The Municipal World

PUBLISHED MONTHLY IN THE INTERESTS OF THE MUNICIPAL INSTITUTIONS OF ONTARIO

Vol. 9. No. 8. ST. THOMAS, ONTARIO, AUGUST, 1899. Whole No. 104

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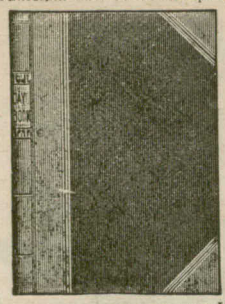

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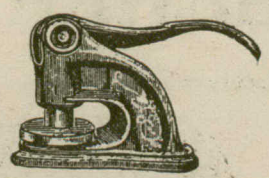

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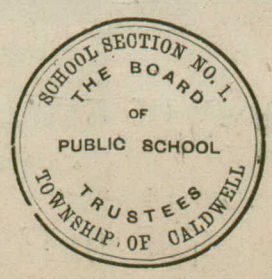

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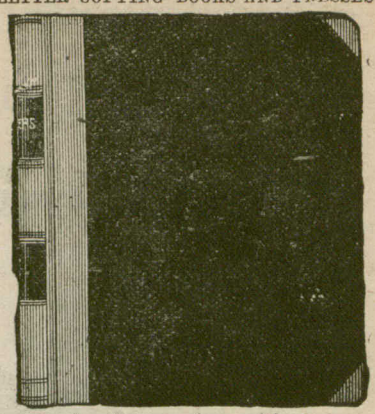

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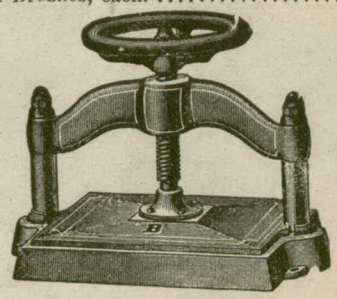

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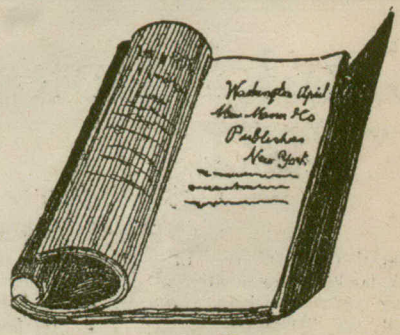

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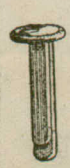

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THE MUNICIPAL WORLD

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

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CONTENTS

Calendar for August and September, 1899.

Legal, Educational, Municipal and Other Appointments.

AUGUST.

1. Last day for decisions by court in complaints of municipalities respecting equalization.—Assessment Act, section 88, (4 and 7.)
Notice by Trustees to Municipal Councils respecting indigent children due.—Public School Act, section 62, (8); Separate School Act, section 28, (13).
Estimates from School Boards to Municipal Councils for assessment for school purposes due.—High School Act section 15 (5); Public School Act, section 62, (9); Separate School Act, section 28, (9); section 33, (5); section 58.
High School Trustees to certify to County Treasurer the amount collected from county pupils.—High School Act, section 15, (9).
High School Trustees to petition Council for assessment for permanent improvement.—High School Act, section 34.
5. Make returns of deaths by contagious diseases registered during July. R. S. O., C. 44, s. 11 (4).
14. Last day for County Clerk to certify to Clerks of local municipalities amount of County Rate.—Assessment Act, section 94.
21. Rural, Public and Seperate Schools open.—Public Schools Act, section 91 (1); Separate Schools Act, section 81 (1).

SEPTEMBER.

1. High Schools open first term.—High Schools Act, section 42. Public and Separate Schools in cities, towns and incorporated villages open.—Public Schools Act, section 91 (2); Seperate School Act, section 81 (2).
2. County Model Schools open.
5. Labor Day.
15. County selectors of Jurors meet.—Jurors Act, section 13.
Last day for County Treasurers to return to local clerks amount of arrears due in respect of non-resident lands which have become occupied. Assessment Act, section 155 (2).
20. Clerk of the peace to give notice to Municipal Clerks of number of Jurymen required from the municipality.—Jurous Act, section 16.

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The Municipal World

PUBLISHED MONTHLY

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

E. W. McKAY, EDITOR,

A. W. CAMPBELL, C. E. } Associate
J. M. GLENN, LL.B. } Editors

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ST. THOMAS, AUGUST 1, 1899.

The late outbreak of smallpox in the township of Walford cost $1150. The county council of Leeds and Grenville granted $400 to assist the township.

* * *

The valuation of the property of Telephone and Telegraph Companies for assessment purposes would be simplified if assessors would proceed under the provisions of section 47 of the Assessment Act and require the companies to furnish a written statement of property liable to assessment.

* * *

Henry Oaten, ex-clerk and treasurer of Gravenhurst, has had his trial, and after pleading guilty to the charge of embezzling town funds, has been sentenced to serve three years in the Kingston penitentiary. Considering all the attendant circumstances, the sentence is an extremely heavy one. Oaten was not a criminal in the ordinary sense. He erred, it is true, but who has not. Instead of skipping out and trying to evade the punishment of his crime, he manfully faced the people, offered to strip himself of every dollar he possessed, and of all his friends could raise, and promised to make up what was lacking. It is needless to say that the people who permitted him to starve or steal, refused to accept his offer of compromise. They will doubtless claim that they would be committing another crime by compromising a felony in allowing Mr. Oaten to pay off part of his defalcation and escape punishment; but supposing Oaten had been able to restore all the money misappropriated, there would have been no crime to punish. It is a sad thing to see a man who has occupied so prominent a position in the community as Mr. Oaten, sent to the penitentiary as a common felon. The only thing now which can possibly be done is to petition the government for a reduction of the sentence.—*North Star*, Parry Sound.

Anderdon vs. Burns.

REFEREE MARCON'S REPORT.

Amherstburg *Echo*: This action, which is one of considerable importance to the ratepayers of the township of Anderdon in particular and to the county in general, was commenced by the plaintiff to recover from the ex-township collector Burns the sum of $388.66, the amount of an alleged shortage as found by a special auditor, Mr. Reaume, upon examination of ex-treasurer McCarthy's books. The case came on for hearing before Mr. Justice Rose at the non-jury sittings in the Autumn of 1898. Ex-treasurer McCarthy was added as a defendant and the trial of the action was postponed. The plaintiff's claim was amended by asking the same relief against McCarthy as had originally been claimed from Burns. The matter came up again before Mr. Justice Street and an order was made whereby the matter was referred to F. E. Marcon, Esq., as referee, to ascertain and report upon the facts, the question of costs being reserved for hearing by the Court. The following is the report of the referee:

"Pursuant to the order of reference made herein by his Lordship, Mr. Justice Street, and dated the 22nd day of March, 1899. Upon hearing the evidence adduced by all parties and upon hearing counsel for all parties, I find there is due from the defendant McCarthy to the plaintiffs the sum of $388.66 with interest at 6% per annum from Dec. 10th, 1897. The evidence of Oliver Reaume and Henry Odette fully sustained plaintiff's claim to this sum and stands uncontradicted. In regard to the counter claims as for the sum of $71.96 the defence or defendant, Burns, as shown by his pleadings, admits that he paid this sum by mistake and inadvertence by reason of an error in certain additions. I find that this amount went into the hands of the treasurer (McCarthy) and I also find that the plaintiffs should not repay it, and this mistake was not as to a fact. The other portion of the counter claims I find should also be dismissed as against the plaintiff, and these two items, the sums $71.98 and $286 should be repaid defendant Burns by the defendant McCarthy, this money having been received by him through his daughter, Miss McCarthy. And I further report I have not placed any reliance in Miss McCarthy's evidence, she having falsified the books and destroyed receipts, cheques and other documentary evidence. The above cited case also applies in this instance. As to the question of costs, I think, under all cirumstances, the costs of this action, and of this reference, should be borne and paid by the defendant McCarthy, because the original action was brought against Burns for the $388.66, and it was only on the examination of Miss McCarthy, by order, that it was found that McCarthy, ex-treasurer, should be and was added as a party defendant. And I further report that the evidence of Mr. Neff, expert accountant, was of a material and great assistance to me in coming to the above findings, and would suggest that Mr. Burns' costs of obtaining Mr. Neff's service be allowed. And any of the defendant Burns' counter claim to obtain the above result I have allowed. Stillwell vs. Toronto 20 Ont. All of which is respectfully submitted." F. E. MARCON, Referee.

Municipal Audit in England.

In concluding a valuable treatise on English Local Government, Dr. Blake Odgers offers the following suggestions:

The accounts of all our local bodies should be audited by the district auditors of the Local Government Board. I have no doubt that the elective auditors honestly try to do their duty. But they are often personal friends of the leading members of the vestry or council whose accounts they are appointed to audit; they have had, as a rule, no professional training as auditors, and have no legal knowledge to enable them to decide which items of expenditure are permissible and which are not.

Further restrictions should be placed on the power of local authorities to apply to Parliament for borrowing powers behind the back of the Local Government Board.

Every local authority should prepare and publish an annual budget—a detailed estimate of its probable income, and its probable expenditure for the coming year. At the close of the year it should prepare and publish a detailed account of the actual expenditure of the year. This is done, I know, in some cases, but not in all. Every ratepayer should be able at any reasonable time, to obtain a copy of both statements without difficulty. And the accounts should be stated clearly in a simple form that will be readily intelligible to those who provide the money which the local authority spends.

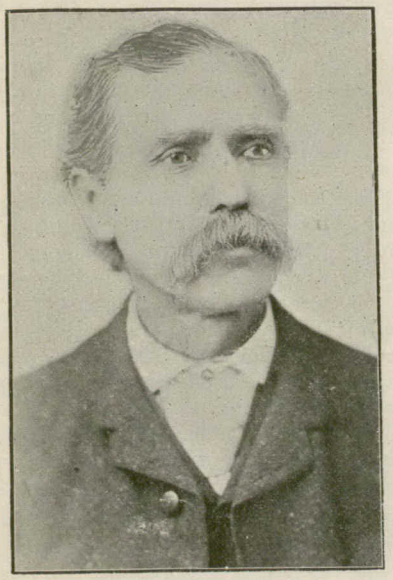
The author attaches most importance, perhaps, to the independent official audit which is now only applied to the district councils. Some of the larger municipalities, however, engage professional auditors who are as independent and as competent as the Local Government officials.

Re Raymond and City of Brantford.—Motion for a mandamus to compel the city corporation and clerk to hold an election for the office of mayor. The applicant was elected mayor in January last, and recently sent in his resignation, having been appointed postmaster of the City of Brantford. The resignation was in writing, and the document contained a proviso that it should not take effect until the following day. This was accepted by the council on the day on which it was offered. It was, for the corporation and clerk, contended that the document was not a resignation. but only a notice of intention to resign. Held, that it was a sufficient operative resignation. Order made for a mandamus as asked without costs.

Municipal Officers of Ontario.

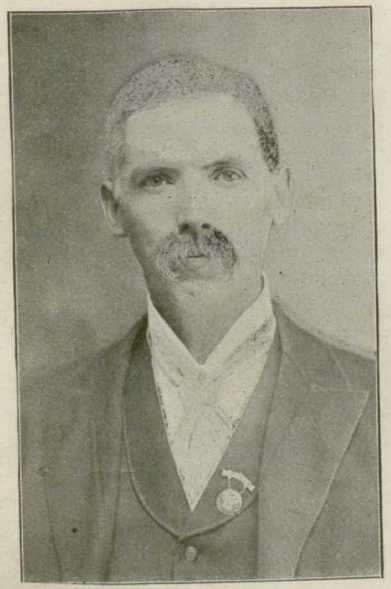
Clerk Township of Pittsburg.

Mr. Belwa was born in 1842, in Barriefield, Pittsburg township, county of Frontenac. At the age of 15, he lost a



MR. CHAS. BELWA.

leg as the result of a shooting accident. He was educated at the Kingston schools, and engaged in teaching for a short time, and afterwards as a watch repairer, and piano and organ tuner. He was appointed clerk of the township of Pittsburg in 1866, and held office until 1897 when he resigned on account of ill health, but was



MR. H. L. JOHNSTON.

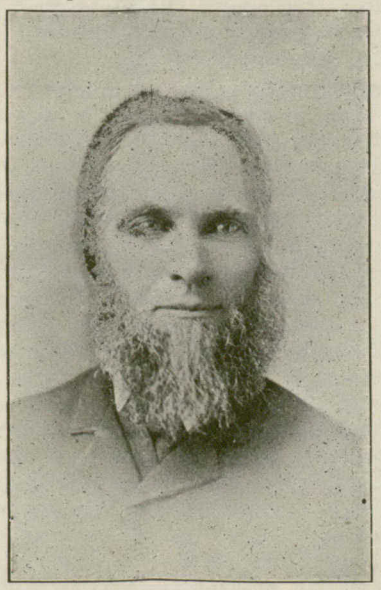
re-appointed in January 1898. Mr. Belwa is a necessary part of the municipal machinery of his township; he is painstaking and thorough in the discharge of his duties, and is said to be one of the most efficient clerks of the rural municipalities of the Province.

