

# The Municipal World

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

Volume XIV. Number VIII.

ST. THOMAS, ONTARIO, AUGUST, 1904.

Whole Number CLXIV

## CONTENTS

	PAGE
Editorial.....	180
Ottawa to Tax Bachelors.....	181
Improved Election Methods.....	181
Qualification of Sep. School Teachers..	181
Equal Annual Payments on Debentures.	200
<b>ENGINEERING DEPARTMENT—</b>	
Wentworth County Roads .....	182
The Road Question in Brant.....	183
Specification for Metal Concrete Bridge Floor .....	184
Utilizing Statute Labor.....	184
Golden Rules in Roadmaking.....	187
A Good Roads Record.....	187
Consolidated Schools.....	197
<b>LEGAL DEPARTMENT—</b>	
Ward v. Lowthian; Green v. Marr ....	198
Re Fielding and Town of Gravenhurst..	198
Re Sombra School Section No. 26.....	198
Todd v. Town of Meaford.....	198
Forbes v. Grimsby Public School Board	199
Re Medler and Town of Toronto Junction.....	199
Re Meldrum and Town of Peterborough	199
Burying Ground Cannot be Legally Sold for Taxes.....	200
Re Rawdon Voters' Lists.....	200
Garner v. Township of Stamford.....	200
Wason v. Douglas.....	200
<b>QUESTION DRAWER—</b>	
478 Powers of Council and Police Trustees..	
479 Is a Farmer's Son a Ratepayer?.....	
480 Disposal of Municipal Property.....	
481 Bailiff Can be Collector—Power of Council to Repeal By-Law—Member of Council Cannot Take Contract—Can- not be Pathmaster—All By-Laws Need Not be Registered.....	
482 A Bridge Contract.....	
483 Opening of Roads Shown on Plan .....	
484 A Drainage Contract—Collecting Sub- scriptions—Changing Drain from D. & W. to Municipal Drainage Act.....	
485 Appeals to Court of Revision Against Assessment of Dogs.....	
486 Duration of Council Meetings—Adjourn- ment.....	
487 Construction of Local Improvements Under Section 677 of The Consolidated Municipal Act.....	
488 Collection and Payment of Rates in Union School Section.....	
489 Assessment of Mining Lands.....	
490 Composition of Police Committee—Con- tract of Councillor with Corporation— Compelling Cutting of Noxious Weeds— Proceedings on Change of Time for Assessment.....	
491 Statute Labor—Line Fence Between Bush Lands—Closing of Private Way— Liability When Bridge Out of Repair...	
492 Liability of Undertaker Burying Without Permit.....	
3 Statute Labor—Recovery of Taxes Paid on Excessive Assessment.....	
494 Closing Road Through Private Property	
495 Building Fence When Creek is Boundary Line.....	
496 Payment of Doctor's Bill for Attendance on Drunken Man.....	
497 Responsibility for Building Fence Around School Yard.....	
498 Exemption from Assessment of Agri- cultural Society Lands—Assessment of Dogs.....	

## Calendar for August and September, 1904.

### Legal, Educational, Municipal and Other Appointments.

#### August—

1. Last day for decision by Court in complaints of municipalities respect-  
ing equalization.—Assessment Act, section 88, sub-section 7.  
Notice by trustees to municipal council respecting indigent children  
due.—Public Schools Act, section 65, (8); Separate Schools Act,  
section 28, (13.)  
Estimates from school boards to municipal councils for assessment for  
school purposes, due.—High Schools Act, section 16, (5); Public  
Schools Act, section 65, (9); Separate Schools Act, section 29, (9);  
section 33, (5.)  
High School Trustees to certify to County Treasurer the amount col-  
lected from County pupils.—High Schools Act, section 16, (9.)  
High School Trustees to petition council for assessment for permanent  
improvement.—High Schools Act, section 35.  
Inspector's Report on school premises due.
5. Make returns of deaths by contagious diseases registered during July.  
R. S. O., chapter 44, section 11, (4.)
14. Last day for county clerk to certify to clerks of local municipalities  
amount of county rate.—Assessment Act, section 94.
15. Rural, Public and Separate Schools open.—Public Schools Act,  
section 96, (1); Separate Schools Act, section 81, (1.)

