing roads within their respective jurisdictions. If, in the exercise of their discretion, a council deems it advisable to pass such a by-law, it cannot do so until all the preliminary steps mentioned in sec. 632 of the act, have been taken. If the road is one that is required by any person or persons for ingress and egress to and from his or their premises, the council cannot pass a by-law closing the road, until the person or persons affected have been compensated and some other convenient road or way of access to his or their premises has been provided. See section 629 of the act.

Payment of Cost of Hospital Tents and Supplies of Necessaries to Inmates.

400—J. C.—1. We have had two cases of small-pox in this municipality. The board of health took immediate action and fitted up hospital tents and engaged medical attendance, supplied all necessaries for same at the expense of the municipality. Can the municipality recover any part or all of the above expenditure from patients if they are worth it ?

2. Would section 93, chapter 248, R. S. O., 1897, apply to the above ? Please explain fully this section.

3. Does section 106, chapter 248, R. S. O., 1897, mean that the municipality should supply hospital tents and medical attendance and all necessaries at the cost of the municipality ?

1. The persons affected with this disease, or their parents or other persons liable for their support, should pay the cost of medical and other attendance furnished and necessaries supplied, if they are financially able to do so, otherwise the municipality will have to pay it.

2. Yes, as explained in our answer to question No. 1.

3. Sec. 106 should be read with sec. 104 of the Act—they make provision for the erection of small-pox hospitals by a municipality (sec. 104) or by the health officers or local board of health, at the cost of the municipality, in case the latter has not already provided one. These sections make no mention of and have no application to the question of paying the cost of medical or other attendance, or necessaries supplied to inmates or patients, but they may be read along with section 93, and the expenses of providing nurses and necessaries must be met in the same way.

Not Entitled to General School Levy.—Dispute as to Purchase of School Site.

401—MAC.—1. We are building a new school ; have had no school yet but purpose having it before year is out. Are we entitled to the $150 granted by council to every school in the corporation, having had no school but are building ?

2. We bought a half acre of ground from a man to build school upon for $35, but when we came to pay him he would not accept the money on the grounds that we took sixty-six feet road allowance, he claiming that road inspector told him that forty feet would do there for a road. Is not sixty-six feet a legal highway ? He wants $5 more for the difference between forty feet and sixty-six feet but I claim sixty-six feet. What shall we do with him ? Suppose it goes to arbitration will we have to pay all expenses or will he have to pay a share ?

1. Sec. 70, of the Public Schools Act, 1901, (sec. 66, of chap. 292, R. S. O., 1897) provides that the $150 shall be levied and collected for each public school in a township, which has been kept open for the whole year exclusive of vacation, and where it has been kept open for *six months or over*, a proportionate part of the said $150, at least, shall be levied and collected by assessment upon the taxable property of the whole township. No provision is made for the levying and collecting and payment to a school section of any part of this $150 unless the school has been kept open at least six months of the year.

2. In regard to the 2nd question asked, it is difficult to answer it because the facts are not stated fully. If there is a written agreement, signed by the owner of the land, he can be compelled to make a deed of the land. But as you do not say whether there was any such agreement, we cannot advise you as to whether he has bound himself to convey or not. We do not understand what the road allowance has to do with the question. He has no interest in it. 66 feet is the usual width of road allowances, but we do not know the width of this particular road allowance. If the original measurements are still in existence there can be no difficulty, because they govern. If there is any difficulty in locating the road by reason of any of the measurements having disappeared, you had better get a surveyor to locate it, so as to be certain that you are not taking part of this man's land on the supposition that it is part of the highway. Again, if it is part of the highway, what right have you to utilize it for a school site, and why should you embarass the question by mixing up the road allowance with the school site, because so far as the road allowance is concerned, this man has no right to it, and you have no right to use it for a school site. If you will look at the question carefully you will see that you have not given the facts necessary to enable us to form any opinion in regard to the matter. There is a rule of law, that where a man buys, say a farm, and actually goes into possession of it, he can in equity compel the vendor to convey the land, but in this case we cannot say whether the trustees are in a position to invoke this principle. We may say, however, that it is not likely they can, because it does not appear and we do not suppose that the trustees can say that they have gone into possession of any definite piece of land separated

from the rest of this man's land by a fence.

Mode or Effecting Loan to Build School-House.

402—T. M.—A board of public school trustees legally borrow $600 to pay for the erection of a school-house. Will it be necessary for township council to issue debentures for this small amount, or can the trustees legally borrow on their note, with the seal of section attached, payable $200 and interest annually, and will the rateable property of the section be liable therefor until notes are paid?

The trustees have plenty of offers for the notes at six per cent. but if debentures are issued for this small amount, the cost and interest will exceed that, so they prefer giving notes if it is legal.

Sub-sec. 10, of sec. 65, of the Public Schools Act, 1901, (sec. 62, chap. 292, R. S. O., 1897) empowers the trustees of all public schools to provide, in the case of rural schools, for the payment of teachers' salaries quarterly, and, if necessary, to borrow on their promissory note under seal of the corporation, at interest not exceeding six per cent., *such moneys as may be required for that purpose*, until the taxes imposed therefor are collected. This is the only provision under the Public Schools Act enabling trustees to borrow on the security of their promissory note—consequently they cannot borrow in this way, the money required to erect a new school-house. The funds required for the latter purpose must be raised through the council of the municipality, either by the issue of debentures pursuant to sub-sec. 1 of sec. 74, (sec. 70, of chap. 292, R. S. O., 1897) or by the levy of the whole amount by one yearly rate, under sub-sec. 1, of sec. 75, (sec. 71, of chap. 292).

Council Cannot Pass By-Law Postponing Return of Statute Labor List.

403—R. M.—Has a township municipal council the right to pass a by-law postponing or delaying the performance of statute labor and the making of the returns therefor later than the first of August, or say until the first of November?

Sub-sec. 1, of sec. 110, of the Assessment Act, as amended by sec. 9, of the Assessment Amendment Act, 1899, provides that overseers of highways shall return lists of persons who have made default in performing their statute labor, to the clerk of the municipality, before the 15th day of August in each year. A municipal council has no power to pass any by-law unauthorized by statute, or which will have the effect of superceding the positive provisions of any statute—therefore your council cannot pass a by-law postponing the date for the return of these lists.

Who Should Build Line Fence

404—A SUBSCRIBER.—If a man sell one acre of land off his farm who is liable for the fencing in the absence of agreement?

In the absence of agreement, if both parcels are occupied, each of the parties must erect and maintain one-half of the fence necessary for a boundary between them, and if the parties cannot agree, either one can compel the other to erect and maintain such half by proceeding under the Line Fences Act.

Neglect to Elect Councillor to Fill Vacancy.

405—SUBSCRIBER.—We find a difficulty in securing the usual number of persons to constitute a full council. Owing to the illness of one member and retirement of another we are compelled to do business with five including mayor. In order to fill vacancy the clerk in the usual way called a meeting for nominations. No nominations were made. Being desirous of having the vacancy filled, what procedure are we now to adopt?