Clerk Village of Thamesville.

Mr. Johnston was born at Croton, Ontario, in 1850. He was assessor for the township of Camden for ten years, and was appointed clerk of the village of Thamesville in 1893. In addition to his municipal office, he is now carrying on the business of conveyancer, insurance agent, etc. His father, the late Colonel Johnston, of Croton, took an active part in the Rebellion of 1837 and 1838.

Clerk Town of Paris.

Mr. Dadson was born in 1835, in the town of Cranbrook, county of Kent, England. He came to Toronto in 1849, and for a number of years worked at the case in a printing office. He afterwards



MR. S. DADSON.

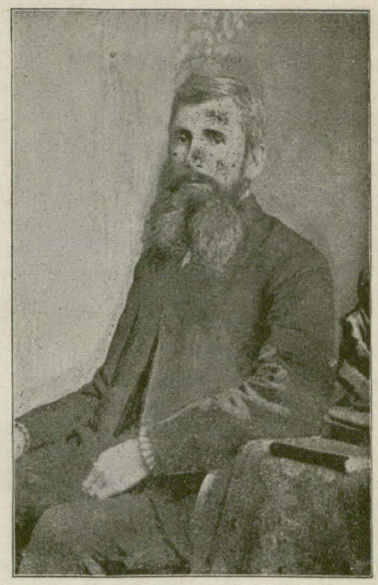
obtained a first class certificate from the Normal School, and was engaged in teaching for over 21 years, 6 of these being in the Paris public school. He was appointed clerk of the town in 1881.

Clerk Township of Grattan.

Mr. Gorman was born in the county of Lanark 1839. His parents afterwards removed to Admaston, county of Renfrew, then a wilderness without municipal or school organization. He was educated in a private school and afterwards learned blacksmithing and the axe making, which he carried on extensively together with farming for a number of years. He has held the positions of auditor, assessor and councillor, and was appointed clerk of the township of Grattan, and village of Eganville in 1890, but resigned his village office in the following year.

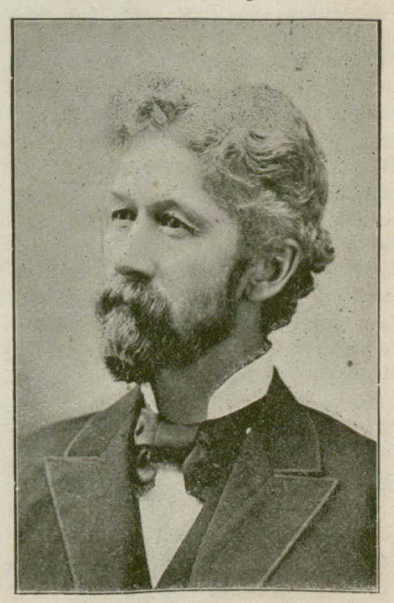
Clerk County of Huron.

Mr. Lane is a native of Bidderford, Devonshire, England, where he was born in 1853. He came to this country with his parents and settled in Scarboro, county of York in 1861. Afterwards



MR. WM. GORMAN.

removing to the township of Ashfield, Huron county. He received a fair education in the public school and Goderich High School, and was engaged in farming for some years. He was appointed to his present position in 1891, and for eight years previously he had been clerk ofthe township of Ashfiedl.



MR. W. LANE.

"Asphyxiation by mud." So the coroner's jury said Miss Alice Grace, of Chanute, Kan., met her death when she wandered away in the night and was later found dead in the highway.

The Limits of Municipal Enterprise.

BY PROF. WILLIAM SMART, PROFESSOR OF POLITICAL ECONOMY AT THE UNIVERSITY OF GLASGOW.

The propriety of discussing this subject at the present time will scarcely be disputed. The corporation of Glasgow, successful in most of its undertakings hitherto, and a little intoxicated, perhaps, at finding itself so widely quoted for its "enterprise," seems to be in a humor to enter on any undertaking for which it finds, or imagines it finds, a mandate. In these circumstances, it is time to ask if there are no canons which should define the proper sphere of municipal action.

I shall assume that the citizens are neither socialists nor yet austere individualists; that they neither approve of any municipal action because it is a step towards putting everything under state control, nor condemn it because individual enterprise has previously done it. Whatever be the case with our councillors, it may safely be said that the majority of the citizens have no such prepossessions, and are willing to judge of any municipal undertaking on its merits.

What is a municipality? It is not an outside body acting for a class or classes of the citizens. It is an organism under the state, doing for a local area certain things which are appropriately delegated to it by the State, and its *raison d'etre* is very much that of the state itself. Allowing for the essential weakness of representation by individuals irremovable during their office, and chosen by a majority of somewhat uninterested voters, a municipality is a committee of the citizens themselves taking common measures for their own well-being. Speaking generally, it resembles the Imperial Government, of which it is a microcosm, in that its function is not so much to do specific things as to provide the conditions under which the cititizens may have the greatest amount of individual liberty to lead their own lives and pursue their own businesses. The state for instance, has its army and navy; the city has its police—the object of the one being protection from foreign invaders, of the other protection from ill-doers at home. But beyond this there are certain industries which are more or less of conditions of life, and for which it is generally recognized that a government or municipality has special facilities. The state has its posts and telegraphs; the municipality has its gas and water. It is the proposal to extend the municipal industries which presents us with most of our problems.

MUNICIPAL INDUSTRIES.

What has particularly to be remembered is that these industries provide us with goods and services which the citizens otherwise would provide for themselves by individual enterprise. From this consideration it follows that in every such industry the municipality is bound to come into collision with private individuals, and is bound to take account of a great many interests that are by no means easy to harmonize. The corporation here is in the position of a great manufacturer, with this difference, that while the private manufacturer has one, or at most, two interests to consult, the corporation has to consult four interests, which are not the less distinct that they may occupy, in various degree the body of one individual. A manufacturer is in business, as he says, to "make money," that is, to make a living for himself and those dependent on him. He may, at the same time, consciously set before him the idea of serving the public by purveying good things and cheap things, but, generally, this is done for him by the necessities of competition. If he does not make to suit the public, and charge prices which the public can pay, he will not "make money;" and, as Adam Smith said, "by pursuing his own interest he frequently promotes that of the society more effectually than when he intends to promote it." But a municipality, as a trustee and representative for the entire body of the citizens, has to consider, measure, and try to reconcile the interests of these four classes—consumers, ratepayers, rival producers and working classes.

To take these in order:

CLASSES AFFECTED—1. CONSUMERS.

(1) Consumers.—Perhaps in point of theory municipal industry should be confined to the provision of these goods and services where the circle of consumers is practically the whole body of the citizens. But there are innumerable industries answering to this description, which no one except a socialist ever thinks of asking the corporation to undertake, and we must find an additional feature to justify municipalization. That feature probably is monopoly. The provision of gas and water by municipalities, for instance, is generally unquestioned, and the reason is that perfectly free competition would involve the liberty to interfere with the streets, and so with the traffic, and so with the amenity of houses and shops in a way that we should now regard as intolerable. These industries, then, must either be in the hands of the central authorities or be given out, under restrictions, as monopolies.

On similar grounds the management of the tramways seems to meet this canon. The steady increase in the receipts shows that a car service has entered into the standard of comfort of even very poor people, and so the interest of consumers is pretty much coterminous with that of the community. And when it is argued that we might have had as cheap fares and as abundant a service from a private company, it is enough to reply that this is one of those industries which involve occasional disturbance of the streets, and so should be under the control of a body whose interest it is to secure a minimum of such disturbance.

But, in the case of telephones, the consumers are merely a class of the community—a class, too, which has not the claim of poverty at its back. It has been ingeniously argued that the telephone is not regarded as a universal good because of its high rent, and that a reduction of the annual charge to £6 or so would induce a great extension of its use. But rich people and business people do not make up the "community" of Glasgow, and it is hard to believe that the utmost facilities in the way of call-offices would ever bring the telephone within the reach of the working classes.

In the case of the provision of houses again, the want of coincidence between consumers and community is very evident. This is purely a class provision, and must be—as, indeed, it is—defended on quite other grounds.

From these considerations, however, we seem forced to admit that a municipality may be justified in taking over undertakings for which it has no natural advantage. For instance, in spite of the objection mentioned above, it is quite arguable that our corporation should take over the telephone service, not on the ground that it could do better for the consumer than the private company does, but for the reason that underground, or even overhead wires involve a control of the streets by outsiders whose interests are not so wide as those of the citizens.

(*To be Continued.*)

In England women may now be elected as councillors and chosen as aldermen. *The Municipal Journal* says: "In London we associate aldermen with the sordid side of municipal life, with feastings and ceremonies, processions and shows. The popular mind cannot conceive the portly form of an aldermen—his figure rendered more ungainly by his cumbersome robes—interesting himself in such mundane things as drains, public baths, and street cleaning. Sometimes aldermen are not above taking an interest in such things as electric light—particularly when the interest goes into their own pockets; but no one can imagine an alderman becoming a useful working member of a council. The alderwoman will destroy our impressions of the City Alderman. She will continue to be useful when elevated to the aldermanship; she will have other interests than turtle soup, wine, and cigars, and will be altogether a more dignified personage than the alderman London now knows.

"While the House of Commons made women eligible as aldermen, it did not carry consistency further by leaving the position of mayor open to them. Few women would desire to occupy the mayoral chair, although some have been vice-chairman of Board of Guardians in London, but it is difficult to see how the position can be restricted to men. Women will vote and be elected on the new councils as citizens, not as women, and if in the conduct of our local elections we are to do away with the distinction of sex it will be difficult to limit the system.

ENGINEERING DEPARTMENT.

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O.L.S., C.E., M.C.S., C.E.

Bad Drainage.

It is a very common thing throughout the province to find long stretches of deep, wide and dangerous ditches built in the road allowances, and it is surprising that even now this plan of enlarging and extending these drains is being followed. It is an unfortunate thing, for many reasons, that this plan was ever commenced, and it is to be hoped that municipal councils will endeavor as far as possible, to prevent future extension.

In the past the anxiety to grade and drain the road as well as form an outlet for the drainage for the front at least, of the farms, and to saddle as much as possible of the cost of doing the work against the municipality, made the location of these drains along the roads desirable for the farmer. Although small at first many of them were fixed by by-law, the improvement of the land led to a demand for deeper outlets and the enlargement of many of these drains, has now occupied a great portion of the road allowance.

For very much the same reason, path-masters in doing road-work, have spent a large portion of their time in cutting through watersheds and carrying these drains across watercourse after watercourse, beyond their respective farms, until finally the water was dumped over a hill into a river, creek, or deep ravine. The result has been the accumulating of a large quantity of water along the roadside, and the perfectness of the farm drainage means after every shower a great rush of water, causing a washing and wearing away of the road-bed, and the gulching of the hill over which it falls.

The bad effects of this plan are now being realized in the expensive protection works which must be resorted to. Railings and other guards must be constructed along the banks which practically leads to a narrowing of the roadway to about one-half the desired width.

Again these drains must, under the by-law be cleaned out from time to time, and when the roadway is once gravelled much difficulty is experienced and expense incurred in finding waste ground for the excavated soil which is not desirable for land surfacing. The intention in the original survey of the ground, in every county, was to reserve an allowance 66 feet wide for road purposes. This would permit of surfacing, tree planting, the formation of a liberal width of roadway, and the building of suitable gutters to carry water to the natural courses crossing the allowance, and leave a margin between the gutters and fences which might be levelled and seeded, to add to the appearance of the roadway and the adjoining property. In many parts of the province much interest is now being taken by progressive farmers who have displayed considerable taste in laying out their fields, buildings, barns and houses, designing lawns and yards, planting trees and shrubbery, the building of neat fences, and in the careful cultivation of the soil; and they see it necessary to go beyond their own limits to improve the appearance of the roadway, levelling the sides, making the roadway straight and uniform in width, using tile for drainage, and in filling in unsightly ditches. This has done very much towards improving the appearance and practically increasing the value of their properties, besides exciting much admiration.

In many sections, however, these ditches have been built without regard to appearances, and before many years pass, the owners of many and otherwise beautiful farms will regret the day these deep, dangerous and unsightly gulches were permitted. In England the importance of keeping roads free from such works is recognized to the extent that nothing but shallow gutters are permitted on the road allowances, deep drains, wherever needed by the adjoining land or for the drainage of the roadway, being placed on the inside of the fence, or hedge on the private land.

For many reasons the practice which has obtained in this county to some extent, of using the road allowance as the location of drains as much as possible, while it may save a little farm land, will in the end prove costly and most unsatisfactory.

The farmer should not make the mistake of supposing that the road passing his place is merely public property, and that he has no personal interest in it. The roadway leading to and alongside the farm is one of the most vital parts of the farm itself, and the farmer who neglects or injuries it, whether in point of appearance or in point of utility, is destroying one of his most valuable sources of profit. One of the most common features in which neglect is shown is in the matter of drainage, either insufficient, or a bad form of drainage.