#### September—

1. High Schools open first term.—High Schools Act, section 45. Public  
and Separate Schools in cities, towns and incorporated villages,  
open first term.—Public Schools Act, section 96, (2); Separate  
Schools Act, section 81, (2.)
  2. County Model Schools open. Reg. 58.
  5. Labor Day.
  15. Last day for county treasurer to return to local clerks amount of  
arrears due in respect of non-resident lands which have become  
occupied or built upon.—Assessment Act, section 155 (2.)  
County Selectors of Jurors meet, Jurors' Act, section 13.
  20. Clerk of the peace to give notice to municipal clerks of number of  
jurymen required from the municipality.—Jurors' Act, section 16.
  25. Applications for admission to County Model Schools to inspector's  
due. Reg. 59.
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| <ol style="list-style-type: none"> <li>499 Voting on Money By-Law—Preparation<br/>of Voters' List, etc.....</li> <li>500 Destruction of Noxious Weeds.....</li> <li>501 Payment of Costs of Criminal Prosecu-<br/>tion in Districts.....</li> <li>502 Council Can Compel Coal Dealers to<br/>Use Market Scales.....</li> <li>503 Liability for Damage to Cemetery Fence<br/>Council Can Make Grant to Agricultural<br/>Society in Adjoining Township.....</li> <li>505 Liability for Damages Occasioned by<br/>Diseased Horse.....</li> <li>506 Collection of Taxes and Sale of Lands in<br/>Arrears in Districts—Location of School<br/>House—Proceedings Preliminary to the<br/>Erection of New School House.....</li> <li>507 Procedure When Pathmaster Refuses to<br/>Act.....</li> <li>508 Powers of Township Council as to Side-<br/>walks in Police Village—Strengthening<br/>Bridge for Traction Engine.....</li> <li>509 Council Should Not Advertise for Tend-<br/>ers for Township Clerkship.....</li> <li>510 Sale of Lands Purchased by Municipality<br/>at Tax Sale.....</li> </ol> | <ol style="list-style-type: none"> <li>511 Procedure on Installation of Waterworks<br/>in Town.....</li> <li>512 Method of Warning Public as to Dan-<br/>gerous Condition of Road.....</li> <li>513 Maintenance of Sidewalk on Townline..</li> <li>514 Method of Preparing By-Law for Open-<br/>ing Road—Preliminary Proceedings....</li> <li>515 Grant to L.O.L. for Celebration Purposes</li> <li>516 Vote Necessary to Carry Resolution....</li> <li>517 A Line Fence Dispute—Compensation<br/>for Lands Taken for Road.....</li> <li>518 Powers of Township Constable in Dis-<br/>tricts—Mileage of.....</li> <li>519 Change of School Site and Erection of<br/>New Buildings, etc.—Rights of Parties<br/>Tendering for Contract.....</li> <li>520 Adjournment of Drainage Court of<br/>Revision—Qualification of Auditor.....</li> <li>521 Dimensions of Subways Under Railways</li> <li>522 Levy and Collection of School Monies in<br/>Union Sections—Qualification of Land<br/>Surveyor.....</li> <li>523 Running Powers of One Railroad Over<br/>Another—Consent of Council—Status of<br/>Parties to Agreement.....</li> </ol> |
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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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Associate Editors.

TERMS.—\$1.00 per annum. Single copy, 10c.; Six copies, \$5.00, payable in advance.

EXPIRATION OF SUBSCRIPTION.—This paper will be discontinued at the expiration of term paid for, of which subscribers will receive notice.

CHANGE OF ADDRESS.—Subscribers who may change their address, should give prompt notice of same, and in doing so, give both old and new address.

COMMUNICATIONS.—Contributions of interest to Municipal Officers are cordially invited.

HOW TO REMIT.—Cash should be sent by registered letter. Draft, express or money orders may be sent at our risk.

OFFICES—334 Talbot Street, St. Thomas. Phone 189.

ADDRESS all communications to THE MUNICIPAL WORLD, LIMITED,  
Box 1321, St. Thomas, Ont.

ST. THOMAS, ONT., AUGUST 1, 1904.

The Statutes of the Province of Ontario for 1904, which it was anticipated would come to hand about the middle of July, will not be ready for distribution until on or about the 15th of the present month.

We are requested by the Provincial Municipal Auditor to state, that, as Brown Brothers, the publishers of the Government form of Municipal Cash Books, on account of their late severe loss in the Toronto fire, will be unable for a few weeks yet to fill their orders, that it would be desirable in the case of treasurers whose books are filled, to make use of foolscap sheets of paper for the debit and credit entries necessary to be made, and when the books are delivered (which cannot be long now) to transcribe the same into the Government form of book as formerly.

Mr. G. Sneath, J. P., was appointed clerk and treasurer of the Township of Vespra in January, 1854, and still holds and performs the duties of both offices.

Preston has decided in favor of municipal electric lighting. By a vote of 170 for, with only 15 against, the ratepayers carried a by-law to raise by way of debentures \$27,000 to purchase the existing arc and incandescent plant from Messrs. James Fenwick and John Shearer, and to install an up-to-date municipal electric lighting plant.

The Township of Paipoonge has recently been separated from the municipality of Neebing, and Mr. A. W. Trewin, who for sixteen years was clerk of the Township of Tehkummah, Manitoulin Island, has been appointed its first clerk. This gentleman's experience will, no doubt, materially aid the council in starting and continuing the transaction of the business of the new municipality along the right lines. The new township comprises part of the fertile valley of Slate River, and is in the vicinity of the Town of Port Arthur. Its assessed value is over \$130,000.

The estimated cost of the granolithic walks to be laid in Tilbury this season is \$12,000.

Mr. Robert Woods, treasurer of Joly township, was shot and killed by Mr. E. Paisley, who mistook him for a deer.

At a recent meeting of the council of the Town of Welland, Mr. Henry W. Boyd was appointed clerk to succeed the late Mr. E. R. Hellems.

Four money by-laws were voted on by the property owners in Barrie recently, and all were carried by large majorities. They authorized the issue of debentures for the following purposes: Extending cement pavements, \$10,000; extending waterworks system, \$3,000; enlarging fire hall, \$3,500; purchase of hose, \$1,500.