Section 218, of the Municipal Act, was intended to provide for such a contingency as has arisen in your municipality, but it is not clear who has the power to fill the vacancy. If the difficulty which has arisen had occurred at annual election, it is quite clear that the members of last year's council would have right to fill the vacancy. The difficulty in this case is as to whether the words, "new members" applies to the councillors who were elected at the annual election. If they do the present members, or a majority of them, will have the right to fill the vacancy. After the best consideration which we have been able to give the matter, we do not think these words apply to the councils who were elected at the annual election. Suppose an election held, say in August, to elect five members in a council of seven, and four were elected, but the electors neglect or decline to elect the fifth councillor, would the four members elected be regarded as the new members alone, or would these four together with the two members elected at the annual election, be regarded as the new members? We are of the opinion that the four would be regarded as the new members and that they alone would have the right to fill the vacancy. If we are right, then as there are no new members in this case, the members of last year's council have the right to fill the vacancy. To prevent any doubt we would advise that the members of last year's council and the present members agree upon the man to fill the vacancy until the end of the year, taking care that a majority of last year's council as well as a majority of the present members agree upon the man to be appointed.

General School Levy.

406—W. H. B.—I am requested by the municipal council to ask your opinion regarding assessment for school purposes. Section 70 provides for each section $150. We have five sections in the two townships as united. Number one section pays one-third of the whole taxes as there is an unorganized village with a large school population. The other sections are sparsely settled and employ a low priced teacher, which enables them to have money to spare, with the $100 district and provincial poor school grant of from $40 to $90, as recommended by the inspector. The question is, can the clerk levy a school rate for each township in the union separately? I am informed it is being done in a group of sparsely settled townships. In its application here the property in the large section contributes nearly double what they receive, and besides they have a high priced teacher to pay besides building an $800 school house.

Sec. 70 provides that the municipal council of *every* township shall levy and collect by assessment upon the taxable property of the public school supporters of the *whole* township, etc., the sum of $150 at least, for *every* public school which has been kept open the whole year, exclusive of vacations, and where the school has been kept open for six months or over, a proportionate amount of the said $150 at least, shall be levied and collected by assessment upon the taxable property of the whole township. By sub-sec. 3, of sec. 2, of the Act, it is provided that the word "township" shall include unions of townships for municipal purposes, as in your case; consequently the council of the united townships must levy and collect, by assessment, upon the taxable property of all the public school supporters in the two townships forming the union, the aggregate of as many sums of $150 as there are school sections in the two townships—reducing it as the statute requires in case of schools which have been kept open for less than the year and over six months. The fact that one section will pay a larger proportion of this tax than the others, makes no difference.

Holding of Court of Revision Should be Separately Advertised.

407—P. F. S.—Subsection 7 of section 71, chapter 224, Assessment Act say that the clerk of municipalities is to advertise the court of revision, etc. Is it compulsory to advertise in form separately in township paper the holding of such court, or can it be done through the publication of council minutes of meeting previous to such court, if the time, place and everything else is in accordance with the law? I advertised this year's court in five different papers including our municipal paper but right below our town minutes. There was only one man who wanted to make a point out of this, who kicked without doing any harm. I rather understood this subsection to mean just as I acted since it refers to no form as for instance the advertisements re the court of appeal of the voters' list.

We are of opinion that to comply with the provisions of the sub-sec. you quote, the particulars as to the holding of the Court of Revision, enumerated in this sub-sec. should be published as directed, separately from the published minutes of any council meeting or other matter, as an advertisement.

Requisites of By-Law Prohibiting Cattle From Running at Large.

408—S. M.—Can a township pass a by-law prohibiting cattle of town residents from running at large in the township as town has a by-law passed prohibiting cattle from running at large in the town?

The circumstances are that the town folk owning cattle (in consequence of the prohibitory town by-law) drive their cattle into the township to get their pasture free. Some town folk think that because of free pasturing so many years, the owner paying taxes is injuring the towns folk by fencing off their land from continuing in commons.

The council of your township can pass a by-law pursuant to sub-section 2, of section 546, of the Municipal Act, restraining and regulating the running at large of all animals within the limits of the municipality, whether they belong to the town people or otherwise, but we do not think the by-law can be limited to the cattle of residents of the town. See questions 219 and 239—1901.

Township's Liability for Accident.

409—J. K.—We had a pile of stone raised out of road bed and piled there leaving a road around pile last fall. This spring we appointed same commissioners and had them crushed, got a bill for crushing fifty cords and spreading on road. Commissioner reported a small pile of crushed stones to level up road where stones were taken out, and intended to put them on with statute labor, he being pathmaster. All the members of council except one thought they were all spread. On the night of June 22nd, a man who draws milk and travels the road every day was going home drunk, it is said, driving furiously and ran over this little pile. He was found upset thirty yards further on. His face was cut some but he was able to drive to see the doctor next morning. It was found that there were 29 feet clear on one side of pile and eighteen on other. His lawyer sent us a bill for $18.13 for medical attendance (although doctor never went to see him) and $5 for himself. He says he will bring suit for damages. Can he recover anything if it cannot be proved that he was drunk? His lawyer said in presence of our council that he had *only* taken two or three glasses.

Whether this man can recover or not is more a question of fact than of law. The first question is, "Was the road out of repair or defective?" and the second question is, "did such defect cause the accident?" The mere fact that the man was drunk will not bar his right to recover unless his intoxication contributed to the accident. If it can be proved that the drunkeness coupled with the furious driving was the proximate cause of the accident, the municipality is not liable.

Cattle Running at Large—Fencing at Water's Edge of Lake.

410—J. H. C.—1. Does the law allow cattle to run at large in townships in Ontario or is it necessary for township council to pass by-law to allow them to run on the highways, before they can be allowed to run, or is it just opposite to what I am asking?

2. A person owns property in a corner of a township. His farm is bounded on the east by the townline and on the south by the waters of Long Point Bay. His deed calls to the water's edge. He has no fence along the water's edge but extends his line fence along the townline on the east side and out into the water so that the cattle cannot wade around the end to go in on to his property. Has he any right to build a fence beyond the line of his own property, or will he have to build a fence on the line along the water's edge to keep the cattle off his property?

1. By the common law all cattle are permitted to run at large on the public highway and are legally at large on a highway in a municipality, until the council has passed a by-law pursuant to sub-sec. 2, of sec. 546, of the Municipal Act, restraining them from so doing.

2. The waters edge is the boundary of the man's land, and if he builds a fence beyond that point he goes beyond his rights. The public generally have a right to use the water, and if the fence built out into the water interferes with the public user, it is a nuisance. But notwithstanding this, we do not think that any private individual would have the right to interfere with the fence even if built out into the water, by tearing it down unless it occasioned him some special injury in addition to its being a public nuisance.

Payment of Expenses of Persons in Quarantine.

411—T. D. R.—I have read your answer to question No. 378, August number. What are the proper steps to take to collect the expense? Can it be collected the same as taxes and at the same time?

The Public Health Act makes no provision for the collection of these expenses at the same time and in the same manner as ordiary municipal taxes. The amount must be recovered from the parties liable by an ordinary action at law, if they refuse to pay, and are able to do so.

Council's Liability for Cutting Down Highway.

412—J. T. J.—The township council in cutting down and repairing a hill in front of my place have completely destroyed and made impassable my front gate drive entrance. Can I hold the council responsible in any way for damages?