Electric Fire Alarms.

The city of St. Thomas has under consideration, the installation of an electric fire-alarm system. The council has collected the following information respecting such a system in other places.

Brockville has 19 boxes: cost $2,500 annual cost of operation, $250.

Smith's Falls has 12 boxes: cost $2,000 annual cost of operation $85.

Montreal has 258 boxes: cost $20,000; annual cost of operation and repairs $1,300.

Chatham has 15 boxes: cost $2,100.

Westmount Que., has 23 boxes cost $3,434.59; annual cost of operation $200.

Satisfactory results are reported in every case.

Road Machinery on Time Payments.

The Wisconsin Legislature has passed a law authorizing the country districts to purchase road making machinery on time payments. The result of the law will undoubtedly be the securing of road making machines by hundreds of municipalities in the State, which have heretofore been unable to raise the necessary money in one year. The adoption of such a law in Ontario would be commendable. Councils the Province over have come to the conclusion that proper implements are essential to good roads, and that it is utterly impossible for them to do proper and finished work without these implements.

The present rate of taxation limits the council to a certain revenue, and as these machines are expensive, it is impossible to make the purchase of a complete outfit and pay the amount from the revenues of one year, and they are obliged to move along piecemeal, purchasing possibly a grader one year, a rock crusher the next, and being finally stuck in the purchase of a roller, which is the most expensive. This is by no means an economical or business-like plan. Each implement is of certain service, but no one is effectual without the other two to work in concord with it. Very often these separate implements are condemned because the others are not at hand to do their part in finishing the roadway. Some of the more progressive municipalities have raised the necessary money by the issue of debentures, favored by a vote of the people to provide the outfit, and wherever this has been done excellent results follow, and these results have proven the wisdom of the plan.

These implements are substantially built, the wear and tear is not great, and with proper attention will last for a number of years. It is only reasonable to say that a plan should be provided for procuring them and making each year, as nearly as possible, pay for the service. If the municipalities were given the power to purchase, on time payments, an amount sufficient could be easily set aside from the annual revenue for this purpose, and the remainder of the expenditure made to provide vastly better results.

The usual manner of making sewer pipe joints with cement has not in all cases proved sufficient, where there is the usual amount of underground water to be guarded against. The use of asphalt is advocated for the making of practically water-tight joints. The bells and spigots of the sewer pipe are first coated with an asphalt paint applied with a brush. A strip of burlap is then dipped into hot asphalt, and twisted into a roll or "gasket." The spigot end of a pipe is placed in the bell of another, the roll of burlap is calked into the joint space, and the joint is then completed with hot asphalt. The results are said to be very much more satisfactory than can be obtained from cement used in the ordinary way.

Wide Tires.

The council of Peterborough has provided a complete street making plant, has started to build streets in a substantial and business-like way, and is now considering the advisability of passing a wide tire by-law.

The latter step is a thoroughly practical one. The plan and cost of maintenance is as much a question for careful thought as is first construction, and maintenance is very largely influenced by the extent of travel and character of vehicles employed.

Consequent upon undertaking the building of good streets, provision should be made for their most careful preservation. Narrow tires, such as are now in common use in this country, and were adopted to meet the exigencies of early settlement, are by no means consistent with improved streets or roads, and should be as completely discarded as should the pioneer plans of street making, which, I am glad to see, have been dismissed.

With the narrow tires, slight ruts are soon formed, which direct the traffic in certain channels or ruts. With wide tires the traffic is distributed over the surface. Changing the plan of street making and not changing the width of the tires will mean the taxing of ratepayers to build good streets, but leaving them to tax themselves for purchasing and maintaining vehicles with which to most expeditiously destroy these streets; compelling the council to again tax them for unavoidable repairs. With constant and frequent travel the bursting, cutting, ploughing and grinding effects of narrow tires will injure and rapidly destroy the best made road. Whereas, the broadening of the tires proportionately to the weight of the load has a smoothing, consolidating and preserving influence.

In the making of good streets rolling is absolutely essential; in the maintaining of good streets rolling is equally important. In building the streets a roller specially made is employed; in preserving the streets tires proportioned in width to the weight of the load do the work of a roller. It is surprising to find how rapidly wide tires are growing in popular favor, but unfortunately the proper width is being reached only by degrees. This may be accounted for by there being no standard fixed by by-law; the selection being made upon individual judgment, which varies greatly in different sections, and very much in the same section.

The streets in our towns and cities are now in a condition for this change. The roads in the country are fast approaching it, and the change should be made as rapidly as possible, employing all reasonable means for bringing it about. Every citizen should lend his assistance in accomplishing this. Ratepayers who subscribe to the cost of improving the streets will be benefitted by lessening the cost of maintenance, and teamsters and owners of vehicles will be largely benefitted by the improved condition of the roads which the change will bring about.

In making the change we are only following the experience of other countries, which have long since discovered the wisdom of the change. England and all progressive European countries have laws regulating the width of tires according to the load vehicles are designed to draw. In France, tires on market wagons range from three to ten inches, the majority being from four to six. Several of the States of the American union have legislated with regard to the matter.

Concrete Culverts.

An evidence of how quickly municipalities adopt new methods when the wisdom of doing so is clearly demonstrated, can be seen in the fact that so many of them are now manufacturing their own concrete pipes for culverts. Two years ago this plan was unknown. Skilled workmen are not necessary, and only the purchase of cement is required, the process of manufacture being simple, and the product cheap and durable. The result is that the demand for these moulds is very great, those who have undertaken the manufacture have been taxed beyond their capacity, but inside of two or three years these moulds will be part of the roadmaking outfit of every municipality, and cheaper and better culverts will be the result.

Like every other manufacture of the kind, care must be taken to see that a first-class quality of cement is used; that the gravel must not contain earthy matter, but clean sharp sand; that the proportions one of cement to three of sand are carefully measured; that just a sufficient quantity of water is used to nicely dampen the material; that the whole be mixed so that every particle of stone and sand has been surrounded by cement; and that this material be immediately placed in the moulds in thin layers thoroughly damped, and allowed to stand a sufficient length of time to become set before being used. One set of moulds for each size of pipe, will with care, last for many years. They are not expensive, costing for 8 inch tile, $8.00; for 12 inch tile $10.00; for 15 inch tile $12.50 for 18 inch tile $15.00.

The road supervisor in charge of the Hastings roads has adopted the plan of operating the grading machine by a traction engine, and much prefers it to horse-power. At least two teams were formerly required, costing $6 per day, whereas the engine costs but $3. The power is uniform and constant, rests are not required every half hour on a hot day, and the machine can be used to its full capacity. The report of the amount of work accomplished daily in this way is surprisingly great. In shaping old roads the day's work is usually a strip over which the engine can travel and return in half a day, and two rounds invariably take off the shoulders and complete the crown.

The Grade of Roads.

Good roads should wind around hills instead of running over them, and in many cases would not increase their length, as it is no further around some hills than over them. Moreover, as a general rule, the horizontal length of a road may be advantageously increased, to avoid an ascent, by at least twenty times the perpendicular height thus saved; for instance, to escape a hill one hundred feet high it would be better for the road to make such a circuit as would increase its length two thousand feet. The reasons for this are manifold, the principal one being that a horse can pull only four-fifths as much on a grade of two feet in one hundred, and gradually less as the grade increases, until with a grade of ten feet in one hundred he can draw but one-fourth as much as he can on a level road.

As a chain is no stronger than its weakest link, just so the greatest load which can be hauled over a road is the load which can be hauled up the steepest hill on that road. The cost of haulage is, therefore, necessarily increased in proportion to the grade, as it costs one and one-half times as much to haul over a road having a five per cent. grade, and three times as much over one having a ten per cent. grade on a level road. As a perfectly level road can seldom be had, it is well to know the steepest allowable grade. If the hill be one of great length, it is best to have the lowest part steepest, upon which the horse is capable of exerting his full strength, and to make the slope more gentle towards the summit to correspond with the decreasing strength of the animal.

It has been estimated that a horse can pull better where the road is slightly undulating, say, where it has a level stretch, than a slight grade not steeper than one foot in one hundred and twenty-five feet, and following this a decline of the same steepness, etc. In this way three different sets of muscles are brought into action, and while the one is being used the others are being rested. It is hardly necessary to recommend the construction of roads according to this principle at present, as we are a long way from having comparatively level ones. That the principle is a true one, however, is proved by the fact that a bicyclist finds it easier and more restful to ride over slightly undulating roads than over absolutely level ones.

All things being considered, the horizontal grade of a road should never be greater than three feet to the one hundred, nor less than one foot in one hundred and twenty-five feet.

The town of Welland on the 20th June, carried by a large majority, a by-law for raising $20,000 to be spent this year in granolithic sidewalks and macadamized streets. The main street from the M. C. R. R. depot to the town, a distance of about one mile, and the two principal streets in the town will be first to be macadamized.

A Free Water Service.

A radical departure from established methods of waterworks financiering will go into effect in Detroit, Mich., on July 1, 1900, provided a bill recently passed by the Legislature of Michigan is signed by Governor Pingree. The new law abolishes all rates on water used for domestic purposes. To make up for this reduction in the income of the water works department, a special tax is to be levied in the general rate, sufficient to raise a fair proportion of the total cost of maintenance. The remainder of the operating expenses of the waterworks department is to be paid by manufacturing establishments, hotels, and wherever water is used for commercial purposes.

The object of the proposed measure is undoubtedly a good one. Water is as necessary as air, and to make it as free and easily obtained, is an ideal condition. A generous supply of good water should be readily available to every citizen, and when properly used by the individual, it becomes a benefit to the whole community. Water is the instrument of cleanliness, and cleanliness, particularly in crowded centres, becomes a grave necessity in preventing disease.

A generous use of water should not imply a wasteful use of water. One of the evils which water commissioners have to combat is the wasteful use of water, in which water, purified and supplied at considerable expense, is allowed to run away in useless streams from hundreds of taps left open by careless householders.

Opposed to the plan adopted in Detroit, is that inaugurated in many places of placing meters, and charging for water in proportion to the amount of water used. The later system, assisted by a very low rate, is more likely to result beneficially to the community at large than is a wholly free water service. The meter rate should be as low as it consistently can be made, and will invariably result in materially reducing the annual expenses of water supply. In very rare instances a meter rate might cause an insufficient use of water, but by making it so low as to be merely a check on entirely useless waste, the desired end, a generous but not wasteful supply, would be reached.

That water is necessary, and in its original condition, as free as air, does not imply that a municipal corporation is morally bound to make no charge for supplying it at the houses of consumers, and in a purified condition. This conception prevails respecting many other of our necessities, which apparently given to all mankind, nevertheless become as much an article of manufacture as the food we eat, the clothing we wear. Water purified at an enormous expense, and piped throughout a municipality at great outlay becomes similar to a manufacture and is justly an article of commerce; one which, however, is of vital necessity to a community, and as such, should be supplied for the lowest possible amount.

Road Maintenance.

Without proper care the most expensive road may go to ruin in a few years, and the initial expense of constructing it be nearly lost It is of the greatest importance, therefore, that in every municipality a regular system of inspection and repair should be provided. They do not only wear out, but wash out and freeze out. Water is the greatest road destroyer.

It is necessary, to the proper maintenance of a road, that it should "crown" or be higher in the middle than at the sides. If it is flat in the centre it soon becomes concave, and its middle becomes a pool or mud-hole, if on a level, or a water course if on an incline.

A hollow, rut or puddle should never be allowed to remain, but should be evenly filled and tamped with the same material of which the surface was originally constructed. A rake should be freely used, especially in removing stones, lumps or ridges. Ruts may be avoided by using wide tires on all wagons which carry heavy loads. If this is not possible the horses should be hitched so that they will walk directly in front of the wheels. This can be accomplished by making the double or whiffletree, of such length that the ends may be in line with the wagon wheels. A horse will not walk in a rut unless compelled to do so, and, consequently, if all horses were hitched in this way ruts would eventually disappear from stone roads.

If stones are cracked on a road with a hammer, a smooth surface is out of the question. Use stone chips for repairing stone roads, and remember that all foreign material and rubbish will ruin the best road, and that dust and mud will double the cost of maintenance. Ordinarily the chief work done by country people on highways is repairing the damage resulting from neglect.

Vitrified Brick.

A portion of the main business street of St. Thomas was last year paved with vitrified brick. For the completion of the work, tenders have been received for the supply of brick, the successful tenderers being the Massillon Stone and Fire Brick Co., of Massillon, Ohio, who will supply repressed blocks at $9,75 per thousand, free on the cars at Massillon. The freight rate is guaranteed not to exceed $2 per ton, and duty $1.95 per thousand, all benefit from decreased rate of freight to be given the city. Special blocks for the street car tracks will be supplied at the same rate. The company agrees to change dies as regards the shape and thickness to conform to instructions.