The Bell Telephone Company has been victorious in an action it recently brought against the corporation of the Town of Owen Sound. The town forbade the company digging up the street to lay a cable conduit across from their new offices. When the company proceeded to excavate, the town interfered and the hole which they had dug was filled in by employees of the corporation. Subsequently the case was tried at Hamilton and judgment was reserved. Mr. Justice Meredith has handed out his decision and with regard to the town's claim that the road could not be restored to its original condition says: "The road is but a macadamized one and one that is often opened for far less generally useful purposes. Any objection to the work on this ground is purely a subterfuge to cover some ulterior purpose, and that purpose is plain, namely, to coerce the company to pay to the town a tax upon their business, which the town has no sort of legal right to demand. Their objection to the work is not made in good faith, but for a purpose *ultra vires* and wholly unwarranted. Parliament has clearly and distinctly given the plaintiffs power to carry their wires over or under public streets, but has made that right subject to certain rights. These latter rights must be exercised in good faith and should be reasonably exercised. Instead of that they had been unreasonably exercised in bad faith and for a purpose not authorized within the power of the defendants, so that whatever those rights may be, the company are entitled to succeed in this action. The defendants will, therefore, be perpetually restrained from interfering with the work of the plaintiffs in carrying their wires to their new offices under instead of over the highways. Upon the broad question of the power of municipal councils under the amended Federal Act, the extravagant claims of Owen Sound that it rests with the town to determine as they see fit, where and how the company shall construct their lines, seems to be quite unwarranted by the Act." The judgment in this case settles, as far as the court can settle it, the question of the right of the company under the powers granted by Federal legislation to put its wires under the highways of a municipality. The question is one of interest to all towns and cities, and if the judgment stands it will put an end to uncertainty as to the powers of municipalities to refuse or grant such privileges.

### OTTAWA TO TAX BACHELORS.

They Get the Benefits of Civilization, but Do Not Pay.

A proposition to have a tax imposed upon bachelors in Ottawa is to be laid before the city council by Ald. Desjardins. He intends to have the finance committee consider the advisability of an application to the Legislature to secure authority for such action.

"There are some bachelors in Ottawa," Ald. Desjardins stated, "who own property and pay taxes, but there are a great number who do nothing of the sort. They use our streets and have the benefit of the whole corporation service without paying a cent toward the maintenance of the city. These, too, nearly all belong to a class who are well able to pay by reason of their holding positions which give good salaries. They should pay taxes as well as the rest of us.

"The special tax, moreover, may have the tendency of increasing the number of marriages. Old bachelors are far too numerous in Ottawa."

The New Assessment Act recognizes the above principal. By sub-section 19 of section 5 of the Act the incomes of persons, *not being householders and assessed as such*, are exempted from taxation to the extent of \$400 only, whereas persons assessed as householders in cities or towns having a population of 10,000 or over, are entitled to an exemption of \$1,000, and in other municipalities, \$700.

### IMPROVED ELECTION METHODS.

As a result of his investigation of the recent municipal election frauds in Toronto, Judge Winchester has made the following recommendations :

(1) That the deputy-returning officers and poll clerks respectively be appointed by the council at least one month prior to the election, the deputy-returning officers to be chosen from the sub-divisions in which they are to preside as deputies ; that the poll clerks be assigned to their duties by the Board of Control not sooner than one week before the elections ; that in no case should relatives be appointed to the same polling booth.

(2) That these officers be sworn by the city clerk or a Justice of the Peace at least one day before the day of the election.

(3) That a numbered ballot be used in connection with all municipal elections. Had the ballots been numbered at the late elections this investigation could have been concluded in a very short time at a trifling expense, as also the criminal prosecutions that were held.

(4) That one ballot paper be used for all candidates, including Mayor, Board of Control, Aldermen and Board of Education ; that when delivering the ballot papers to an elector, the deputy-returning officers ascertain what portion of it is not to be used, and cancel the part not to be used with a stamp reading "not used."

(5) That at the close of the poll the deputy-returning officer, poll clerk and constable certify on the line immediately following the last name entered in the poll book that such name was the last one so entered ; and also certify the number of ballots delivered out for each office, and that the ballots as counted tally with the number entered in the poll book.

#### Election of Officials.

(6) That the city clerk within one week from the return by the deputy-returning officers of the ballots, poll books, etc., and before payment to the officers named, do report to the Board of Control the manner in which each deputy-returning officer and poll clerk has performed his duty, and if the report shows that the statute has not

been complied with that the offending officers be not again appointed, and, if considered, that their remuneration be withheld.

(7) That the city council be granted authority to order a re-count of the ballots to be held before the County Judge, if considered proper in the public interest, such re-count to take place within four weeks from the election.

(8) That the payment of scrutineers be made an offence against the municipal election laws.

#### To Cancel Franchises.

(9) That all corporations holding franchises from the municipality be liable to have their franchises cancelled by the council on the proof of any illegal interference by or with the authority of any director or other officer of such corporation in the election of any member to the council.

(10) That every voter be only allowed to vote for Mayor, Board of Control and Board of Education at the polling place of the sub-division in which he resides, and there only.

(11) That where legislation is necessary to carry out the above recommendations such legislation be applied for.