This case appears to come within the principle laid down in re Youmans and the County of Wellington, where the law is thus propounded: the owners of property abutting on a public highway are entitled to compensation from the municipality under the Municipal Act for injury sustained by reason of the municipality having, for the public convenience, raised the highway in such a manner as to cut off the ingress and egress to and from their respective properties abutting on the highway which they had formerly enjoyed and to make a new approach necessary. According to this decision, it appears that where a man's approach to a highway is destroyed by work done on the highway for its improvement so as to require a new approach, he is entitled to compensation to the extent of the damage or injury he has sustained.

Collection of Statute Labor Commutation and Dog-Tax.

413—J. R.—1. A part of a by-law passed in 1893 in the township reads as follows: "And be it further enacted that any person commuting in money for statute labor shall pay the sum of eighty cents per day for each and every day, the said sum to be paid to the roadmaster on or before the first day of performing statute labor." Some claim that in case the money is not paid as per foregoing by-law, the clerk should charge one dollar instead of eighty cents. I cannot see how he can legally do so. Am I right?

2. Can the council legally pass a by-law, charging more than the fixed rate of commutation when the money is not paid to the pathmaster? or, which would amount to the same thing, can a by-law be passed allowing a reduction if rate is paid to the pathmaster?

3. Can the council legally authorize the collector to demand the dog-tax when collecting taxes from parties having dogs in case no dog-tax is charged against the parties on the roll?

1. We entirely agree with your contention.

2. No. The statutes confer no such authority on municipal councils. The only provision for enforcing payment of commutation money by a defaulter is contained in sec. 110 of the Assessment Act, as amended by sec. 6 of the Assessment Amendment Act, 1901, and is as follows: When a resident owner, etc., after notice or demand, makes default in payment of commutation for statute labor, the overseer of highways in whose division he is placed, *shall return him as a defaulter* to the clerk of the municipality before the 15th of August. And the clerk shall in that case, enter the commutation for statute labor, against his name in the Collector's Roll of the current or following year, and the same shall be collected by the collector.

3. No. The collector can be required to collect only such taxes as are entered upon his (collector's) roll.

Council Cannot do This.—Take Proceedings Under D. & W. Act.

414—S. J. H.—1. Court Algoma No. 216, C. O. F., own a one-and-half story hall with stairs running up at back end with railing up the side and around the landing. No one uses these stairs but the Foresters alone. This lot is not fenced; the street runs past the front of hall. It seems that a little girl was playing on these stairs at the back end of hall, and got under the railing some way and fell off. Can the municipal council compel the Foresters to put a tight railing on those stairs?

2. A has land on both sides of B. A is putting in a necessary tile drain which must run through B (natural water course.) Can A compel B to put in a tile drain at his own expense across his own land to connect the drains of A?

1. No.

2. A may take proceedings under the Ditches and Watercourses Act, (R. S. O., 1897, Chap. 285,) to have a drain constructed under the provisions of that Act. The portion of the cost of the making of this drain to be borne and paid by B, will have to be determined by the engineer who makes the award under the Act. We assume that the watercourse referred to is not a natural watercourse in the legal sense of the term.

Liability for Maintenance of Drainage Works.

415—G. E. J.—1. A petition signed by a majority interested asking for the extension of a certain drain was presented to the municipal council. But the clerk in notifying the engineer made a mistake and told him the original drain was to be improved and extended. The engineer came on and made two reports, one for improving and cleaning the original drain, and one for the extension. When the report for the extension was read before the council the majority withdrew as it was too expensive. Now the man, who is the moving spirit in having the drain extended, wants the original drain cleaned and improved although all the rest of those who paid for the drain are opposed to cleaning it. Also the council sent a committeee to examine the drain and find it in a fair state of repair. Perhaps the engineer had the extension in view when he made out his report for cleaning, etc. Now can the ratepayer force the said drain against the wishes of all other ratepayers?

2. And if he can, will the report the engineer made out be legal, as it was made before the said ratepayer asked for the cleaning of the drain ?

1 and 2. In the case of Fewster vs. Raleigh, Mr. Britton, K. C., who was at that time referee under the Drainage Act, decided that the deepening, widening and extending of drains, so as to carry away all the water they were originally designed to carry away, is a work of maintenance and repair within the meaning of the drainage act, and persons injured by neglect to so maintain and repair, are entitled to damages. For the procedure to compel a municipality to repair and maintain a drain see section 73, the Drainage Act.

Assessment of Railway Property—Maintaining of Slaughter House and Keeping Animals in Village—An Uncompleted Drain.

416—J. A. R.—1. The Canada Atlantic Railway runs through our municipality and we have been troubled each year for the last number of years endeavoring to assess their property so as to satisfy them. Will you please let me know if the water tank of the said company is assessable ? The said tank is outside the one-hundred foot right of way but is on a piece of land purchased by the company.

2. Are the tool sheds assessable ?

3. Is their property to be assessed separately or in block ?

4. Can they be assessed on the scrap-iron system ?

5. A owns a slaughter-house on main street in village and persists in slaughtering animals contrary to the rules of the Medical Health Act. Can the council or the Local Board of Health pass a by-law fixing the amount of fine to be imposed on any person violating the said law ?

6. Can the local Board of health of an incorporated village prevent any person from keeping or raising swine, cows, horses, etc. ?

7. A lives on the raise of land. He makes an underground sewer from his cellar and follows the main street about four-hundred feet distance to the lower land and leaves the sewer open in front of B's house about four yards from B's door. Can A be compelled to follow up his sewer to some other point ?

1. Judge Dartnell, late judge of the County of Ontario, in the case of the Grand Trunk Railway Co. vs. Port Perry, (34 C. L. J., p. 239) decided that water tanks and plaftorms are part of the superstructure of a railway and as such not assessable.

2. Yes, these buildings are assessable in the same way as station-houses, in the same manner as other real estate in the municipality, under sub-sec. 2 of sec. 31 of the Assessment Act.

3. The property of a railway company in a municipality should be assessed and valued under three separate heads, namely: (1) the land occupied by the road; (2) the real property (other than the roadway) in actual use and occupation by the company and (3) the vacant land not in actual use by the company. The first two classes should be assessed in the same manner as other real estate in the municipality and the last as if held for farming or gardening purposes. See sec. 31 of the Assessment Act.

4. No.

5. Section 72 of the Public Health Act, (R. S. O., chap. 248) provides that no person can establish the trade of slaughtering animals in a locality, without the consent of the municipal council, under a penalty not exceeding $250 and of a penalty not exceeding $10 for each day on which, after notice in writing by the local board, or an officer thereof, to desist, the offence is continued. See also sections 8 and 9 of the by-law appended as schedule B to the Act. And councils of cities, towns and villages may pass by-laws preventing and regulating the erection or continuance of slaughter-houses, etc. See subsections 3 and 4 of section 586 of the Municipal Act, and they may impose a penalty for the breach of such by-laws under subsection 1 (b) of section 702 of the Municipal Act.

6. Between the 15th of May and the 1st of November in each year, hogs shall be kept in pens seventy feet from any house, with floor free from standing water and regularly cleaned and disinfected. All animals should, however, be kept in such a way as not to create a nuisance, or endanger the health of the community. See rule 7 and 5, 6 and 8, of sec. 14 of the by-law referred to in our answer to question 5 And councils may pass by-laws for preventing or regulating the keeping of cows, goats, pigs and other animals and defining limits within which the same may be kept under. Subsection 7 of section 586 of the Municipal Act.