Ridgetown will this year macadamize the main street between the C. S. R. depot and the town, a distance of about one and one-half miles. The stone will be taken from the quarries at Amherstburg.

The Good Roads Movement.

The Department of Agriculture at Washington has just issued a road bulletin in which it states that New Jersey is building more and better roads for the money than any other State; also that these roads can be kept up to a high standard at a minimum of expense. This bulletin expresses the opinion that all the important roads in the United States will be macadamized, or otherwise made good within a few years.

There can be no disputing the fact that the agitation for good roads has taken a wonderful hold upon the people of the United States. The time for talk and discussion in many States such as New Jersey has passed; definite plans have been laid down; statute labor and all temporary and frivolous measures have been swept aside, and in a strictly business-like way money in large sums has and is being raised by state tax, and expended upon this work in the same way as money is provided and spent upon other public works.

We can well afford to boast of the advancement of the good roads movement in Ontario, and it is a pleasure to see the effort that is being put forth by many municipalities with the means at their disposal. Still, in the majority of cases, this amount is no larger than it was before the agitation was set on foot. In every other department of public work known to the people of Ontario the most modern plans have been provided, and no difficulty has been encountered in providing the necessary means, and these works compare favorably with those of any other country. But in the question of roads and streets, the greatest indifference seems to prevail, and the most shiftless methods are, in consequence, employed. And we very much dislike to find that this indifference should be continued until we are forced to follow the example of these states, which are now simply copying the plans of other countries which are centuries old.

Possibly no town in Ontario of its size, is making such a radical change in the methods of street-making as is the town of Perth this year. A rock crusher has been in operation for some weeks past, a steam roller has been leased from Brockville, and as a result several of the principal streets have been macadamized in a most excellent manner. The people are greatly interested in the results, and the next few years will find Perth provided with ideal roadways. Mayor Shaw who is a ardent advocate of good roads, is this year making a distinct record.

Excellent work is being done in the macadamizing of the streets in Cornwall. A steam roller was purchased and the work of macadamizing the principal streets is now well under way. About $17,000 will this year be spent in this work.

High Class Pavements in Towns.

Even the best and most expensive road material does not appear to be too good for the progressive towns which are giving the question of street improvement careful and studied consideration, and it is very encouraging, indeed, to see that, not only the large cities are aiming at the ideal, but that many of the smaller and less pretentious are studying the relative merits and cost of the various classes of pavement before selecting the most economical for their requirements. The town of Forest is collecting information on asphalt and vitrified brick as pavements for their principal streets.

Vitrified brick and asphalt are confined to the cities and large towns in Ontario, the standard pavement for smaller places being macadam. In many of the smaller American towns, vitrified brick is being extensively used on the principal thoroughfares, and with much success. The initial cost appears to determine largely the pavement to be adopted. So far as discovered, brick and asphalt are the ideal pavements for the principal streets of towns and cities, and the ideal cannot be obtained without paying for its value. This value is made up in many ways; durability, perfection of surface, ease of traction, cleanliness, and easy maintenance are the chief qualities.

But in connection with all these qualities there is a sentimental value which must not be overlooked in providing a perfectly satisfactory pavement. On all private property in towns and cities much money is spent in planting trees, shrubbery, laying out drains, sodding, and in keeping in neat and perfect condition the lawns in front of them all for the sake of pleasure and appearance. And this idea of the æsthetic does not terminate at the property line, but should be carried into the street. Sidewalks should be carefully located, boulevards should be neatly constructed and kept up, trees planted and carefully attended to, and in keeping with all this, the appearance of the street and pavement must be considered; and to provide this feature an allowance must be made.

Oil for Roads.

Further experiments with oil on country roads are reported as proposed by Major M. Meigs of Keokuk, Ia. It is said that tests will be made in the vicinity of Des Moines to determinate the effect of oil sprinkled on a road bed, well graded and crowned, harrowed lightly before and rolled after sprinkling. It is hoped that mud as well as dust will be lessened. Doubtless the grading, crowning and rolling will be very important factors in the test. All the reports state that it is expected the oil will cause the road to shed water like a duck's back.

While oil applied to roads will in many cases be benificial, it can only be a temporary measure, and cannot be expected to take the place of stone and gravel, although it will no doubt prolong the life and increase the usefulness of well made stone and gravel roads. It will largely prevent dust, and will probably prevent much mud. But to expect that it will materially improve ordinary earth or "mud" roads in spring and fall, is a hope which theory does not teach, and experience has not proven.

A Sample of Good Roads.

While in Arnprior recently, town clerk Neilson drew our attention to a piece of street there as a sample of the value of draining. It was the street in front of Mathieson's hotel, and had formerly been the boggiest spot in the town. It had been repaired under advice of Road Commissioner Campbell. Two three inch farm tile drains had been put in, one on each side, about twenty feet from the street line, and about four feet deep. Result, a piece of road which was dry and hard on Wednesday, of even grade, without a rut in it; while all around were streets of better natural situation, and which had just as much attention and gravel applied to them, but were minus the drainage, and which were just as wet and rutted to day as are Renfrew's streets.—*Renfrew Mercury.*

The Location of Roads.

If a road goes over a hill when it might go around, the labor and expense put upon it are absolutely wasted, and the sooner its direction is changed the better. If a road is not rounded up and surface drained, it should be not only for present use as an earth road but as a preliminary to macadamizing. If it is not underdrained in all wet spots, this should be the first work done. Nothing indeed will pay better for present use than putting in tile or stone drains.

In laying out a road, straightness should be always sacrificed to obtain a comparatively level surface. Although this is one of the most important principles connected with road building, it is one of the most frequently violated There is no objection to an absolutely straight road, but graceful and natural curves conforming to the lay of the land add beauty to the landscape besides enhancing the value of the property.

The county council of Lincoln, having control of the road between Queenston and Grimsby, a distance of 35 miles, has purchased two grading machines, and are working one on each half of the road with good effect.

The good roads movement is active in Belleville. A steam roller was this year purchased, and already many stretches of first-class street have been made.

Municipalities and Consumption.

ACTION IN MANCHESTER, ENGLAND.—PHTHISIS TO BE NOTIFIED.

Dr. J. Niven, the medical officer of Manchester, recently submitted a report to the city council on the notification of cases of phthisis, for which the council has voted £1,500.

The procedures which will be entailed by notification will include the necessary keeping of a double register of persons and of houses. The first register will contain a record of the name, sex, age, residence, occupation, place of work, and stage of illness of the phthisical person at the time of notification; the second register will contain a record of the address, name, sex and age of the phthisical person. The registers will require revision every six months, so as to form an index in alphabetical order of the names and addresses respectively for the purposes of reference. It will be necessary to arrange with the chief public institutions to notify all fresh cases of phthisis attending them. Each public institution will need to be furnished with a book, in which particulars may be recorded. It is, therefore, necessary for the sanitary committee to approach the different hospital authorities so as to arrange for such a book being kept. The committee would probably wish to furnish registers to the institution. A scale of payment of fees had already been accepted by the committee.

Assuming the public institutions to fall in with these arrangements, a medical man should be advertised for at a salary of £200 a year. The duties of this medical man would consist in visiting the cases at their own homes, investigating the circumstances under which the disease had been contracted, and the condition and arrangements of the home. He would report on a prescribed form to the public health office, and steps would then be taken to carry out the necessary measures of disinfection at the house affected, which the medical man appointed for the purpose would arrange after consultation, for a time at all events, with the medical officer of health. He would also for institution cases carefully describe the precautions requiring to be taken by the patient, and the management of the house, and would leave printed instructions. As far as possible he would see that those precautions were carried out. In cases attended by private practitioners he would, unless requested to do so by the medical attendant, avoid giving personal instructions to the patient which the medical practitioner would himself give.

Dr. Niven suggested that in order to distribute the work, public institutions should first be dealt with, and that these should therefore be approached as soon as possible. The sanitary committee which adopted these suggestions, resolved to appoint a medical assistant in connection with the notification of phthisis at a salary of £200 per annum.

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 attention will be answered free by post, on receipt of a stamped addressed envelope. All questions answered will be published, unless $1 is enclosed with request for private reply.

Statute Labor—Pay for Gravel not Ordered.

331.—CLERK.—There is a difference of opin ion in our council as to the amount of statute labor imposed. It has always been a rule where a man owns several hundred acres of land to put 200 acres in each parcel, and rate the labor accordingly, taking their authority from sub-section 2, section 109, chap. 224, R. S. O., 1897, while I am of the opniion that section only applies to non-resident lands, and that section 102 chap. 224, R. S. O., 1897, is all that applies to resident land, where no by-law has ever been passed increasing or reducing the number of days on the following assesment :

	CON.	LOT.	ACRES.	VALUE.
1. J. S.,	2	W. 8	100	$ 650
"	3	E. 9	100	350
"	3	pt. 7	25	30
			Total,.....	$1030

2. Does sub-section 2, section 109, chap. 224, R. S. O., 1897, apply to resident lands or only to non-resident?

3. Does the said section apply to non-resident land assessed on the resident roll.

In 1895 Mr. J. was pathmaster of a road division, and in the fall of said year he dug a cellar for a new house and put the gravel out of same on the highway, amounting to over one hundred loads, intending to count it in his statute labor for the following year, but in the spring of 1896, when the new pathmasters were appointed Mr. J. was removed, and a new one appointed, who would not give Mr. J. credit for the gravel and work put on the highway. Mr. J. then sent in a bill to the council for $12.35, for gravel and work put on the highway. The council granted him $4.00 for same, considering that would pay Mr. J. for the extra distance which he drew the gravel, and for spreading on highway. They did not consider him entitled to any compensation for gravel and work, only for the extra drawing and spreading of same, as he was digging the cellar for himself, and was doing the work without any instructions from the council. Mr. J. returned the $4.00 granted, and said he would have all or nothing. There was nothing more done in the matter until last council meeting, when Mr. J. demanded payment of his account, or he would sue the council for same.

4. Can Mr. J. claim any compensation for gravel and work under the above conditions?

5. Can he compel the council to pay him the full amount as stated?

6. Would the council be safe in letting Mr. J. sue for same?

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1. Seven days.

2. The sub-section referred to applies to resident lands, and to the land of non-residents, whose names are entered on the assessment roll. Section 108 of the said act, enacts the mode in which statute labor is to be rated and charged against the land of non-residents, who have not required their names to be entered on the assessment roll.

3. Yes.

4. In our opinion he cannot recover. As we understand the situation, the gravel was removed by Mr. J. in digging his cellar, as a matter of necessity, and the placing of it on the highway was voluntary on the part of Mr. J., and for his own convenience.

5. Not having made any contract with the council or any duly authorized agent of theirs, to do the work and having performed the work without the knowledge of or instructions from the council, he cannot compel the council to pay him the amount claimed.

6. Yes.

No Assessment Indian Lands.

332.—J. M. D.—Can the lands of an Indian reserve be assessed to, and taxes collected off, white tenant?

No. Sec. 7, sub-section 1 of the Assessment Act, exempts from taxation, "All property vested in or held by Her Majesty, or any other person or body corporate in trust for, or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity." Sub-section 2 of said section, enacts that, "where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the *occupant* shall be assessed in respect thereof, but the *property itself* shall not be liable.

By-Law Exempting Grinding Mill from Village Taxes.

333.—M. R.—A ratepayer wishes to erect a grinding mill in village, and applies to the council for exemptions of taxes on the same, say five years. Has the council power to grant exemptions from taxes, or should it be by by-law, or by a voice of the ratepayers of the municipality? Kindly inform me how to proceed.

Your council can exempt the mill (which you do not not define very clearly) if it be a manufacturing establishment from taxation, (except as to school taxes,) for any period not longer than ten years. The exemption must be granted by by-law of the council, and such by-law cannot be passed until the assent of the electors has been obtained in conformity with the provisions of the Municipal Act, in respect of by-laws for creating debts. See section 25 of chap. 26, Ontario statutes, 1898–99, (The Municipal Amendment Act, 1899.)

Who to Give Notice of Filing Fence-Viewers' Award.

334—SUBSCRIBER.—I notice by section eight of the Line Fences Act, that the fence viewers' award shall be deposited in the clerk's office, and notice of its being made shall be given to all parties interested.

1. By whom should said notice be given? Should it be given by the clerk or fence viewer?

2. Section 10, of said Act, requires the award to be registered. By whom should it be registered?

1. Section 8 of the act does not in terms impose on the clerk the duty of notifying parties interested of its having been made, yet we think the clerk is the proper party to perform this duty, since the award is required to be deposited with him, and therefore becomes an official document.

2. Section 10 does not "require" an award made thereunder to be registered. It simply provides that it it be registered, it then becomes a lien and charge upon the lands respecting which it is made. Any party to the award, if he deem it to his advantage, may register the award.

Farmers' Sons—Statute Labor and Commutation.