### QUALIFICATION OF SEPARATE SCHOOL TEACHERS.

Mr. Justice MacMahon has given a decision which will probably affect a great many separate schools throughout the Province. The learned Judge finds the law to be that separate school teachers should pass the same examinations, and have the same qualifications, as teachers in the public schools. In the case of *Grattan v. Ottawa separate school trustees*, Judge MacMahon holds "that under the law the teachers of separate schools must qualify and pass the same examination to teach in Ontario as is required to teach in the public schools ; that unqualified teachers have no rights as teachers either among the Christian Brothers or any other body, as at the time of The British North America Act provision was made only for such persons as were then engaged as teachers, and that all persons who entered the profession in Ontario after 1867 would have to pass the usual examination ; that no authority is vested in the trustee by the Act to expend money on the erection of any religious institution or for the residence of a teacher, and the agreement could not be entered into for a longer period than one year. The agreement is held to be invalid and an injunction has been granted to restrain the board from entering into it."

In answer to questions concerning this judgment, Deputy Minister of Education Millar, of Toronto, said recently : "We will insist on all teachers being qualified or withhold the Government grant. If this decision is enforced, it means that the majority of the separate school teachers in the Province will have to qualify. I cannot say just how the Department will proceed."

An Order-in-Council has been passed incorporating Haileybury, in the District of Nipissing, as a town, to take effect on the 1st August inst. Mr. H. McQuarrie has been appointed returning officer for the election of municipal officers, which will take place on August 6th.

\* \* \*

Mr. Wm. Mitchell, town clerk of Goderich for the past twenty years, and secretary of the public school board, expired suddenly on the 18th July last, while on duty in his office.

# Engineering Department

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

## WENTWORTH COUNTY ROADS.

The recent report of the Commissioner of Highways contains an article by Edward Kenrick, warden of Wentworth, on the system of roads formulated by the county council under The Highway Improvement Act, from which we make the following extracts :

When Wentworth County proposed, under the inducement of Government aid, to formulate their scheme for an improved system of county roads the conditions were in some respects favorable to the undertaking. The City of Hamilton, as the county market town, formed a common centre, towards which radiated, as spokes to the hub of a wheel, some 38 miles of well-travelled macadam roads. Here was a starting point, and the fact that all these roads were then in the hands of toll road companies indicated the necessity for ascertaining the expense of releasing them from tolls, as the first order of proceedings. Also in Wentworth, the county road movement was no novel experience, the county already having at this time about 38 miles of county roads. Of this mileage of roads, 25 miles, after having been toll roads for many years, had but recently been made free, whilst only so lately as within the last five years the county had been put to the expense of nearly \$30,000 in acquiring and partly constructing the remaining 13 miles.

### Conflicting Interests.

Under such apparently favoring conditions, seven commissioners, representing six county divisions, were appointed by the Wentworth council to take the county road matter in hand, and it should be stated, by way of encouragement to those who may hereafter be called upon to undergo a similar experience, that they achieved final success, only after having oftentimes, during the 18 months which intervened before the matter was submitted to the ratepayers, been almost driven to despair by the many difficulties with which they were from time to time confronted in the attempt to reconcile the various conflicting interests of their several districts.

It might also here be mentioned that the County Commissioners, in working out the details of their scheme and in estimating the proportion of expense which each municipality would be called upon to contribute, took into careful account not only the benefits which the proposed purchase or construction of each road would confer upon the particular municipality within which such road would be situate, but the benefits also which the purchase or construction of such road might be reasonably expected to confer upon all other municipalities in the district.

### Objections Have Lost Weight.

Many and varied were the objections to the scheme, which seemed serious enough at the time, but which, viewed in the light of after experience, lost much of their weight. For instance, from the noticeably large increase in the public travel on the Wentworth roads, shortly after they were taken over by the county, it is fair to assume that a large and increasing percentage of ratepayers has discovered the convenience of making constant use of them, and that the objection, based on the alleged injustice to many called upon to pay increased taxation on this account, and yet living so far distant from county roads as to derive no benefit from them, was without any

very solid foundation. In process of time a readjustment of the assessed values of property, as affected by its more or less favorable location in regard to these roads, will no doubt remedy any serious injustice of this nature. The argument in favor of toll roads, that the user should pay to keep them in repair, would have been far more difficult to combat if the intention has been to saddle the local municipalities with their maintenance. These roads, as located in Wentworth, carry the traffic not belonging only to the municipalities through which they run, but from all the country around as well. Their maintenance by the county is an equitable distribution of the expenditure required to keep them in repair.

### System Adopted.

The county system of roads, as finally approved by the ratepayers of Wentworth, the vote having been taken in the month of November, 1902, included the 38 miles of roads already held by the county, and made provision for (1) the purchase of the 29 miles of toll roads above mentioned for \$63,104 (the prices of the several roads having been previously settled by arbitration), for (2) the assumption by the county and the construction of 62 miles of new roads, at an estimated cost of \$48,350, and (3) for the payment of the amount of \$6,550 to certain local municipalities, to compensate them for the roads previously purchased by them from the Government, the aggregate amount required for the scheme being \$118,000, including \$20,000, the estimated amount of the Government grant. Upon the election of the council of 1903 the necessary proceedings were initiated for carrying into effect the proposed new system of county roads. Whilst the several roads were being taken over and duly named and numbered, and their limits regularly defined, as a preliminary provision for their supervision the county was divided into six road divisions, corresponding as nearly as possible with the existing county divisions, with the representatives of each division as local commissioners.

Following this, at a special meeting of the council held in the month of April, by-laws were introduced defining the duties of a county road superintendent, and appointing to the office, at a salary of \$800 per annum, the gentleman under whose charge, subject to the supervision of the council, as a roads and bridges committee the whole work of constructing and repairing the Wentworth system of county roads has since been carried on.