7. You do not say whether B is injured in any way by reason of the construction of the sewer by A, either by the deposit of water upon and flooding of his land or by the creation of a nuisance at the mouth of the drain. If B is not injured in any way, he has no cause to complain, but, if, on the other hand, B has sustained injury by the flooding of his land by A, he can recover the amount of damage he has sustained from A, if he is good for damages, and restrain him from a continuation of the offence. If a nuisance has been created, it should be abated by the local board of health on complaint made to them. See section 69 of the Act.

Width of Road Allowance.

417—J. B. H.—Deeds in Algoma from Crown Lands Department reserve five per cent. of the lands for roads. On property taken up under the Mining Act, people have squatted, so to speak, and have so encroached on the road with fences that very narrow passages are left at points, some hardly allowing a load of hay to pass. What must be the least width of a road allowance over which there is heavy traffic to accomodate an important lumber firm and the north third of a whole township ? and what course must the council adopt to get this allowance ?

You do not say whether roads have been laid out, opened and established, either by the government or township council, through these lands to the extent of the reservation or a portion of it. So we cannot say whether there is a legally constituted road through these lands at all or not. Section 35 of chapter 225 of R. S. O., 1897, authorizes the councils of townships in Algoma to lay out roads having a width of less than sixty-six feet, subject to the regulations of the Crown Lands Department. If a road has been legally established, the council may either bring an action or prefer an indictment against any person who obstructs it. See Vincent vs. Greenfield, 15 A. R., 56, where Osler, J., says : "There does not appear to be any objection to their maintaining a civil action for this purpose instead of proceeding by indictment though the latter is the more usual course."

Petition Against Local Improvements.

418—McN.—A petition against a proposed local improvement was given to the clerk. Before the time in which such petition could be presented had expired, one of the petitioners asked the clerk for permission to erase his name from the petition. Had the clerk a right to allow him to do so?

Sub-section 3 of section 669 of the Municipal Act, as amended by subsection 2 of section 42, chapter 26, Ont. Stats., 1899, provides that "the number of the owners petitioning against the proposed improvement or work and the value of the real property which they represent, may be ascertained and finally determined in such manner and by such means as are provided by by-law in that behalf, and, after the final determination, *no name shall be removed from the petition* unless by the consent of the judge of the county court."

Unmarried Women Can Vote on Money By-law.

419—A. Y. C.—1. Suppose a man has a daughter, full age of twenty-one, who is on the voters' list to vote at municipal elections. Can she legally vote on a money by-law ?

2. If she is married and her name still on the voters' list can she vote on her maiden name ?

1. Yes, if she possesses the other necessary qualifications required by section 353 of the Municipal Act.

2. No. See sections 353 and 354 and the oath required to be taken under sec. 356 of the Municipal Act.

A Booth on the Highway.

420—J. B.—A public picnic is being held on private grounds. A man sets up a grocery on the road at the entrance to the grounds. can the grocer be prosecuted by the picnic parties, or can the council prosecute him under the statutes, there being no township by law against such obstructions ?

No.

Proceedings of Township Council.

421—H. M.—A motion was passed giving 20c. a rod for wire fences along west side of gravel road and concession A Three councillors for motion, reeve and one councillor against. One councillor was an interested party and asked the reeve to pay him for what fence he had put up. There was no by-law passed and parties who put up the fences expecting 20c per rod now threaten a lawsuit. When application was made for payment the motion was rescinded, three voting for and two against.

1. Should the reeve have signed the checks, the motion being carried?

2. If there is a lawsuit, is the whole council responsible or only those voting to give 20c. per rod?

3. Would the interested councillors seat be voided by his receiving the pay?

4. Should the reeve have told him it required a by-law, he not being in favor of it; and some of them thinking they knew it all, and should a councillor at all times acting independent of the reeve or his advice, not be responsible for his acts, and not depend on the reeve to keep him straight?

1. We assume that these payments were intended to be made pursuant to power given to township councils by sub. sec. 5, of sec. 545 of the Municipal Act. This being the case a by-law should have been passed by the council for the purpose, subject to the provisions of chap. 240, R. S. O., 1897. A resolution is not sufficient to legalize grants of this kind, or to empower the reeve to sign cheques or orders on the treasurer for the amounts.

2. We are of the opinion that there is no legal liability for these payments either on the part of the whole council or individual councillors.

3. Yes. See the latter part of sub-section 1, of sec. 80, of the act. As to proceedings to be taken to compel the vacation of the seat, in case a disqualified person retains it, see sec. 208 of the act.

4. The reeve, being head of the council, should, so far as lies in his power, instruct and guide his council in transacting the business of the municipality. Eve y councillor is not, however, bound to blindly carry out the reeve's ideas on any subject. Each councillor should exercise his own independent judgment and vote and act as he deems best in the interests of his municipality.

Railway Companies Liable for Statute Labor—Payment of Defaulter's Statute Labor.

422—SUBSCRIBER.—1. Are railway companies liable for statute labor taxes in rural districts?

2. A rented a house from B and agreed to pay taxes including commuted statute labor. No statute labor was performed in the division nor statute labor tax collected in 1900. Last winter A moved to another part of the township and refused to pay. Can B be compelled to pay statute labor tax?

1. Yes.

2. B, being the present owner of the property, is liable to the municipality for the amount of the statute labor. Statute labor is chargeable against and collectable out of the land and is not a personal liability of the owner or occupant for the time being. The council has nothing to do with any private agreement that may have been made for the performance of statute labor or payment of commutation therefor, between the owner and his tenant. We are assuming that the overseer of highways and the clerk of the municipality have complied with section 110 of the Assessment Act.

Collection of Taxes on Warehouse.

423—W. E. W.—We have a warehouse standing on the lake shore allowance which has been unoccupied for some years. The owner has not paid the taxes and the council were powerless to sell the building. The said warehouse has now been sold and the purchaser is about to move the building on to his own lot. Can the council follow the building and collect the arrears of taxes?

We gather from your statement of the case that the land upon which the warehouse stands is government or public property—in any event that it does not belong to the owner of the building, and that the owner of the warehouse has the right to remove it, since he has sold it to be removed. The above being the case the warehouse is not such a fixture as to form part of the realty and can be seized and sold for taxes anywhere in the township, if it has not previously been sold by party assessed to some other person, in same manner as other personal property, if the collector's roll for the year for which the taxes are in arrear has not yet been returned to the treasurer by the collector. If this roll has been returned the municipality's only remedy is by ordinary action at law against the party assessed. The arrears cannot be returned against the land on which the warehouse stood, nor can the land be sold in due course to satisfy these arrears.

Rates of Taxation Should be Calculated and Entered on Roll Separately.

424—E. C. W.—In this village the total levy is seventeen mills on the dollar, made up as follows:

County rate	8-10 mills.
Village rate.....	4½ "
High school debenture....	1 "
Public school debenture ..	8-10 "
T. V. mills debenture....	1 2-10 "
Electric Light debenture..	9-10 "
Waterworks debenture..	1 3-10 "
School trustee rate deb. ..	6½ "

The county judge held that section 130 of sub-section 2 was fully complied with by writing in the name and amount of each rate levied, on the first page of the roll, and it would therefore not be necessary that each assessment should be multiplied by each individual rate. Would I be safe in making my collector's roll by simply calculating on each assessment the entire rate of seventeen mills?