335.—T. D. R.—Re question No. 267, in June number of THE MUNICIPAL WORLD: When farmers' sons refuse to perform statute labor charged against them, as in the case quoted by "T. S.," or when they are temporarily absent from home duriug the time staute labor is being performed. (1) What course should be taken to collect the amount of commutation? (2) Can it be charged in collector's roll against the land of the father?

1. Under section 106, farmers' sons are same as those required to perform statute labor under section 100. The collection of commutation from this class of persons is provided for by section 107 (1), or by by-law of council passed under authority of section 561, sub sections 2 and 4.

2. No.

Railway Exemptions from School Rates.—South Grimsby

336.—CLERK.—By 47 Vic., chap. 75, section 34, the corporation of any municipality, through any part of which the Toronto, Hamilton & Buffalo railway passes, may by by-law exempt the said company and its property within said municipality, either in whole or in part, from municipal taxation.

The township council of South Grimsby passed a by-law on the 13th day of April, 1895, exempting said railway company from taxation in the following language :

"5. That the lands, premises, and personal property of the said Toronto, Hamilton & Buffalo Railway Company, within the municipality, now owned or hereafter acquired by them for railway purposes, shall be and the same are hereby declared to be exempt from all local municipal taxation for and during the term of twenty years from the taking effect of this by-law, and no rates or levies of any nature shall be made upon the lands, premises, and personal property of the railway company during the period aforesaid, for any purposes whatsoever, provided the terms and conditions hereinafter contained are observed and performed by the railway company."

In the following year, when the road was completed, the company's proportion of the public and high school rates were placed on the collector's roll, and the company paid the same without protest. The same was done in 1897 and 1898. Subsequently a demand has been made by the company's solicitors on the municipal council for the refund of the taxes paid, stating they were illegally paid.

1. Can municipal councils exempt by by-law railway companies from paying school rates.

2. Can the company compel the council to refund the taxes already paid.

3. Would the township council be justified, and within their right, by continuing to place the company's proportion of the school rates on the roll as heretofore.

1. We are of the opinion that the property of the railway company is not exempt from the payment of school rates, Section 73, of The Public Schools Act, R. S. O., 1897, provides, "No by-law passed by any municipality after the 14th

day of April, 1892, for exempting any portion of the rateable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever."

2. If the property of the company is liable for school rates, the taxes were properly paid and cannot be recovered, but even if the property of the company is exempt from school rates it does not follow that it can compel the township to refund the taxes paid. Sir Frederick Pollock in his work on contracts says, "Money paid under a mistake of law connot in any case be recovered." In the American and English Encyclopædia of Law under the title "Duress", the following statement is found. "In examining the authorities the following general principles will be frequently met with. Under the ancient and well known rule of the common law, a tax voluntarily paid cannot be recovered back. This is true even where the tax has been illegally paid, or the law under which it was paid is unconstitional." A case in our own courts, Grantham vs. the city of Toronto, 3 U. C. Q. B, 212, is to the like effect.

The plaintiff there was a livery stable keeper, who owned certain carriages, gigs, sleighs, etc. These were not liable to be assessed except in regard to such of them as he was keeping "for pleasure only." He was, however, assessed for some which he did not keep for pleasure only, and he paid taxes on them for some years and then sought to recover back the taxes so paid. At page 215, C. J. Robinson, in delivering the judgment of the court says: "Instead of this (that is objecting to this assessment) he paid the rates as assessed without remonstrance or objection and now, after the lapse of years brings his action to recover back all that he unnecessarily submitted to pay. In the meantime we must suppose the corporation must in the ordinary course of things have applied the money received by them in each year to public purposes; and it would be most unreasonable to hold them liable to an action to recover back what has been thus expended, having been received under such circumstances. If this action could lie, then it must follow that whenever an inhabitant of the city has been assessed for property which he did not own, or for more than he owned and has paid the tax without objection, he can harass the corporation with an action to recover back." According to the foregoing statement of the law, the taxes in this case having been paid without protest cannot be recovered back in any event.

3. In the view we have taken of this case the property of the company should be assessed and charged with its proportion of the school rates of the municipality.

Inspector and Enforcing Yellows and Black Knot Act.

337.—REEVE.—The township of N., on a petition of fifteen ratepayers, passed a by-law appointing an inspector under the provisions of the Yellows and Black Knot Act, 56 V., chap. 42, section 1. Mr. D. has neglected, and refuses to cut out the black knot after the expiration of the ten days' notice, given in writing by the inspector. To enforce the provisions of the Act the inspector has asked four or five magistrates to hear the case, who say it is the duty of the reeve to hear the case.

1. Who has the right?
2. Can magistrates be compelled to act?

1. Sec. 8 of the Act you refer to (now Chapter 280, R. S. O., 1897,) provides that every offence against the provisions of the Act shall be punshed, and the penalty imposed for each offence shall be recovered and levied, on summary conviction before ANY justice of the peace under Sec. 473 of the Municipal Act. The reeve of your township is ex-officio, a justice of the peace. It is the duty of the Reeve and any other legally qualified justice of the peace to act in this matter.

2. A justice of the peace can be compelled by mandamus to hear and determine a complaint within his jurisdiction. In Short on mandamus page 310 the law is laid down thus: A mandamus would be granted whenever justices improperly refuse or neglect to hear and determine a cause within their jurisdiction. They must give a judgment of some sort. In the case of re Holland 37 U. C. Q. B., 214, a mandamus was granted to hear evidence for the defence in a case under the Public Health Act.

Statute Labor.—Poll-Tax.—Snow Fence Bonus.

338.—ENQUIRER.—1. When the owner of a village lot in a non-incorporated village is assessed on the resident assessment roll of the township, as the taxable party, and is charged with the statute labor therefor, can tenant be made to do one day's statute labor as poll-tax under section 100, of the assessment Act? or is he exempted from statute labor under section 24, of said Act, as being otherwise assessed?

2. When tenant of village lot, as above, is assessed as the taxable party for an amount under $300, would it be right to credit one day done for said lot, and $1.00 for poll-tax? or does the fact of his being the taxable party exempt him from any poll-tax?

3. Is it legal for a township council to grant a small bonus in aid of erecting wire fences where snow drifts?

1. You do not state whether the tenants name is on the assessment roll bracketed with that of the owner or otherwise. If the tenant is assessed as above, he is not liable for statute labor under the provisions of section 100, of The Assessment Act, but if his (the tenants) name is not on the assessment roll at all, he is liable for one day's statute labor.

2. The tenant. under the circumstances you mention, is not liable for statute labor in the nature of poll-tax. The property occupied by the tenant is liable for statute labor calculated according to the scale provided by section 102, of the Assessment Act or the scale, if any, provided by by-law of the municipality.

3. Section 1. of chapter 240, R. S. O., 1897, enacts that the council of every township shall make such compensation to the owners or occupants for the taking down, alteration or removal of fences causing an accumulation of snow on the public highway and for the construction of some other description of fence approved of by the council, in lieu of the one so required to be taken down, altered or removed as may be mutually agreed upon.

School Tax—Sturgeon Point

339.—CLERK.—In your July number I noticed Verulam Clerk writing you re Sturgeon Point equalization assessment with Fenelon and Verulam, for school purposes.

1. He states June 1st to be the date for this work, though in your June calendar you have it June 30th. Which is correct? The assessors of Fenelon and Verulam met June 1st, and have just put equalization at sixty-six and two-third cents Verulam, and thirty-three and one-third cents Fenelon, on the dollar, including Sturgeon Point. Who, i. e., which clerk—Fenelon or Sturgeon Point—would attend to the school tax paid by Sturgeon Point during the next three years, if, as you say, in your answer to G. W. T., the assessors of Fenelon and Verulam shall, as heretofore, do the equalization? My contention is that, as Sturgeon Point was, to all intents and purposes, formed into a separate municipality last winter, that its assessors should take part in this equalization, and its clerk should do the work in connection with the division oi the school tax. As clerks do not work on the results of equalization of assessment until September, I would think there would be more wisdom shown in allowing until the end of July for equalization of school sections than curtailing time to June 1st, if G. W. T. is correct.

This north section is in Verulam, and the part in Fenelon and part in Sturgeon Point are about equal.

On what authority could the clerk of Sturgeon Point levy these school taxes in his municipality other than a certificate from his assessor to the effect that he had done this equalization, and that it was so-and-so.

"G. W. T." is correct in saying that the equalization of Union School assessments should be completed before the 1st day of June. (See sub-sec. 1 of sec. 51 of the Public School Act.) The item in the June number of the MUNICIPAL WORLD to which you refer is also correct. (See sub-sec. 2 of sec. 51 of the above mentioned act.) An item in the calendar in the May number under date of May 31st draws attention to the assessor's duty in this behalf under sub-sec. 1 of the said section. We confirm the remainder of our answer to the question of "G. W. T.", (No. 325.) The village of Sturgeon Point, as a separate municipality, has no assessment roll for the current year (1899). We take it that the basis for all taxation in the said village for the present year will be the assessed value of those portions of the townships of Fenelon and Verulam, now forming the village of Sturgeon Point, on the assessment roll of the said township for the year 1899, and the apportioning of the amount required by the trustees of the union school section this year amongst the municipalities of which it is composed would be a simple arithmetical calculation.

Time for Doing Statute Labor.

340.—C. B.—The township fixes the time for the performance of statute labor, which is between the first day of June and the 31st day of July. 1. If an overseer does not call out the parties in his road section at or during the time

mentioned, (intending to call them out after harvest,) can he order them out to perform their statute labor? 2. If they refuse to perform the work after road making season, as prescribed by the by-law, can he return them as defaulters, and then have the statute labor commutation charged on the collector's roll.

1. Yes.
2. Yes.

Appeal from Court of Revision.

341.—SUBSCRIBER.—In appeal notice from court of revision is it necessary to serve clerk of division court, as well as municipal clerk, with the notice?

No.

Farmers' Sons and Statute Labor.

342.—J. L. W.—Can a farmer's son, who is entered on the assessment roll as farmer's son, be made to perform one day's statute labor (as juryman,) more than what the assessed property calls for.

Yes. See question No. 267, in the June number of this paper, and No. 335, in this issue.

Qualification of Councillor.—Property Sold.

343.—A. O.—We have a member in our township council who has sold his farm, and this property is the one for which he is assessed and qualifies upon. He is assessed for no other property in the township. Kindly say if he is disqualified to sit and act as councilman for balance of term, or does it affect his status as a councilman? Would it be the duty of the reeve or council to notify him, and call for an election for a member in his place if he is disqualified.

If the member of the council referred to had the necessary property qualification at the time of his election, the mere sale and disposal of his property afterwards would not disqualify him, or render his seat in the council vacant. Section 207 of the Municipal Act enumerates the circumstances under which the seat of a council becomes vacant after his election.

Clerk's Contract with Council.

344.—P. C.—I am the clerk of the township, and the reeve wants to discharge me from my duty for the simpie reason that I am trying to guide the council. I am trying, from time to time, to communicate to the council all such information in regard to law for the government of the same, and this is because no member can. I am engaged for the year 1899 by by-law. Can he remove me from my office or not?

The reeve has no power to dismiss you. The council may, however, do so, but if you have been engaged for the year by by-law, at a certain salary, you will be entitled, in the event of your dismissal without cause, to damages for wrongful dismisal. You will find this question discussed at length on page 85, question No. 239, in THE WORLD for May.

Amending By-Law.—Drainage Work.

345.—C. S. B.—I think that a pro rata assessment, as per original assesment, must be the intention of the Act. In case more is raised than required, pro rata return is necessarily made. We have passed a by-law on lines indicated, but before getting out debentures I concluded to ask your opinion regarding it. The notice of registration, (section 397, municipal Act,) is not required, I should think, in this case.

1. Will you please give me your opinion as to the necessity for a court of revision for by-law passed under section 66, of the drainage Act?

2. Also say if you think it necessary to advertise notice of registration of by-law?

We do not think the holding of a Court of Revision is necessary in this case, and even the publication of the by-law is optional with the council. See section 67 of the Drainage Act.

2. If the by-law is such a one as is mentioned in section 396 of the Municipal Act. Notice of the passing and registration of the same should be published in accordance with the provisions of section 397 of the last mentioned act.

Return of Collector's Roll, and Sale of Lands for Taxes in Districts.

346.—T S.—The collector's roll was returned on the 1st day of June last, and the treasurer prepared statement of lands liable to be sold for taxes, and handed it to the reeve. He refused to issue his warrant for sale of same, with the excuse that the roll should have been returned on the 1st day of February.

Mention sections in statutes which make it necessary that the roll must be returned on the 1st day of February, so that lands can be put up for sale in July, August, September and October.

Section 52 of chap. 225, R. S. O. 1897, provides that the council shall by by-law, fix the time for the collector to make his returns, etc. You do not say whether such a by-law has been passed by your council, or, if so, what date was therein fixed. Section 53 of the said act confers on the reeve and treasurer of your municipality the same powers and duties relating to the sale of land in arrears for taxes, as are conferred on the warden and treasurer of counties, in regard to the sale of land so in arrear, in the several municipalities composing the county. By section 173 and following sections of the Assessment Act, as amended by the Assessment Amendment Act, 1899. The above is of course subject to the provision of section 54 of said chap., 225, which enacts that such sales shall take place early during the months of July, August, September and October.