### Duties of Superintendent.

The by-law defining the duties of the county superintendent, briefly epitomized, makes provision for a general supervision by him of all roads and bridges, with power to engage men and machinery for all necessary purposes ; for the appointment by him of two or more section men for each road ; for making an estimate of the amount recommended to be expended during the year for the maintenance of each road ; for his carrying out such work within the limits of the appropriations, for keeping the necessary accounts of all work done, and for submitting them for inspection, with accompanying vouchers ; for the payment by him of employees and for supplies, but when exceeding a certain amount, upon order of the warden or chairman of the Roads and Bridges Committee ; for controlling all road machinery and implements, and for furnishing security for the due performance of his duties.

The county superintendent appointed by Wentworth is not a professional engineer, but he is a man of some practical experience in quarrying and contract work, etc., and has served as township reeve. He has proved himself a capable official, and has given excellent satisfaction under the trying circumstances of starting an almost new undertaking. The council granted him a bonus at the December session in recognition of his services.

It has been claimed as an objection to the substitution of one road superintendent for the system formerly adopted by having three councillors, as commissioners of each county road, that the members of the council are now unable to keep in sufficiently close touch with the roadwork in progress, and that to allow the superintendent (although it is true that he is nominally under the supervision of the Roads and Bridges Committee) the same authority for hiring men and teams and for purchasing supplies as was formerly possessed by the county road commissioners, is shifting too great a responsibility upon him from the shoulders of the council, where it should more properly rest.

It is probable that, to meet these objections, two safeguards, which have already been suggested, will be adopted in the coming year, viz., a monthly audit of the road accounts by the county auditors and the appointment of two members of the Roads and Bridges Committee, one for the north and the other for the south, to act as inspectors of work in progress, and to act in concert with the superintendent in the purchasing of supplies and the letting of minor contracts.

#### Have Exchanged Divided for Single Management.

Whilst not fully satisfactory in every particular, Wentworth's experience has clearly illustrated the wisdom of exchanging divided for single management. Road-making is a science, and experience, the only school in which proficiency can be acquired, and although in the multitude of councillors there is wisdom, it is yet a speedier process and less expensive to educate one road superintendent, who proposes to make road-making his profession, and devote his whole time to the work, than many councillors, who at best are only amateurs at the business and give it but a divided attention. Again, friction always signifies loss of power. With one driving wheel always drawing in one direction, the machinery of management runs smoothly, whilst with many driving wheels, even though of greater capacity, yet by reason of their drawing in many different directions, the whole business must in short order be brought to a standstill. An uniformity of system on all county roads is not the least noticeable feature of the single management. When a traveller in Wentworth strikes a road properly graded and rounded up, he recognizes at once the landmarks of a county road.

#### Quarries.

Other necessary preliminaries to the undertaking of the good roads scheme in Wentworth were the purchase of road machinery and the acquisition of gravel pits and stone quarries. As regards the latter, it is probably sufficient to mention that Wentworth has expended thus far about \$1,400 on this account and holds by purchase or leasehold six stone quarries and three gravel pits, more or less conveniently located in different parts of the county. It might also be stated that of the toll roads taken over by Wentworth, one only (four miles) was a gravel road, and that except for facing purposes gravel has not hitherto been extensively used in Wentworth County.

#### Road Machinery.

Prior to the year 1903 the county owned in the way of road machinery one portable rock crusher, with capacity of about 14 cords per diem, and one horse roller of five tons weight. These had been used partly for

repairs and construction purposes by the county, and partly for the use of the local municipalities, to whom they had been loaned, as occasion arose. In purchasing machinery for the new road system, it was considered advisable (taking its costly nature into account) to limit its amount to something not largely in excess of what would be the requirements of the county for repairs and reconstruction purposes, after the completion of the new roads now proposed to be constructed. With this in contemplation, the county proceeded to purchase the following: One universal steam roller, of 9 tons weight (10½ when loaded), 35 horse-power. This was considered the roller best adapted to country roads, sufficiently heavy for all practical purposes, easily handled, and one that with reasonable precautions would pass safely over any ordinary country bridges and culverts. A second rock crusher of similar capacity with the one already owned by the county; two road graders; one scarifier, of 1,500 pounds weight, made to the order of the superintendent, and reported to have done good service; one tank with sprinkler, for use prior to rolling; four wheel scrapers; two drag scrapers; three grading ploughs; one pick plough, etc., etc.

For operating the rock crusher and graders, traction engines have been hired, and as regards the use of a traction engine for drawing the graders, the superintendent reports as his experience that where the road is solid a traction engine is preferable to teams, being both steadier and cheaper, but where the engine is required to travel on loose ground it loses its traction power, and teams must be employed. The total amount expended by Wentworth during the year 1903 in the purchase of machinery was nearly \$6,000.

#### THE ROAD QUESTION IN BRANT.

Numerous public meetings for the discussion of the road question have been held in various parts of the Province during the early part of the year, and with most encouraging results. Immediate action of a marked character does not follow in every case, but the sympathy created for the good roads movement is certain to make itself evident in greater or less degree, and with an increasing and lasting effect. The following editorial from the Brantford Expositor is an instance of the importance now being attached to the movement for better roads:

"If there is not at an early date an improvement in the methods of road-making in Brant County, it will not be the fault of Mr. A. W. Campbell, the Provincial Highway Commissioner, who has on several occasions most obligingly accepted an invitation to address our people on this most important subject. On no occasion has he forced himself upon us; he goes nowhere to talk good roads without invitation from some responsible source, and, it may be added, that he goes nowhere without convincing his hearers of his ability and geniality, and of his absolute mastery of the subject to which of late years he has given so much attention.