We quite agree with the county judge's opinion as to sub-section, 2 of section 130, of the Assessment Act. You cannot legally prepare your collector's roll as you suggest, as such a course would be in direct contravention of the provisions of section 129 of the Act, which requires all the rates you enumerate and all other rates to be calculated and entered in separate columns of the collector's roll.

Authority of J. P., Etc., to Arrest for Breach of By-Law Regulating Public Morals.

425.—SUBSCRIBER.—If a man is cursing and swearing, or using profane or obscene language on the streets or in public, can a J. P. fine on view or can J. P. order arrest and lockup and trial after, or can constable arrest on view? Can same be done for being drunk? What statute and section is power given to act under? When you fine on view, is same as if a regular court or what is procedure and authority? How would this work where there is a P. M.? What constitutes cursing and swearing in public?

A justice of the peace has the right of other peace officers, and may arrest one whom he has just cause to suspect of a felony, or one committing a breach of the peace *in his presence*, but the more usual course is to issue his verbal order or warrant to an officer, instead of making the arrest in person. As to persons swearing or being drunk see section 207 (e) (f) of the Criminal Code, and as to when peace officers may arrest without warrant, see section 552 (2) of the Code. A J. P. cannot fine on view. By section 549 (2) councils may pass by-laws for preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language and other immorality and indecency, and by section 549 (6) for restraining and punishing vagrants, mendicants and persons found drunk or disorderly in any street, highway or public street, etc. By section 7 of chapter 87, R. S. O., 1897, no justice of the peace shall admit to bail, or discharge a prisoner, or adjudicate upon or otherwise act in any case for a town or city where there is a police magistrate, except at the court of general sessions of the peace, or in the case of the illness, absence, or at the request of the police magistrate. This section does not effect the powers of a justice as a peace officer. It prevents him from trying a case where there is a police magistrate. Swearing is to utter or indulge in the use of oaths or profane language. Profane means impious, blasphemous, irreligious or wicked. Most persons understand what is meant by cursing, swearing, or using profane or obscene language better than we can define or explain the meaning of these words.

A Ditch Out of Its Proper Course.

426.—SUBSCRIBER.—1. An owner of a farm fronting on a public road, to benefit his land, diverts a stream by a deep cut along the side of the road. This new run for the water has undermined the roadway and makes it very dangerous to the travelling public. The cut was made, say fifteen years ago, without any consent of the council or any protest by council against it. Can the council now compel the party who had this cut made to fill it up to the original level and allow the water to run in its natural course? Or can council fill it up without being liable to an action by the owner of land benefited by water running in artificial course?

2. In case of corporation losing in an action for damages by an accident at this place, can corporation fall back on the party who diverted the water that undermined the road?

1. We are of opinion that the council cannot compel whoever had this drain or cut constructed to fill it up now—especially since the work appears to have been done with the knowledge and acquiesence of the council. The council can fill in the excavation—in fact, should do so, if, in its present state, it renders the road dangerous for traffic.

2. No.

Dog-Tax Cannot Be Collected in Townships Unless Entered on Collectors' Roll.

427.—J. S.—We have in this township a dog-tax, and the assessor has not got nearly all the dogs on his roll. Will it be lawful for the collector to demand and collect the tax on dogs that are not on the assessment roll, as he makes his rounds collecting?

No. Since these dogs are not entered on the assessment roll, they cannot be placed by the clerk on the collector's roll, and the collector can collect only such sums as are entered on his roll.

An Unauthorized Resolution.

428.—1. TOWNSHIP CLERK.—The following resolution was passed in 1882 by the council of this township: "That the application of A. B. to enclose and occupy that portion of the allowance for road between lots 8 and 9 in the north part of the 7th concession of this township, be granted, until such time as said part of said line be required for the use of this municipality." A. B. now refuses to fence only one-half, and his neighbor has trouble in keeping stock from his premises. Can the council compel A. B. to put up the whole of the fence? or can they take it back, as the road allowance cannot well be made passable?

2. Can the neighbor enclose that part which A. B. refuses to fence, by fencing it in himself?

3. Or what should the council do in the case?

1. The council cannot compel A. B. to fence in this portion of the road allowance. Even if the resolution had been passed pursuant to legal authority (which we do not consider was the case) it did not bind A. B. to fence in the portion of the road allowance to which it related. It simply gave him permission to do so if he felt so inclined. The council can resume possession of the road allowance.

2. No.

3. The council should resume possession of this portion of the road allowance, and, in case they desire to thereafter close up, lease or sell it, they should be careful to proceed in the manner provided by sections 632 and 637 of the Municipal Act.

Assessment of Gas Pipes and Wine in Bulk.

Wine, unless home-made, is not a product of the field. Gas pipes should be assessed according to their value to the owners. Judge Horn, senior Judge of the County of Essex, recently gave judgment to this effect in two special cases. The assessor of Colchester South assessed the United Gas & Oil Co.'s pipes in the township, on the junk system, making the assessment $3,000. The Court of Revision immediately raised the assessment to $27,000, the valuation of the pipes on the basis of a going concern. The company refused to produce evidence before the Judge on the appeal, claiming that the Court of Revision had no right to make the raise until it heard evidence to warrant the move. His Honor dismissed the appeal. In the case of the Girardot Wine Company, which appealed against an assessment of $6,000 on 124,000 gallons of wine, on the ground that the spirit was the product of the farm, and was thus exempt according to the Ontario statute, His Honor pointed out that the clause exempted only the farmers who were responsible for the cultivation of the product. When Earnest Giradot, the president of the company, grew his own grapes there was no assessment on the wine. The company's stock is worth about $48,000. On this amount the Traders' Bank holds warehouse certificates for $39,000, so that only $6,000 worth of the stock is assessable. The statute provides that nothing encumbered to its value shall be assessed. The company will abide by the Judge's decision.

Return to the Ward System Desired.

We take the following from a recent issue of the Barrie *Advance*:

The municipal experiment of abolishing the ward system has been a failure in Barrie. The town council is at present entirely unable to cope with the business of the town. There are only six aldermen, where there should be twelve. An evidence of this is to be found in the fact that the council have neglected numerous works.

Among the many things the people are wanting done is the building of the new wharf. The council do not make a motion regarding it, they are evidently shirking their duty, If the council is too small why do they not admit it?

The feeling in town, we believe, would be to return to the old ward system with twelve men. To do this it is necessary to present a petition signed by 20 per cent. of the ratepayers, asking that the question be submitted at the next elections. Now is the time for the petition to be started, and we hope someone will take it up as early as possible.

An exchange has the following to say in reference to the paying by municipal councils, of physicians' bills for attendance of indigents in a municipality:

"Every now and then we hear of a medical man applying to some municipality for payment of an account incurred by attendance upon an indigent person, or a number of them as the case may be, and councillors are very apt to say nay to these requests, on the ground that the council did not solicit the attendance. That may be regarded as heroic treatment of the doctor, if not of his patient, but is it a fair adjustment of the claim? Suppose a practitioner refused attendance on such people, what would be thought of him? What motives would he be accused of, and judged by? Should he be more harshly criticised than the men who ignore his services, under such circumstances, especially if a life were at stake? Not by any means. Refusal of the necessaries of life in this day and age, would be thought very severe treatment to mete out to any one, if want were brought about by illness. As municipal authorities seldom refuse to pay for food, why not pay for medicine, seeing the one may be as necessary for sustenance as the other?