By-Law for Removing Obstructions in Rivers.

347.—UHTHOFF.—A river known by the name of North River runs through the township of Orillia. The township is partly settled along the river, and some of the settlers have thrown tree tops in it, and flood wood comes down and has formed several jambs which backs the water and flood the roads, causing washouts in the roads, and damage to farms. The timber men used to drive logs down this river some years ago, and they cleared it out every spring, but now no logs are driven. The timber is all gone. The river needs cleaning out badly. What are the proper steps to take to have the same done, and whose duty is it to do it? Some of the settlers object to any of the rubbish being drawn out and burnt on their places. Can they prevent it?

See section 562, sub-sections 12, 13 and 14 of the Municipal Act. Subsection 12 gives to councils of townships power to pass by-law for clearing away and removing the obstructions in drains, creeks and watercourses at the expense of the offender or otherwise. Sub-section 13 provides a mode of levying and collecting such expense, and sub-section 14 makes provision for the imposition of a penalty on persons causing the obstructions. If the settlers will not remove the obstructions, for which they are responsible, the township, pursuant to a by-law passed by the council, under the above authority will have to remove the obstructions in such a manner as will cause the least damage or injury or inconvenience to the lands of the settlers.

Assessment Church Property—Diversion of Watercourses—Damages—Private Drainage to Road Ditches.

348.—G. G. A.—The Methodist minister and the clergyman of the Church of England, are assessed as tenants of the houses and lands respectively occupied by them as a parsonage and rectory.

1. Can the individual members of the board of trustees of the Methodist Church and the church wardens be legally entered individually on the assessment roll and on the voters' list as the owners of the respective properties?

2. Can they legally vote as freeholders under section 353 of the Municipal Act, provided the valuation of the property in each case is sufficient, and the persons not otherwise disqualified?

3. H lives on a farm which he owns, on south side of sideroad, and C owns a farm on the north side. A creek runs north-westerly through H's farm, crosses the sideroad and enters C's farm, and there is a bridge or culvert where the creek crosses the road. Subsequently, accumulations of gravel, etc., brought down by the water have diverted its course, and it now leaves H's farm in a new channel at a point some distance west of where it formerly was and crosses the road and enters C's farm in a new channel west of the former one. The council have built a new culvert opposite and over the new channel on the sideroad. Nothing appears to have been done by any of the parties in the way of diverting or interferring with the natural watercourse. C objects to the new channel being cut on his lands. Has he any redress, and if so, against whom? If the ditching or road-work of the corporation caused to some extent the diverting of the water course, could the corporation be held liable for any damage sustained by C. Can H be obliged to keep the water in its old channel, or can he be obliged to remove the sediment therein that has caused the diversion on his lands?

4. In draining the cellar of a school-house the school trustees dug a drain or ditch therefrom to the road or concession on line ditch. The school-house is somewhat lower than the road ditch. Is the township council under any obligation to deepen or lower the road ditch to receive water from the school ditch?

5. Is it not within the rights of the municipalities to prohibit and prevent the construction of ditches or drains from private lands leading to the road ditches or public lands, (unless of course under the provisions of the Ditches' and Watercourses' Act)? In what way should the council proceed to enforce its rights?

1. No.
2. No.

3. Unless the diversion has been caused by the wrongful acts of the municipality or H, C has no cause of action against either party. On the other hand if it can be shown that the diversion has been caused by either H or the municipality the party causing the diversion is liable to C for such damage as he can show—the

aw being that no person has the right to divert a natural stream, that is a stream aving defined banks, to the injury of any riparian owner.

4. No.

5. The municipality can, by action, apply to the court for an injunction to prevent damage to its roads in such case as this. Private parties must proceed under the Ditches and Watercourses Act in order to obtain drainage of surface water from their lands.

Assessment Farm Lands in Towns.

349.—T. J. C.—In your closing sentence in answer to question 302, (last issue of THE WORLD) you say, "when no sales can be reasonably expected, the assessed value of such lands shall be that at which sales of it can be freely made."

Now if no sales can be expected how can the property be assessed so that sales can be freely made? Does not this seem to be somewhat mixed.

By reason an error in the printing of the reply to question 302 it does not convey the information which we intended. The latter part of section 29 provides that where no sales can be reasonably expected during the current year, the assessor shall, where the extent of such ground exceeds two acres in cities, and ten acres in towns and incorporated villages, value such land as though it was held for farming or gardening purposes, with such percentage added thereto as the situation of the land reasonably calls for. But for section 8, a piece of land in a village or town, used for the purposes mentioned in section 29, and not exceeding ten acres, would have to be assessed according to the principle stated in the first part of section 29, that is *the value at which sales of it can be freely made.* This is the only basis of agreement for such land under section 29. Section 8 provides for cases where there are blocks of land in towns or villages of not less than five acres, held and used as farm lands by one person only. In such a case as this, the land is to be assessed as farm lands unless it appears to the assessor that sales of it can be freely made, and if so, he is there to assess it accordingly as provided by the first part of section 29.

Value on Joint Assessment Owner and Tenant.

350.—J. G. S.—The assessor this year has made the following assessment: A man and his mother, (a widow) assessed as joint tenants. A man and wife as joint owners. A man as tenant and wife as owner, assessed jointly, and none of the above are assessed for more than $380.

In any of the cases would any of the parties be entitled to vote? and would he be justified in placing any of them on the voters' list? What I mean by jointly assessed is, they are bracketed together in the first column of the roll.

We do not think any of the parties you mention are entitled to vote. See section 93 of the Municipal Act.

A Council's Authority to Borrow Money.

351.—SUBSCRIBER.—1. I own a piece of land with a vineyard on it. My neighbor owns a piece of land to the south of me. It is all worked but one acre and a half against my lane. The timber has all been chopped off and has all grown up with under-brush. It makes it almost impossible for me to work my place. It is also a harbor for all kinds of birds that destroy my crop. Is there any law to compel them to clean the underbrush off, if so, how?

2. In the year 1895, the council borrowed seventeen hundred dollars on a note for six months. They levy every year for that note since, and never pay it off, borrowed till taxes were paid. Can the council still keep levying for that note? Is it legal? Making a levy in August 1899, is it right to levy till 1900, or until the twelve months following, or until the next January? Which is right?

1. We are of opinion that there is no legal authority that will enable you to compel your neighbor to remove the underbrush complained of.

2. Owing to the way the question is framed, it is difficult to ascertain what information you desire. If the council borrowed the $1,700 to meet the then current expenditure, they should have been guided by the provisions of section 435, of the Municipal Act, that is, the council should, by by-law, passed after the rate has been struck for the year, have authorized the head of the council and the treasurer thereof to borrow not more than eighty per cent. of the amount collected, or to be collected as taxes, to meet the then current expenditure *until such time as the taxes levied therefor can be collected.* In view of the above the note you mention should have been paid as soon as the taxes for 1895 had been collected.

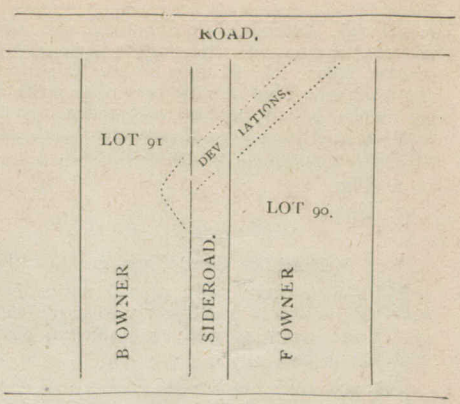
Townships Transfer to Councillor.—Closing and Opening a Road—Arbitration—Sale of Land Purchased at Tax Sale.

352.—J. W.—1. Is it legal to transfer township property to a township councillor?

2. Can a road be closed by the owner of the land upon which said road was built, after statute labor had been performed thereon?

3. H agrees verbally to sell right of way to townsnip and to let the price of it be set by arbitration. H and township appoint each an arbitrator, who fix the price at $35. H now refuses to abide by arbitrators award. Can he be forced to do so although he did not bind himself in writing to abide by the decision of the arbitrators?

T owns lot 90 and B owns lot 91 shown on the enclosed plan with allowance between for sideroad.



Many years ago a road was made partly on lots 90 and 91 shown by dotted lines marked deviations said road was used by the public and statute labor performed thereon, until four years ago when T fenced in the deviation on lot 90. The council never got any deed for either deviation.

4. Does the fact of usuage by the public convey a title.

5. Had T any right to fence in the deviation on lot 90, compelling the public to travel over a very high hill?

6. Since four years ago T has refused to sell or open the old road. What steps can be taken to compel him to do so?

7. At sheriff's sale of land for taxes, three years ago, the corporation bought some of the lands. The township must now dispose of them. What will be the proper way of doing so? Can the township council employ an auctioneer and sell the lands by public auction or must a warrant be issued to the sheriff to sell the lands?

1, Section 83 of the Municipal Act enacts that, "In case a member of the council of any municipality, either in his own name, or in the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a *purchase* or sale in which the municipality is a party interested, the contract purchase or sale shall be held void in any action thereon against the municipality. See Question No. 327 in the July issue of this paper.

2. This question is incomplete. You do not say whether the land was ever legally acquired for road purposes. Was it expropriated by the council, dedicated to the public as a highway, or assumed as a public highway by by-law of the council. The simple fact that statute labor has been done upon the road does not alone constitute it a public highway. If the performance of statute labor alone is relied upon by the council claiming it to be a public highway you must state the length of time during which statute labor has been performed upon the road, and the extent of it.

3. We are of opinion that H cannot be forced, under the circumstances, to carry out the award of the arbitration. The agreement to sell was not in writing, as the law requires, and the arbitration was apparently an informal one, and not in accordance with the provisions of section 448 and following sections of the Municipal Act.

4. This question, like No. 2, is incomplete, and for the same reasons. Section 637 of the Municipal Act empowers the council to open or make roads, and section 632 of the same act provides the procedure.

5. Unless the road is a public highway, T has the right to fence in his own land.

6. Section 534 of the Municipal Act gives the council power to acquire lands by by-law for the purposes of the corporation. If necessary, the council should purchase such lands as they may require for the purpose of making the road in question, and if they cannot agree on the price, arbitrate in the manner provided by section 448 and following sections of the Municipal Act. The course to be pursued by the council in establishing the new road will be found in section 632 of the said Act.

7. The council can sell the lands at such time and place and in such manner as may seem to them to be most advantageous

Clerks' Fees—School Debenture By-Law.

353.—W. W. H.—Can a clerk of a township charge a school section for preparing a by-law and issuing debentures to build a new school-house in the municipality of which he is clerk, and paid a salary yearly, "to do all the work the council requires of him as said clerk?"

Sub-section 4, of section 70, of the Public Schools Act, provides "that the expenses of preparing and publishing any by-laws or debentures, and all expenses incidental thereto shall be paid by the school section on whose behalf such debentures were issued." If the council has to pay anything for the preparation of this by-law, the amount paid, provided it is reasonable, must be paid by the school section. When the clerk prepares such a by-law the council cannot charge anything to the school section unless it has paid the clerk. We think the council, when the clerk prepares such a by-law, should allow him a reasonable sum for preparing it, and charge the section with the amount.

Payment Debenture—Arrears.

354—SUBSCRIBER.—1. We owe three years arrears in P. school debentures. We could not find the holders, so we used the money raised. Can they charge us interest on arrears?

2. Can we legally borrow now from a bank or other person, money on a note to pay up arrears (demanded now) until our current rates come in?

3. For what purposes can a corporation borrow on a note?

1. Yes. Your council should have placed the money on deposit in some safe banking institution, pending the discovery of the holders of the debentures, so that it would be earning interest in the meantime. The council had no right to use the money for any purpose other than to meet the payment of the debentures.

2. We do not think that the money required to meet the debentures in this case can be regarded as ordinary expenditure within the meaning of section 435, of the Municipal Act. In levying your rates for the present year, you should levy a sufficient amount over and above all other rates, to meet the debentures and interest thereon. The holders of the debentures will probably be willing to wait until the taxes, or a sufficient part thereof, are collected to pay them off, if you will advise them that you intend to provide the money out of the present year's taxes.

3. To raise sufficient funds to meet the current ordinary expenditure of the municipality until such time as the taxes levied therefor can be collected. See section 435, of the Municipal Act. As to what constitutes "ordinary expenditure," see question No. 273, in the June issue of this paper. As to when and to what extent the powers conferred on municipal councils by the said section can be exercised, see question No. 169, in April issue of this paper, and the article headed "Goderich Councillor disqualified," in the same issue.

Cows—Pounds—Road Fences—Statute Labor—Where to Perform.

355.—J. H.—1. When the by-law of a municipality allows peaceable cows to run at large can they be impounded if they get into a neighbor's fields through his gate being left open or a fence or bars open by owner of premises in order to go to and from his work?