"Mr. Campbell delivered an address before the South Brant Farmers' Institute in Burford village yesterday, and was most cordially received. He made no special advocacy of a county roads system, although there is no doubt he strongly favors it, but he showed in a most conclusive manner that the methods of road-making now generally prevailing are most wasteful and unbusinesslike, and that much better results can be had for even less money than is now being expended. In Burford Township, for example, he said there are some 90 pathmasters, each with his own ideas of road-making, and one often undoing the plans of his predecessors. As a result, there had been expended during the past ten years upon the roads of this township some \$50,000 in cash,

and an equal value of statute labor work, or about \$100,000 in all. For this large expenditure it was apparent that no adequate results have been achieved, nor could it be otherwise until there was one system for the township, both as to the width and crown of the roadways, and iron bridges and cement culverts were generally employed in place of wooden structures. He also favored proper machinery being used. Good work had in days gone by been done under the statute labor system, and good work could still be done, but as it was usually operated it was ineffective and wasteful.

"As an outcome of the recent agitation, The Expositor hopes to see at an early date the formation of a Good Roads Association for the county, not necessarily for the adoption of the county system and the acceptance of the aid offered by the Ontario Government, but for the interchange of ideas and the bringing about of improved methods of making and maintaining our highways."

#### SPECIFICATION FOR METAL CONCRETE BRIDGE FLOOR.

*Location.*—(1) The bridge floor to be constructed under these specifications is to be upon the bridge over the River....., opposite lot....., concession....., of the township of....., and to be more definitely pointed out on the ground by the engineer.

*Metal Reinforcement.*—(2) The metal with which the said concrete floor is to be reinforced, shall be of expanded metal, wire netting, or other metal approved by the engineer, and is to be completely surrounded by concrete and otherwise placed within the floor to the satisfaction of the engineer.

*Dimensions.*—(3) The sidewalk is to be made with a slope of  $\frac{1}{4}$  inch to the foot towards the roadway, and the roadway shall be laid with such curve as the engineer may direct, the total thickness of concrete in the sidewalk to be four inches, and in the roadway to be five inches.

*Down Pipes.*—(4) Down pipes, gratings and other openings or fixtures shall be placed in the walk or roadway wherever required by the engineer, such openings, etc., to be measured continuously as part of the flooring.

*Framework and Staging.*—(5) All temporary framework or staging shall be provided and erected by the contractor to support the concrete flooring while in process of construction, this framework to be firm and substantial, of suitable lumber, and in all respects approved by the engineer.

*Portland Cement.*—(6) All cement employed in the work must be of a favorably known brand of Portland cement, and approved by the superintendent in charge of the work. It shall be delivered in barrels or equally tight receptacles, and after delivery must be protected from the weather by storing in a tight building or by suitable covering. The packages shall not be laid directly on the ground, but shall be placed on boards raised a few inches from it.

*Proportions of Gravel and Cement.*—(7) The concrete shall be composed of gravel and Portland cement, mixed in the proportion of one part by measure of cement to five of fine gravel, no stones of which exceed one and one-half inches in diameter. The concrete shall be mixed on a platform placed close to the work by first spreading evenly a layer of gravel. Upon this shall be spread a proportionate quantity of cement, and the two thoroughly intermixed in a dry state. To this sufficient clean water shall be slowly added, and the whole again thoroughly mixed and brought to the consistency of a stiff mortar.

*Wearing Surface.*—(8) The sidewalk and roadway shall have a wearing surface one and one-half inches in depth of sand and cement, mixed in the proportion of one part by measure of cement to two parts of sand, the sand to be clean, sharp, of varying sized grain and free from loam, earth or other impurities. The sand and cement shall be first mixed in a dry state, then sufficient water shall be added to properly moisten, and the whole shall again be thoroughly intermixed. This top coating shall be applied to the concrete base before the latter has set, so that a perfect bond between the two shall be secured. The surface shall be floated and trowelled until smooth and even, and shall be finished with a toothed roller, or as directed by the engineer.

*Work to be Continuous.*—(9) While the work is in progress, it shall be so arranged that a steady supply of mixed concrete shall pass from the mixing box to the point where it is to be placed. At any time when the work is interrupted before its completion, or at the end of the day, a wet covering shall be placed over the last layer of concrete, and before the work of depositing the concrete is resumed, this surface shall be thoroughly flushed with water to remove any foreign material which may have gathered thereon. No concrete shall be laid in wet or freezing weather.

#### UTILIZING STATUTE LABOR.

One of the most profitable methods of using statute labor where it is retained, is to utilize it in hauling gravel. In this work there is less opportunity for wasting time; it is work which is more agreeable than much of the other work of grading and ditching; it is work which the average farmer understands to be of direct benefit, and is entered into heartily.

It follows that it is better for other means to be used in performing other work. For the grading of the roads there is machinery which every township should possess. For the operation of these machines one man should be hired, as skill and experience are absolutely necessary. It cannot be passed around from farmer to farmer like a scraper or a plow. These machines do not know how a road should be shaped, but in the hands of a man who does they are exceedingly valuable. For draining and ditching it is usually best to hire the work done by men who are accustomed to this class of work.