In the city of Berlin, Germany, the poster nuisance is under regulations which provide that posters and placards shall be affixed on the streets and highways only at such places as the city authorities prescribe. For the privilege of putting up posters at these places a tax of one cent is levied on each poster not exceeding twenty by thirteen inches, and of one-fifth of a cent on each two square inches additional. The plan has something to commend it. It enables the city to exercise control over the posters and at the same time to get some revenue out of it.

Lake Erie is now three and one half feet below the city of Cleveland base of level, the standard from which the city takes measurements of altitude. What is known to engineers as the "city datum," represents the high water mark of the lake in 1838. It cannot be said that the level of the lake is steadily lowering, as some believe, for the level has risen above and gone below the city datum several times since 1838. It is interesting to note that the greatest depths in Lake Erie directly north from Cleveland is 83 feet. The greatest depth in the lake is more than 200 feet, off Long Point.—Cleveland *Leader*.

Bonuses for the purposes and amounts named have been recently passed by the following municipalities:

Town of Orangeville, $5,000 loan to the Dufferin Coffin and Casket Co., and $10,000 to provide the carrying on of the manufacture of biscuits and confectionery.

Town of Forest, $7,000 to enable a Galt manufacturer to establish a carpet factory.

Town of Peterborough, $4,500, to purchase a site for the works of the Canadian Cordage Co.

Village or Elora, $5,000, to purchase and equip a building for an agricultural implement factory and foundry.

Mr. John W. Butterfield, formerly tax collector of Belleville, whose sudden departure from the city on June 1 created a sensation, returned home recently. The deficiency in his accounts, as determined by a special audit, was about $18,000, and a provisional settlement has been effected with the Executive Committee, which will be submitted to the council. Mr. Butterfield has been in Chicago, Ill.

The ratepayers of the town of Mount Forest have passed a by-law, by a large majority, authorizing the purchase by the town of the works and property of the Mount Forest Electric Co.

Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Board of Education of London vs. City of London.

Judgment in action tried at London, brought mainly to compel the municipal council of defendants to levy on the ratepayers $17,000 for alleged purposes of repairs and improvements to school-houses and school property in the city. At the trial the learned judge expressed the opinion that such relief could not be granted. The plaintiffs then abandoned that claim and asked for judgment upon certain questions of law raised on the pleadings and evidence. The plaintiffs submitted to defendants' council two statements of proposed expenses of schools under their charge, the first on April 2, amounting to $121,100.05, for year ending December 31st, and the second on May 21, amounting to $153,089.56, for twelve months next following May 15, the date of the statement, and these amounts are not disputed except as to the item contained in each of "$17,400 repairs and improvements." The defendants are the corporation of the city of London not the municipal council of that corporation. The plaintiffs are the Board of Education for the same city, and, under section 10, Public Schools Act, and section 4, High Schools Act, have powers of both public and high school trustees, and it is within their power and their duty to repair and keep in order the school-house, fences and other school property, section 62 s. s. 4, section 15 s.s. 2 of those Acts ; to submit an estimate of expenses for next twelve months, section 62 s. s. 9, Public Schools Act ; to apply for money for maintenance and permanent improvements not exceeding $500. under section s. s. 5, High Schools Act The council shall levy, etc., by section 97 (1) of Public Schools Act, and shall levy not exceeding $500 in any one year, etc., by section 33 (1) of High Schools Act. The plaintiffs had been requested by defendants' council to submit their "estimates of their probable receipts and expenditures for the current year, 1900," to the council by March 19. Held, that neither estimate was furnished within the time fixed by the council, and the first estimate was not, as both acts require, for twelve months next following the date of application, nor was either of them in respect of this item such an "estimate" as defendants' council had a right to require, and the plaintiffs were bound to submit under the Public Schools Act. The use of the word "improvement" makes the item more objectionable, as it is of wide import and includes things not authorized by the act to be undertaken without the consent of the ratepayers, and the limit of $500 for "permanent improvements" shows that that is the utmost the board could ask for without such consent. See School Trustees and Sandwich, 23 U. C. R., 639, and other cases as to meaning of the word "estimate," and also sections 277 (1) (a) and (8) 404, 405, 408, 435 (4) and 593 of the Municipal Act. No such "estimate was given, and, though the plaintiffs are an independent corporation, and when acting in good faith and within their powers, in no way subject to the control of the Municipal council, yet the latter has the right and it is also its duty, to take some care that it is not made the instrument by which any excess of the powers of the board is given effect to, by levying for them money which the law does not authorize them to exact, and any ratepayer has this right. In this case, the sum usually required for repairs was suddenly increased from between $2,100 and $2,500 to $17,400, and the council were right in asking for a real estimate, and the board wrong in refusing to give one ; but any question of waiver is not determined because it depends on facts, evidence of which was not given, though, if given, they would not affect the result. Action dismissed with costs.

Re Education Department Act and Separate Schools Act.

Judgment upon the following questions submitted by the Minister for the opinion of the court.—(1) Does property which was owned by a separate school supporter, and so assessed, remain liable for rates for the support of separate schools or separate school libraries or for the erection of any separate school-house imposed under by-laws passed before the time at which the separate school supporter has withdrawn his support from the separate school? (2) If the property does not remain liable in the case mentioned in the preceding question, is the person who has withdrawn his support personally liable? Held, that the first question is to be considered with reference to sec. 61 rather than sec. 47 of the Separate Schools Act, R. S. O., chap. 294. The rate to be levied under a by-law does not form a continuing lien on the property of the separate school supporter at the time when a loan is effected. He may sell, and if not the owner at the time of the yearly assessment, no rate can be imposed in respect of the property. Under section 47 the supporter is relieved, after notice withdrawing his support, as to future rates, but is not exempt as to any rate imposed before withdrawal. In case of rates under section 61, he cannot relieve himself by notice of withdrawal, but remains liable during the currency of the by-law unless he ceases to be resident within the particular section within which the separate school is situate. The first question is, therefore, answered as follows: Property which was owned by a separate school supporter and so assessed for rates imposed under by-laws passed before the time when the supporter has withdrawn, does not remain liable for such rates in the future, unless the property is still owned by him at the time of each assessment, and he resides in the section. But question 2 must be answered as follows: The attempt to withdraw from payments to be made under a by-law under section 61 is nugatory, and the ratepayer who was such when the loan was affected, remains liable for future assessments to the extent of the rateable property he possesses so long as he is resident within the school district.

Lamphier vs. Stafford.