2. When the by-law of a municipality makes a lawful fence say four feet six inches high must the concession road fence along farms be lawful fences or is a person bound to build lawful fences along the road or any fence at all if he does not require it for his own use?

3. Is a road fence a line fence? If so, why not make the municipal council build half?

4. A young man who works out owns land in a road beat and is hired with a man in another road. Can he do his road-work in the beat where he works, or must he do it where his land is?

1. Yes.

2. An owner is not bound to erect and maintain a fence along the highway.

3. A road fence is not a line fence in the sense in which the phrase is used in the Line Fences Act, so that the municipality is not bound to build half of it.

4. This young man must perform his statute labor in the statute labor division in which his land is situated, in the absence of a by-law passed under section 561, (5) of the Municipal Act, regulating the manner and divisions in which statute labor is to be performed.

Date of Final Revision of Assessment Roll—Assessed Owner's Name Struck Off—Purchaser's Name Not Entered, Effect of.

356.—T. W S.—With due consideration to the following; (1) "An act respecting voters' lists, part 1, chapter 7, section 6, sub-sec. 1; section 16, sub-sec. 8"; (2) "The Assessment Act," chapter 224, section 71, sub-sec. 19; section 75, sub-secs. 2 and 7, our Court of Revision was finally closed June 16.

1. Providing no appeals are made against the doings of our Court of Revision, when would the assessment roll be understood to be finally revised and corrected? June 16th, the time when the Court of Revision was closed; June 30th, the statutory limit of time, or the time during which appeals against the Court of Revision has elapsed, which would be July 5th, which is five days after June 30th?

2. Providing appeals are made against the doings of the Court of Revision, when would the assessment roll be understood to be finally revised and corrected? Any time at which the judge might see fit to close the court or the statutory limit, July 31st?

3. In the light of question 1 what would be the limit of time for first posting up of voters' list; also in the light of question 2?

4. In the July number of THE MUNICIPAL WORLD and under the heading "Calendar for July and August," I find July 14th named as the last day for completion of duties of Court of Revision, Assessment Act, Sec. 71, sub-sec. 19. Is this correct? Should it not be June 30th?

5. Where an owner in a municipality has disposed of his property and an appeal has been made to the Court of Revision in the regular way to have his name struck off, which is done, would the fact of not entering the purchaser's name on the roll, no appeal having been made, be considered as a "palpable error"? If not a "palpable error" no name would appear on the roll for said property, and how would this effect the collection of taxes?

1. The assessment Roll cannot be considered to be finally revised and corrected, under the circumstances stated, until the lapse of five days after the day limited by section 71, sub-section 19 of the Assessment Act for the closing of the Court of Revision. If no appeal is lodged within that time the roll becomes finally revised. See sub section 16, section 6 of the Ontario Voters' Lists Act.

2. The roll will be finally revised as soon as the presiding judge has given his decision on all appeals coming before him.

3. Section 8 of the Voters' Lists Act provides that in your municipality (a village) that "within thirty days after the final revision and correction of the Assessment roll (whether such correction and revision be at the expiration of 5 days from the date limited by sub-section 19 of section 71 of said act, or when the judge has given his decision on all appeals heard by him) the clerk *shall cause at least 200 copies of the said list to be printed*, etc., and FORTHWITH shall cause one of the said lists to be posted up, etc."

4. No. The date for the completion of the duties of the Court of Revision is the 30th of June.

6. No notice of appeal having been filed in the manner laid down in the act, the court could not legally enter the name of the purchaser of the land on the assessment roll. We do not think the omission of the purchaser's name could be called a "palpable error." Without some evidence as to the name of the purchaser the Court of Revision could not place his name on the roll, and such evidence could not be heard in the absence of the filing of a notice of appeal. The omission of the name of the purchaser will not in any way effect the calculation and collection of taxes rateable and chargeable against the property in question.

Statute Labor—Owner and Tenant—Examination of Assessment Roll—Reading By-Laws.

357.—RATEPAYER.—1. Is a farm so divided in two or more road divisions by being different parts of a lot or different lot—such as a man owning a farm and renting another farm; should the township clerk add the assessment together when he is assessed for both and make out the statute labor lists for each parcel on the schedule plan the same as if each parcel belonged to different persons?

2. Should not the clerk add the assessments of all one person's property together and then divide the total amount of days up? Then divide the statute labor in each division equally?

3. If a person owns a part of a lot and is a tenant for another part of the same lot is he required to do statute labor for both the same as if they were assessed to two different persons, or should not the two pieces be assessed together and the owner and tenant as being the one person entitled only to do labor for the full amount of assessment?

4. Is the municipal council the proper party to examine the assessor's roll when it is returned or is the clerk the chief party to do so.

5. Should all by-laws be duly read a number of times in open council and signed and sealed in open council? or can the clerk say that he will do it at home in his own house and get the reeve's signature to it at some future time do? The councillors sometimes never see the by-law. Which is legal?

1. These two parcels should be regarded as separate parcels and charged with statute labor accordingly.

2. See sub-section 2 of section 109 of The Assessment Act which is a sufficient answer to this question.

3. The two parcels must be treated separately, not being owned by the same person.

4. It is the duty of all the members of a municipal council to see that their officials, including the assessor, perform their duties properly, and therefore they should examine the assessment roll when it is returned. It is, however, particularly, the duty of the clerk to check over his assessor's roll to prove its accuracy in every particular. The roll forms the basis of the greater part of the clerk's yearly work.

5. A by-law should be read a first, second and third times in open council before being finally passed. It should then, or as soon as possible thereafter, be signed by the reeve and clerk and the corporate seal should be affixed. If the councillors do not see a by-law it is their own fault. It is their duty, right, and privilege to insist on seeing the by-law before taking it into consideration.

Statute Labor—Snowdrift—Obstruction to Road.

358.—E. B.—Our eighth clause of by-law of overseers of highways for our township, states that the overseer can call on any in his beat for sudden obstruction or damage by flood to fix and repair? Would this clause not imply shovelling snow as a sudden obstruction, and would a pathmaster be justified in giving an account of work done, and return to clerk the amount of labor performed, or could the council refuse and not give any remuneration if the returns were not made to the clerk of such work, as opening the highway for the mail? The case was: The pathmaster made a claim of $3.00, and no return to clerk, and has done his statute labor this year. Can the council refuse payment?

A pathmaster cannot call out persons to do work on the roads of the municipality except in such cases as the Municipal Act gives him the power. It is his duty to call persons out to perform their statute labor in time to enable him to make his return before the 15th of August, pursuant to section 110, of the Assessment Act. Section 537, of the Municipal Act, empowers councils to appoint pathmasters, and subsection 3, of the same section, empowers township councils to appoint pathmasters to perform the duty of keeping open township roads during the season of sleighing. Under this section power can be given to pathmasters to call out men in their divisions to do work to keep roads clear of snow, and such persons are entitled to be allowed for such work in their next season's statute labor. Apart from these provisions, we are not aware of any other authority enabling a pathmaster to compel people in his division to turn out to do statute labor, and therefore the council cannot give him such power. The council, however, may prescribe the duties of pathmasters, and clothe them with certain powers in regard to the repair of roads, and when such a by-law exists, he must be guided by the by-law. We cannot express an opinion as to the powers of the pathmaster in this case, because we have never seen the by-law; but from what you state it does not appear to provide for an obstruction by snow. If, however, the work was necessary, and the amount claimed for it reasonable, the council ought to pay it out of the general funds of the municipality.

A County Bridge—Proper Length.

359.—X. Y. Z.—Several years ago Euphemia township built a bridge across Fansher creek near the Sydenham river. The water backs up over the flats 10 or 12 feet deep, therefore a cheap bridge was erected from bank to bank, 200 feet long, which would be cheaper than grading 170 feet, leaving over 30 feet to be bridged, that span being quite sufficient. In 1894 the reeve and deputy-reeve of Euphemia moved in county council, Sarnia, to have county build a new bridge jointly with Kent county. A committee was sent over to investigate; committee reported length of bridge 198 feet and also reported that it was county bridge. By-law was passed but Kent would not co-operate on the ground that it was not a county bridge. High Court of Justice decided that it was a county bridge and that the two counties should build it. But now the committee has let job to build a 30 foot bridge, and I understand they intend to place it near one bank then grade 100 feet approach at one end (the old road being at the other end) leaving quite a space unprovided for. Can they do this legally?

2. Are there any decisions in a similar case?

The court having decided that the bridge in question is a county bridge the only question to be considered is what space is to be bridged. But you have not furnished us with sufficient data to enable us to express an opinion upon the matter with any degree of certainty. If a 30 foot bridge is sufficient to span the channel through which the water flows, we think the council are within their rights. They are not bound to build over the flat beyond the natural channel, and this we think is the position which the counties take under section 605. The Municipal Act. They are also required to keep up and maintain the necessary approaches for 100 feet at each end of the bridge. The most recent case on this subject is New Hamburg vs. Waterloo, 20, A. R. I; 22 S. C. R. 296.

2 We know of no legal decision touching directly on the point raised.

A Legal Chain Bearer—Equalization of Township—Personal Property.

360.—H. M.—A farmer purchased the rear fifties of 200 acres and both seller and purchaser had it surveyed at time of sale by a P. L. S. about fifty years ago and both were satisfied with survey. The front 50 has changed hands often since, and no dispute about line until the present owner had it surveyed, making a difference of about a foot from the first. It was not fenced and he claims the land. His hired man was a chain bearer and was also a relative of the wife.

1. Does the first or second survey stand?

2. Is a hired man or a wife's relative a legal chain bearer?

Our county council for a good many years have taken 3 per cent. of the real property in townships to represent the personal property, with the personal property of stores in addition. This year they have done the same, and state that the levy is from June to June.

3. Farm stock, implements, etc., being exempt, and no farmer having $100 of personal property is the levy legal?

4. The act being passed in April exempting grain, hay, etc., could they levy in June, after the legislature exempted them from taxation?

5. If the levy is illegal what action should a township council take. Can they deduct the amount representating farm, personal property, and pay the balance to the treasurer? Or how can they avoid payment?

1. It is difficult for us to say which of the lines in question is the correct one. We must assume that both the surveyors who ran the lines were respectively competent to perform the work, and since they differ, the correctness of either line could be determined only on the evidence adduced in an action between the parties to establish or determine the line. It is quite possible that this case comes within the law as laid down by Mr. Justice Proudfoot, in McGregor vs. Keillor, 9 O. R., 671, and if so, it is too late, now, to dispute the survey of fifty years ago. At page 681, of the above report, Mr. Justice Proudfoot says: "Ball's survey was made in January, 1868, and the trespass was in January, 1882, and summons issued January 30th, 1882, and from the time of that survey the plaintiff occupied up to the line marked when the survey was made. He exercised ownership over it, cut timber up to the line, and the owners of the adjoining lands observed this as the division line between the lots until the trespass complained of. This appears to be a sufficient occupation to bring the case within the statute of limitations. Steers vs. Shaw, 1, O. R., 26."

2. A legal chain-bearer is one who is "absolutely disinterested in the survey in question, and is not related or allied to any of the parties interested in the survey within the fourth degree—that is, within the degree of first cousin." Before commencing his chaining or measuring, he should take the oath or affirmation required by section 5, of chap. 181. R.S.O. 1897.

3, 4 and 5. One answer, we think, will suffice for all these questions. Section 87, of the Assessment Act, provides a mode for the equalization, by county councils, of the assessments of the several municipalities comprised within the county. The valuation placed on the real and personal property in any municipality by the county council is, to a great extent, a guess. The idea is to make the assessed values of the several municipalities proportionate, so that each will bear and pay its just portion of the county rate. It makes very little difference as to the course pursued by the county council in arriving at a basis for the equalization, so long as the assessed value of one municipality is fair and just, when compared with that of each of the others. If any municipality is dissatisfied with its equalized assessed value, provision for appeal is made by section 88, of the Assessment Act. If the time for appeal, (namely ten days,) as fixed by the last mentioned section, has expired, this year's equalization will have to stand. The basis of apportionment of the county rate for the current year is the equalized assessment for the previous financial year. See sec. 87.

Line Fences, Sub-division of Property.

361. TOWNSHIP CLERK.—A owns the west half of the lot; B owns the east half of the same lot. The line fence was divided over 20 years, B building and maintaining the front or south half and A the back or north half. A has sold the back or north half of his lot to C. Who will have to maintain the line fence between B and C's lands?

In view of the change of ownership a re-adjustment of the liability to maintain the fence should be made amongst the three present owners, either by mutual agreement, or by proceedings taken under the Line Fences Act, (R. S. O., 1897, chapter 284)

Union of Townships—Separation—Agreement—Division of Assets.