One of the most necessary steps to be taken so as to receive the greatest benefit from statute labor is to see that the material, whether gravel or broken stone, is prepared in the pit or quarry, ready to be drawn to the road. If screening, crushing, or stripping a pit is necessary, it should be done before statute labor commences. Gravel may be plentiful, but of a very inferior quality. Usually no effort is made by the council to screen the gravel, remove the surface soil from the pit or in any way prepare the gravel for being placed on the road. Teamsters go into the pit, one or two at a time; it is of inferior quality, but they cannot undertake the task of removing the earth and clay, in order to satisfy their few days of labor. In other sections there is no gravel, but field and quarry stone is to be found in abundance, frequently along the road to be improved. But with this material unprepared for roadwork, nothing can be done by the farmers except to plow and scrape the mud, and in other ways put in their time with useless effort. If the council would purchase or otherwise employ a rock crusher to prepare this stone and leave it ready for hauling, if they were to purchase screens, strip pits, etc., and see that nothing but first-class gravel was provided, farmers would be encouraged and would willingly spend their time to the fullest extent in hauling this material.

**GOLDEN RULES IN ROADMAKING.**

The following rules are among the most important in making and maintaining township roads of the class most suited to this Province. They should be applied judiciously, not overlooking the fact that there may be an exception to every rule. The most efficient application of these rules can in many cases only result when the road-maker has a wider understanding of the facts upon which they are based.

1. Every good road has two essential features :

(a) The earth subsoil is well drained, naturally or artificially, making a strong, unyielding foundation, acted upon to the least possible degree by frost.

(b) The wearing surface is a smooth, hard and compact crust, which sheds water readily, and distributes the concentrated wheel load over a greater area of subsoil.

2. The surface covering is generally a coating of gravel or broken stone, which should be put on the road in such a way that it will not, in wet weather, be churned up and mixed with the earth beneath. That is, it should form a distinct coating.

3. To accomplish this :

(a) The gravel or broken stone should contain very little sand or clay—it should be clean.

(b) The roads should be crowned or rounded in the centre so as to shed the water to the open drain.

(c) Ruts should not be allowed to form, as they prevent water from passing to the open drains.

(d) The open drains should have a sufficient fall and free outlet, so that the water will not stand in them, but will be carried away immediately.

(e) Tile underdrains should be laid wherever the open drains are not sufficient, and where the ground has a moist or wet appearance, with a tendency to absorb the gravel and rut readily. By this means the foundation is made dry.

4. Do not leave the gravel or stone just as it drops from the wagon, but level it so that travel will at once pass over and consolidate it before the fall rains commence.

5. Roll the gravel or stone with a road roller until it is smooth and hard. If a roller cannot be had keep the new road metal raked or scraped into the wheel and horse tracks until consolidated.

6. Grade and crown the earth road before putting on gravel or stone, also roll the earth road before putting on the metal if a road roller is available.

7. The grader should start work early in the spring and be kept continuously in operation until the season's work is completed. Work for the grading machine should be staked out in advance, so that the several pieces can be taken up consecutively, otherwise much time is lost in moving the machine from one part of the township to another.

8. A sufficient crown for new gravel roads on level ground is one inch of rise to each foot of width from side to centre.

9. The road on hills should have a greater crown than on level ground, otherwise the water will follow the wheel tracks and create deep ruts, instead of passing to the side drains. One and one-quarter inches to the foot from the side to centre will be sufficient.

10. The work of cutting down hills should be undertaken systematically, a few being taken up each year and made good, the worst or most necessary being first looked after. Gravel or stone can then be put on permanently. The steepness should not exceed one foot in twelve.

11. Repair old gravel roads which have a hard centre, but too little crown, and which have high, square shoulders, by cutting off the shoulders, turning the material outward across the ditch if necessary, and plac-

ing new gravel or stone in the centre of the road. Do not cover the old gravel foundation with the mixture of earth, sod and fine gravel, of which the shoulders are composed. The shoulders can most easily be cut off by means of a grading machine.

12. Roads of importance should be about twenty-four feet in width, between the inside edges of the open ditches, with the central eight feet gravelled or metalled with broken stone. Roads of least travel should not be less than eighteen feet in width.

13. Wherever water stands on the roadway or by the roadside, or wherever the ground remains moist, or is swampy in the spring and fall, better drainage is needed.

14. Look over the roads after heavy rains and during spring freshets. The work of a few minutes in freeing drains from obstruction, or diverting a current of water into a proper channel, may become the work of days if neglected.

15. Surface water should be disposed of in small quantities ; great accumulations are hard to handle and are destructive. Obtain outlets into natural watercourses as often as possible.

16. Instead of having deep, open ditches to under-drain the road and dry the foundation, use tile.

17. Give culverts a good fall and free outlet, so that water will not freeze in them.

18. In taking gravel from the pit, see that precautions are taken to draw only clean material. Do not let the face of the pit be scraped down, mixing clay, sand and turf with good gravel.

19. Gravel which retains a perpendicular face in the pit in spring, and shows no trace of slipping, is generally fit for use on the road without treatment. Dirty gravel should be screened.

20. Plan and lay out the work before getting the men on the ground.

21. When preparing plans keep the work of succeeding years in view.

22. Have on the work only such number of men and teams as can be properly directed.

23. In laying out the work estimate on a full day's work from each man, and see that it is performed. Specify the number of loads of gravel to constitute a day's work. Every wagon box should hold a quarter of a cord.