Judgment in action tried at Napanee brought to recover damages for trespass to land in the township of Richmond. The defendant justified the trespass because entry was made under an award by the engineer of the township pursuant to the Ditches and Watercourses Act. Held, that the award and proceedings leading thereto did not comply with the provisions of the Act in the following respects: (1) the work in question is not one of construction within section 33. (2) The ditch on the plaintiff's land does not appear to have any connection with the general scheme, the principal element in which is the main ditch on the boundary road 28 chains distant, nor is it in aid of the person who filed the declaration of ownership and set the proceedings in motion. (3) The notices under section 14 were not given in time. (4) The formalities, e c., required by section 16, were not observed. The award was not made within thirty days. (5) The ditch on the plaintiff's land was not continued to a "sufficient outlet" (section 5) for a definition of which see R. S. O., chapter 226, section 2, subsection 11. Though some of the above provisions are merely directory, particularly so to times and notices, and may be waived (Maisonneuve vs. Roxborough, 30, O. R., 127), yet here the fact is that the plaintiff, who attended the meeting, left it under the impression that the engineer had come to the conclusion that the ditch would have to pass through more than seven original lots (section 5, 1), and that these proceedings were at an end, and she had no opportunity therefore to object, nor to appeal under section 22 and section 24, cannot be held to cover all the defects shown to exist here. The preliminaries under section 28 as to inspection by engineer, etc., were not complied with. It was probably rather a case of enforcing maintenance under section 35 than of letting work on non-compliance with award under section 28, because there was nothing under this award to be done by plaintiff, and, if so, the proper steps were not taken under section 35, and defendant was in any

point of view a trespasser, and section 17 cannot help him. There is both an excess of jurisdiction and an undoubted disregard for personal rights, justifying the interference of the court; Stephens vs. Moore, 25, O. R., at page 205. Plaintiff may amend as to the invalidity of award if desired. Judgment for plaintiff for $5 damages, and awarding an injunction with full costs of action and motion on High Court scale. Thirty days' stay.

Midland Loan & Savings Co. v. Town of Port Hope.

Judgment on appeal by defendants from judgment of the junior judge of the counties of Northumberland and Durham, in action to recover $302 alleged to have been improperly levied by defendants in respect of plaintiffs' income tax. The plaintiffs were assessed in respect of income at $20,000 for the year 1899, and this assessment was confirmed by the Court of Revision, and again by the county court, the latter holding that it had been agreed between the parties that the assessment should remain at $20,000 for five years. In this action it was held that although the County Judge had jurisdiction to confirm the assessment, notwithstanding the enactment of sec. 8, of the Supplementary Revenue Act, 1899, (62 Vict., 2, O., ch. 8), and that his decision could not be reviewed in this action, yet the assessment is one thing and the collection of taxes another. Upon the confirmation of the assessment the collection of the taxes follows in due course under the methods provided by the Assessment Act, but by section 8 of the Revenue Act, not only is assessment forbidden, but it is made illegal to levy the tax upon income derived from moneys invested, as in this case, outside the particular municipality making the assessment, and this must be deemed a repeal of so much of the Assessment Act as is inconsistent with it, and the prohibition in sec. 8 may well be deemed to meet the cases of assessments made earlier in the year 1899 than the first day of April, on which date the Revenue Act came into force. Held, assuming it to be open to the company to go behind the assessment roll to show want of jurisdiction, that the senior Judge, in confirming the assessment, had jurisdiction to and did determine the amount of the income for which the company were properly assessable, and that what he did did not amount to more than an error in determining the amount of the income properly assessable, that is derived from sources other than those enumerated in sec. 8, and therefore the hypothesis upon which the junior Judge proceeded fails because upon it no tax has been levied on income which the corporation is forbidden to levy a tax on. The court do not express any opinion as to the meaning of the words, "or tax levied," found in the said section. Appeal allowed with costs, and action dismissed with costs.

Ellis vs. Township of Derby.

Judgment in action for the death of the plaintiff's husband by reason of the alleged non-repair of a highway, tried without a jury at Owen Sound. Held, on the evidence and a view of the locus, that the defendant's road at the place where the accident which resulted in the death of the plaintiff's husband, James S. Ellis, happened, was negligently out of repair in the respects set forth in the statement of claim; that such actionable negligence of defendant's was the cause of the accident and injury, and that the accident was not caused by any negligence or contributory negligence of the deceased. Judgment for plaintiff, with damages assessed at $300. $275 for the plaintiff and $25 for the daughter of the deceased, and full costs. Stay of proceedings until 20th September.

Re Martin and Township of Moulton.

Judgment on appeal by W. J. Martin from order of Boyd, C., dismissing motion to quash by-law 380 for closing part of the allowance for road lying between Yonge street and the Wainfleet townline. The Canadian Southern Railway company's track crosses diagonally the appellant's land, dividing it into two parts and there is a farm crossing between them. The part of the lot lying north of the track has not any direct means of access to any highway except the road closed by the by-law. The objections to the by-law are (1) that the road which it purports to stop up is one which the council had no authority to close, unless as a condition precedent to the closing of it there was provided for the use of the appellant another convenient road, or means of access to his lands, and such has not been provided; sec. 629, R. S. O., chap. 223, and (2) that notices required by sub-sec. 1 (a) of sec. 632, of intention to pass the by-law had not been given. Held, applying the test laid down in re McArthur and Township of Southwold, 3 A. R. 295, viz.: "If there is an existing road adjoining the owner's land which would have satisfied the requirements of the law if furnished or provided for the use of such owner in lieu of the highway being closed, then the case is not within the 504th (629th) section;" that the piece of land in question had not adjoining it a road, merely because by means of the farm crossing, access could be had from it to the highway adjoining the other part of the lot; the word "lands" in the section means each lot or part of lot, and they must be contiguous, and where divided, as in this case, each is "lands" within the meaning of the word in the section, and the mere existence of the right of crossing the track—at most an easement—from one parcel to the other, does not alter the case. Allowing the appeal on this ground it becomes unnecessary to consider the second objection. Appeal allowed with costs and by-law quashed with costs.

Thompson vs. Town of Sandwich.

Judgment on appeal by defendants from judgment of County Court of Essex, in favor of plaintiff, in an action by a contractor and builder, for damages sustained owing to alleged improper condition of a dock or wharf, in the town of Sandwich, upon which defendants collect harbor dues. The plaintiff unloaded 34,000 bricks on the wharf, and almost immediately afterwards it broke and the bricks fell into the river and were nearly all lost, and plaintiff alleged that the wharf at the time of the accident was in an unsafe condition of which defendants had notice, and that it had been negligently constructed. Counter claim for negligent and improper user of and injury to the dock. Held, that it would have been sufficient to fasten liability on defendants to show that the dock in question was, where it was in such a position as invited any vessel owner desiring to unload a cargo to do so, if prepared to pay the dock charges which the statute, sec. 562, R. S. O., chap. 223, and by-law passed thereunder, gave the defendants authority to levy: Sweeny vs. Port Burwell Co., 19 C. P., at p. 380; Webb, vs. Port Bruce Co., 19 U. C. R., 615; Mersey Docks vs. Gibbs, L. R., 1 H. L., at pp. 110, 118. But in addition to the implied invitation to unload there was an express contract between the plaintiff and defendants, represented by J. Boismier, the Chairman of the dock committee, for the unloading of the cargo of bricks, which were unloaded and placed in the manner usually adopted at public docks. Appeal dismissed with costs.

Homewood vs. City of Hamilton.