362.—J. O. S.—At a council meeting held in this municipality on Saturday, 27th May, I was requested to write you concerning the settlement between the townships of A and M. The two municipalities were in one under the name of the municipality of A until February or March, 1898. The municipality of M withdrew from the union under the name of M. I enclose you copy of the agreement between the two municipalities, also a statement of arrears of taxes at time of separation. The councils have been endeavoring to come to a settlement but have failed to come to satisfactory terms. For that reason I have been asked to write and ask of you what you consider the just share of each municipality from the statement I enclose and from your opinion of the clauses of agreement, a copy of which I also enclose. I cannot find in the minutes of the council where the basis or clauses of agreement was adopted by council of A, but as they have been trying on two occasions to make a settlement although they failed, I would suppose that it is the same as if they had been adopted. The council did not ratify the agreement by by law or otherwise.

2. Council also requests to be informed if they can extend the time for returning the collector's roll or is there a certain date at which it must be returned?

3. I would like to ask you what arrears of taxes can be legally placed on the collector's roll for 1899?

CLAUSES OF AGREEMENT BETWEEN THE MUNICIPALITIES OF ALBERTON AND M'IRVINE.

Clause No. 1.—Agreed between the municipalities of Alberton and McIrvine: That whereas it appears from the statement of Mr. Woods, ex-treasurer of the joint municipalities, that the assessed valuations of Crozier and Roddick is twenty per cent of the total valuation, and that the assessed valuation of McIrvine is 80 per cent of the total valuation, it is agreed by the representatives of the present councils of Alberton and McIrvine, that the distribution of the net assets of the joint municipalities shall be in the same proportions.

Clause No. 2.—Struck out.

Clause No. 3.—Agreed that the personal property of the joint municipalities be appraised at invoice prices and apportioned as in Clause No. 1.

Clauses 4 and 5—Struck out.

Clause No. 6—That each municipality assume the unpaid taxes within their respective municipalities, as a share of the assets, and agree to pay to the creditor municipality the difference in their favor as collected, or as may be agreed upon.

Clause No. 7.—That the municipality of McIrvine assumes the liabilities of the old 1897 council of Alberton and pay them as per statement of W. Woods, ex-treasurer of the municipality of Alberton, and that the amount of the liabilities be allowed the municipality of McIrvine as a credit on the joint assets.

(Copy of Report.)

RE SETTLEMENT BETWEEN ALBERTON AND M'IRVINE.

The committee on settlement of trust accounts of the old municipality of Alberton beg to report that they cannot agree owing to difference of opinion as to the basis of settlement.

The representative for McIrvine claims that the apparent face value of taxes in each municipality were to be received at such face value in settlement, less proportion of liabilities.

The representative from Alberton claims that the division should be made of monies actually collected, and not of the gross amount on the roll, less the proportion of liabilities.

The representative for McIrvine calls your attention to Clause 6 of the agreement which states that each municipality shall take its own taxes at par or face value in the settlement. Representative for McIrvine, H Williams.

The representative for Alberton calls attention to Clause 1 which speaks of a division of net assets. Representative for Alberton, J. Hastie.

Sec. 325 of The Municipal Act provides that the powers of the council shall be exercised by by-law when not otherwise authorized or provided for. You inform us that you cannot find any entry in the minutes or by-law book of your council indicating that the agreement in question was ratified by such council. We therefore are of opinion that the agreement is not binding on the municipalities. Since the two councils cannot agree as to the terms of settlement, and the two auditors or representatives appointed by them differ as to the mode of dividing the assets, they should fall back on the Statute and arrange matters in accordance with its provisions. Sec 32 of The Municipal Act makes provision for the disposition of property upon the dissolution of the union of townships. By that section municipalities have power to agree between or among themselves as to the disposition of the joint assets, and in case the councils do not within three months after the first meeting of the council of the junior township agree as to the disposition of the personal property or as to the sum to be paid by one to the other, the matters in dispute, shall be settled by arbitration under the Act. The procedure on arbitration you will find in Sec. 458 and following sections of The Municipal Act.

2. See section 144 and 145 of the Assessment Act, and an article entitled, "Return of the Collector's Roll—Collector of Taxes," in the June issue of this paper, page 96.

3. All taxes that have been in arrear for and over three years, see sections 152 to 155, of the Assessment Act. As to what lands are taxable, see sec. 6 and following secs., and sec. 172, of the Assessment Act.

Term of Livery Stable License.

363.—T. W. S.—The municipality of the village of Blythe, has a by-law as follows:—

"All persons keeping a livery stable, or who let out a horse or horses on hire shall pay an annual fee of twenty dollars"

The livery stable license formerly granted has been and is now from March 1, to March, 1, of the following year, although there is nothing in any act of the council naming March 1, as the date or any other day. The blank forms of license used by the council name March 1 as the expiration date of such license.

Mr. B now asks for a livery license.

1. Must B pay the full fee of $20 or a proportionate part of it, seeing that formerly licenses have been granted to expire March 1?

2. If B must pay $20, would he be entitled to a license for year from the date on which such license was issued, or must his license terminate on the first day of March, without respect to the date of issue.

1. If the above clause is the only one relating to the imposition of a license fee on livery stable keepers in your village, your by-law does not make provision for granting any other than a yearly license. This being the case B must pay the full fee of $20.

2. B, paying the $20 annual license fee, will be entitled to a license for one year from the date of his paying same, and on which the license was issued. The date in the blank form of license can be changed before it is filled in and signed by the proper official.

LEGAL DECISIONS.

Ryan vs. Willoughby.

Contract—Impossibility of Performance by Act of party—Municipal Corporations—Member Interested in Sub-contract—Duty to Resign Office—Refusal to Carry out Sub-Contract—Liability.

The defendant, who was a member of municipal corporation and who has been disqualified under section 80 of the Municipal Act, R. S. O., chap. 223, from entering into or being interested in a contract with the corporation, entered into a sub-contract to do the brick and mason work of a town and fire hall which was being erected for the corporation under a contract which contained a provision that the contractor should not sub-let the work or any part thereof without the consent, in writing, of the architect and corporation. The defendant agreed to resign his seat—though this formed no part of his written contract—which he afterwards refused to do on the ground that the corporation declined to accept him as a sub-contractor, and a resolution was passed by the corporation to that effect, whereupon the defendant refused to perform the contract.

Held, that the defendant on his omission to resign had not done all in his power to enable him to perform the contract, and was precluded thereby from setting up the resolution of the council as an answer to his non-performance, and was liable for the damages sustained by the plaintiff.

McKenzie vs. West Flamboro.

Drainage—Want of Repair—Act of God.

Where a drain is out of repair, and lands are injured by water overflowing from it, the municipality bound to keep it in repair cannot escape liability on the ground that the injury was caused by an extraordinary rainfall, unless it is shown that, even if the drain had been in repair, the same injury would have resulted. Judgment of drainage referee reversed.

Modeste vs. Corporation, Ratter and J. T. Froysell, Returning Officer.

Action brought by plaintiff, claiming $200 damages on account of the returning officer refusing to allow him to vote, at the municipal election, in January, 1899. The council had duly passed a by-law according to the statutes, disqualifying any elector who had not paid his taxes, on or before the 14th of December, 1898, and the clerk, acting as returning officer at the election, had a list of defaulters, in the polling booth, which was duly sworn to by the collector, and which contained the name of the plaintiff. Consequently, the returning officer refused to allow him to vote.

Case heard at the District Court of Nipissing, at North Bay, before his Honor, Judge Valin. The plaintiff applied for a jury, but was peremptorily refused, this being a question solely of law. The clerk and returning officer, proved to the satisfaction of the judge, that all requirements of the law, had been duly complied with, and the judge, in giving judgment for the defendants with costs, remarked, that they had done even more than this, in that the clerk arranged for the collector being on hand, within one hundred yards of the polling booth, for the express purpose of receiving taxes from any elector, being on the defaulters' list, and by getting a certificate from the collector, he would be allowed to record his vote.

The Judge complimented the officials of Ratter and Dunnet, on the correct and straightforward manner in which their books and accounts were kept.

Regina vs. Applebe.

By-Law.—Transient Traders.—Occupation of Premises—Invalidity of—Quashing Convictions.

A by-law provided that "no person not entered upon the assessment roll of the city of W., or who may be entered for the first time in the said assessment roll—who at the time of commencing business has not resided continuously in said city—at least three months, shall commence business—for the sale of goods or merchandise—until such person has paid to ——the sum of——by way of license."

Held, that the statute under which it was framed, R. S. O. C., 223, section 583, sub-sections 30 and 31, relates to transient traders who occupy premises in a municipality, and that clause (b) of sub-section 31 defining the term "transient traders" does not modify the practice as to the occupation of the premises, and that this by-law is defective and invalid, as it is directed merely against persons not entered upon the roll, and who have resided continuously for three months in the municipality, and is quite silent as to these persons being in occupation of premises, and a conviction made thereunder was quashed.

Bell vs. Colchester South.

Some time ago the people of Colchester South carried a by-law repealing the Dunkin act. The legality of the proceedings was questioned by the temperance people of the municipality, for whom Chas. Bell stood as plaintiff, and an appeal was taken to quash the by-law on the ground that the vote was wrongly taken.

The by-law was introduced at the council board and read a first and second time and ordered to be published in the Amherstburg *Echo* for four weeks, commencing on Friday, January 27, 1899, and that a poll should be held on Wednesday, February 22, 1899. This took place at a meeting of the council held on January 21, 1899. The council erroneously adopted the machinery of the Municipal Act applicable to the taking of the votes of the electors on a by-law requiring their assent, instead of the machinery provided by the Dunkin Act, which provides for open voting.

A majority of the electors having voted in favor of the by-law, it was read a third time and passed at a meeting of the council held on February 25, 1899.

Held, that the by-law not having been passed until after the voting, and the third reading having been based on the validity of the vote taken, the by-law was passed, Held, also, that there was jurisdiction in the court to quash such a by-law as this upon summary application. Judge Meredith made an order quashing by-law, but without costs, no objection having been made until after the vote had been taken.

Smith vs. Uxbridge.

This was an action brought to recover damages for injuries received by plaintiff on the 15th December, 1895, while driving upon a highway in a township alleged to be out of repair. At the first trial Chief Justice Armour dismissed the case, holding that the road was sufficiently kept in repair by the defendants having regard to the travel upon it and other circumstances. The plaintiff appealed from this judgment and a new trial was ordered, when the plaintiff again lost. Still not being satisfied the plaintiff's solicitor has appealed to and obtained, from the Divisional Court, leave to carry the case to the Court of Appeal. The principal point is, what should be the width of a main road in the township? There is no standard fixed by the Municipal or other Act. The road on which the accident occurred was only between eleven and twelve feet wide. We think it will be difficult for a court or legislature to determine a standard width for highways in Ontario, as the whole question is determined by the wealth of a municipality, the amount of travel and the many other circumstances usually brought out in cases of this kind. The decision of the Court of Appeal will be awaited with interest.

McBryan vs. C. P. R Co'y—Shaw, Third Party.

Adjoining Lands—Injury to One Property by Water—Right of Owner to Guard Against Without Regard to Neighbor's Rights.

M owned land bounded on one side by a river and on the other by land of the C. P. R. Company. On the other side of the railway land was that of S, who was in the habit of irrigating it with water brought from a creek some distance away. There was a slight depression from S's land to the river, and the water so used by S ran across the railway land to the property of M. which was protected from injury by a dam which penned the water back. It was not usually in sufficient quantities to damage the adjoining lands. In 1895 S used much more water than usual for irrigation, and M's dam had to be raised to effectively prevent his land from being flooded and the water sent back on the railway property caused considerable damage. The company brought an action against M. for damages and an injunction which was twice tried. (See 5, B. C. R., 187, ordering a new trial.) On the second trial the judgment was sustained by the full court (6 B. C. R., 136).

Held, reversing the last mentioned judgment, Taschereau, J. hesitante, that M. had a right to protect his land by all lawful means against the threatened injury without regard to any damage that might result to the adjoining land from the measures he adopted; and that the remedy of the company for the injury to its land was against S. the original author. Appeal allowed with costs.

Sanders vs. City of Toronto.

Master and Servant—Negligence—Independent Contractor.

The relationship of master and servant does no exist between a municipal corporation and a teamster, hired by them by the hour to remove street sweepings with a horse and cart owned by him, the only control exercised over him being the designation of the place from which and to which the sweepings are to be taken, and the municipal corporation are not liable for an accident caused by negligence while taking a load to the designated place. Judgment of a Divisional Court, 34 C. J. L. 272, 29 O. R., 273, reversed, Moss J. A. dissenting.

Winslow vs. Dalling.

Highway—Dedication—Non-user.

A way once dedicated to the public cannot be extinguished by acts of the grantor. Neither can the public by non-user release their rights.

The township clerk who does not get THE MUNICIPAL WORLD, and study it, is only half armed for the duties of his position.—Mattawa *Tribune.*

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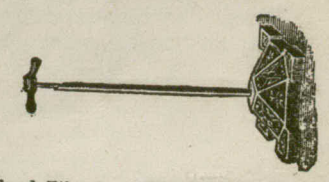

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