Judgment on appeal by plaintiff from judgment of Rose, J., at the trial at Hamilton, dismissing the action, which was brougt to recover damages for injuries sustained by plaintiff by falling into an open area in a sidewalk, in the city of Hamilton, just in front of a tavern, the area being open for the purpose of receiving kegs of beer. By section 639 of the Municipal Act, there is the right to have an opening in the sidewalk. The plaintiff is a man whose sight is defective. At each end of the opening a keg was placed as a sort of a guard or warning. The plaintiff stubbed his toe against the doorstep near the street and then fell into the hole. The plaintiff contended that the opening was not properly guarded. The defendants asked, in the event of the plaintiff's appeal being allowed, for judgment over against the third party, the owner of the tavern, and for relief as to costs. Held, that the plaintiff is entitled to recover. A person may walk or drive in the darkness of the night on the sidewalks or streets, relying upon the belief that the corporation has performed its duty and that the street or walk is in a safe condition. He walks by faith justified by law, and if his faith is unfounded and he suffers injury, the party in fault

must respond in damages. So one whose sight is dimmed by age or a near-sighted person is entitled to the same rights: Davenport vs. Ruckman, 37 N. Y., 568; Smith vs. Wildes, 143 Mass., 556. The proximate cause of the injury here was the leaving of the area without sufficient protection, and if, instead of stubbing his toe, plaintiff had slipped on a banana peel or been jostled, the result, owing to the insufficient protection, would have been the same. The plaintiff was in the constant habit of walking through the streets of Hamilton; he knew the locality in question well, and having regard to the fact that, although he would have fallen from stubbing his toe, he would not have fallen into the opening, but for the negligence in leaving the area without a guard, it is impossible to conceive how contributory negligence can be imputed to him. As there is a natural presumption that everyone will act with due care, it cannot be imputed to plaintiff as negligence that he did not contemplate culpable negligence on the part of defendant. Appeal allowed, and, pursuant to agreement between the parties as to amount, judgment is to be entered for plaintiff for $250 with costs against defendant corporation, who are to have judgment for the total amount together with that of their own costs occasioned by defending the action, over against the third party, Hughes.

Town of Whitby v. G. T. R. Company.

Judgment on appeal by defendants from judgment of Boyd, C., in favor of plaintiff in action for damages upon a bond in breach of an alleged agreement entered into between the Whitby & Port Perry R. W. Co. and plaintiffs, whereby the company agreed that certain of their work-shops should be maintained at Whitby. The action is upon a bond given by the directors against a breach of the agreement The Whitby & Port Perry Railway Co. was consolidated as the Midland Railway Company of Canada, by 45 Vict., ch. 67, and defendants have since acquired the consolidated company. Held, that the Whitby, Etc., R. W. Co. had no express or implied power under its act of incorporation, 31 Vict., chap. 42, to make the agreement sought to be enforced, and that it was not validated or confirmed by section 37 of 45 Vict., ch. 67, providing that "the workshops now existing at the Town of Whitby on the Whitby section, shall not be removed by the consolidated company without the cons nt of the council of the corporation of the town of Whitby," but that this provision must be looked at as an independent statutory provision; the plaintiffs' claim therefore, to recover upon the agreement, must fail; but as it may turn out that they have a right to a remedy in damages, upon the prohibition contained in section 37, final judgment should be reserved to enable plaintiffs to apply on notice to defendants, for leave to amend by claiming a remedy against them by virtue of such prohibition, and to argue the question of liability under it, and the question of damages. Order accordingly.

Township of Beckwith v. McNeeley.

Judgment in action tried without a jury at Perth. Action to recover possession of such parts of lot 14, in the 11th concession of the township of Beck with, as formed part of the travelled road leading from the village of Franktown to the town of Carleton Place, and to compel the defendant to remove therefrom the fences causing an obstruction to the highway. The defendant denied that the lands described formed any part of a public highway, and pleaded the statute of limitations. Held, that there was sufficient evidence of dedication and acceptance by the township, of a road about forty feet in width, and no action was taken to increase the width until 1887 and 1888, when, upon petitions, by-laws were passed by the township council for widening the road from the defendant's land, but no petition had been presented asking that the highway through lot 14 should be widened, and no steps had been taken by the council for expropriating the defendant's land to increase the width of the highway beyond what it had been for more than 60 years. The claim for possession is not maintainable, and the obstructions were removed by the defendant before action. Action dismissed with costs.

Rex., ex rel: Walton vs. Freeborn.

Judgment on appeal by defendants from order of district judge of District of Parry Sound, setting aside the election of and unseating defendants Jenkins and Harrison as municipal councillors and defendant Freeborn as a reeve of the township of Chapman, and directing a new election. When the application was made to institute proceedings there was laid before the judge not only the affidavit of the relator setting forth the ground of objection, but the recognizance, with affidavits of justification and two sureties. These were filed 9th February, 1901, and the judge granted the fiat permitting notice to be served under section 220, R. S. O., chapter 223, but he did not mark the recognizance or fiat with the words "recognizance allowed" until the 28th February, on which day the motion was hea d. Held, that there is nothing in the statute leading to the conclusion that his so doing is ultra vires. On the contrary when the recognizance has been entered into by the relator and his bail or sureties with statutory affidavit of justification, the security is completed, and it is his duty to allow it as sufficient; section 220, Reg. vs. Farmer, 14 P. R.; 463. The security, therefore, in this case was sufficient when the fiat was given, and the declaration in writing that it was so may be made at any time objection is raised. This whole interlocutory procedure is within the discretionary jurisdiction of the judge, and is not a subject of appeal. Held, also upon the merits after a full analysis of the evidence as to all that took place, that the decision below is unimpeachable, and the judgment directing an election to be held should be and is affirmed with costs.

Township of Elizabethtown v. Township of Augusta.

Judgment on appeal by plaintiffs from judgment of Street, J., in action brought to recover a proportionate part of the costs of the removal, in the year 1887, of an obstruction to Mud Creek (which runs through both townships), known as Bellamy's mill dam. The trial Judge held that all that was done by plaintiffs was the purchase and removal of the dam, which was situate wholly within the limits of the township of Augusta, and this being so he was bound by West Nissouri v. Dorchester, 14 O.R. at p. 298, to hold that a scheme of that kind was not within the provisions of section 570, of the Municipal Act of 1893, as amended by 49 Vict. (O.) ch. 37, sec. 20, and 50 Vict. (O.) ch. 29, sec. 54; that to hold otherwise would empower one inhabitant of Elizabethtown to have petitioned and procured the draining of the whole township of Augusta; that what the act intended was that where the lands to be drained were in one township the work might be done and the lands in an adjoining township, incidentally benefitted, charged with part of the cost. The court divided in its opinion. Per Lister, J. A., Osler, J. A., concurring:—The right to recover depends upon whether there was a proper assessment within the meaning of the Consolidated Municipal Act, 1883, in force at the time. There was no assessment by the engineer within the meaning of section 570, whose duties are correctly defined by Street, J., in Robertson v. Easthope, 15 O. R. at p. 431, and sec. 580 does not give validity to the so-called assessment. In the result, appeal dismissed with costs.

Luton vs. Township of Yarmouth.

Judgment in action tried at St. Thomas brought to recover damages for injuries sustained by plaintiff, who, when driving a team of horses down "Luton Hill," on the Edgeware road, was thrown out owing to the highway being, as alleged, out of repair. The wagon struck a stone, which caused the left wheels to slide into a wash-out, and the horses ran away, causing the injury. Held, distinguishing Atkinson vs. Chatham, 29 O. R., 518, sub nom., Bell Telephone Co. vs. Chatham, 31 S. C. R. 61, that the causa causans was not the running away of the horses, but the inefficient state of highway. See Hill vs. New River Co., 9 B. & S. 303; Sherwood vs. Hamilton, 37 U. C. R. 410; Towns vs. Whitby, 35 U. C. R. 195. Judgment for plaintiff for $1,750 and costs.