24. Make early arrangements for having on the road, when required, and in good repair, all implements and tools that will be needed.

25. Do work with a view to permanence and durability.

**A GOOD ROADS RECORD.**

Among other results from the recent disastrous fire in Toronto has been delay in the publication of the annual reports of the Ontario Government. A number of these were at the printer's at the time of the fire (among them the report of the Commissioner of Highways) and it has been necessary to re-write them wholly or in part. The report of the Commissioner of Highways is now, however, ready for distribution, and as usual will be sent to municipal officers, members of municipal councils, officers of Farmers' Institutes, and others interested. Among the subjects discussed are : County and township systems of road management, the good roads movement, methods of construction (including drainage of roads), earthwork, grading, metalling with gravel and crushed stone, road rollers, stone crushers, etc., etc. The expenditure on township roads for the past ten years is given for each township in schedule form, while reports from townships and counties which have modified their systems of road management form an interesting department. Any person interested in the subject of road improvement, and not receiving one of these reports, should write for a copy to the Commissioner of Highways at Toronto.

# QUESTION DRAWER

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

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

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

## Powers of Council and Police Trustees.

478—A. McK.—1. In our township we have police villages. The trustees of village dug a ditch in front of ratepayers' shop, making it so a team could not be driven alongside of shop. He laid complaint before township council. Has township council any power to deal with matter having no by-law.

2. What share of the running expenses should the trustees of police village pay to township council. The township council pays over all the monies, charges them nothing. How should the township council go about making them pay their just share—that is has the township council power to do so?

3. What by-laws should township council pass in regard to police villages?

1. We are of opinion that the ratepayer has no claim against the township council for any injury he may have sustained by reason of the digging of this ditch, as the council did not do the work, nor was it done with its authority. If the drain renders the highway dangerous or unsafe the council should see that the defect is remedied, as the township corporation will be responsible for damages to anyone injured by the unsafe condition of the road.

2. This depends upon the agreement entered into between the council and the trustees, pursuant to section 740 of The Consolidated Municipal Act, 1903. The council may levy the same rate in the police village, and collect the whole amount of the taxes payable by ratepayers in the police village, and retain the whole amount, if it sees fit.

3. Those mentioned in sections 742a, 744, 745 and 746 of The Consolidated Municipal Act, 1903, and the council may also pass a by-law pursuant to section 561 of the Act commuting statute labor to the police village.

## Is a Farmer's Son a Ratepayer?

479—J. F. S.—Is a farmer's son a ratepayer within the meaning of the Act?

Yes, if he is assessed as a joint owner of the premises under the provisions of section 14 of The Assessment Act; but it is otherwise, if he is assessed simply as a farmer's son.

## Disposal of Municipal Property.

480—W. H. N.—Some years ago a company owning property in this township gave a deed of one acre of its land to the township for municipal purposes, on which the township council built a town hall. The Orange Association of this township have made application to the council to purchase a portion of this land for purpose of building Orange Hall.

Can the council legally sell and deed a portion of this ground without a vote of the ratepayers? And if so, what steps should be taken?

Sub-section 1 of section 534 of The Consolidated Municipal Act, 1903, authorizes the council of a municipality to dispose of municipal property when no longer required for its purposes, and it is not necessary to first obtain the assent of the ratepayers. If, however, the land was conveyed to the corporation in such a way as to constitute them trustees thereof for the public, they cannot alienate it, even for another public purpose, without statutory authority.

## Bailiff Can be Collector—Power of Council to Repeal By-Law—Member of Council Cannot Take Contract—Cannot be Pathmaster—All By-Laws Need Not be Registered.

481—CLERK.—1. Can a bailiff of a Division Court hold the office of collector of municipal taxes, he being a resident and a ratepayer in same municipality?

2. Can a municipal council repeal a by-law that was previously passed in a municipality without any appeal from the ratepayers?

3. Can a member of a municipal council lawfully engage in a contract of building a bridge in the municipality of which he is a member of the council, it being to the interest of the municipality to let the contract to him?

4. Can a councillor of a municipality hold the office of pathmaster in the municipality of which he is a member of the council?

5. Must all by-laws passed by a municipal council be registered in the county registry office before they are lawful?

1. Yes.

2. This depends on the nature of the by-law. As a general rule, a municipal council may repeal any of the by-laws of the municipality, but this rule is subject to many exceptions. For instance if parties have acquired vested interests under a by-law, or if it provides for the levying of annual sums to meet the payment of debentures issued thereunder, it cannot be interfered with.

3. No. See section 80 of The Consolidated Municipal Act, 1903.

4. No. A council has no power to appoint one of themselves to any office within its gift.

5. No. Only such as the statutes specially require to be registered. For example, by-laws creating debts, (see section 396 of The Consolidated Municipal Act, 1903), and by-laws for opening highways upon private property, (see section 633 of the Act).

## A Bridge Contract.

482—G. L.—Our council opened tenders and awarded contracts for the building of concrete bridge abutments, J. W. getting contract for two sets, price \$314 for one, \$158 for the other, time for completion July 15th and September the 1st respectively. J. W. now has refused to build either. He claims he would lose money. The council hold the agreement signed by J. W. and his father.

What action should the council take in the matter?

Before definitely answering this question we must see a copy of the agreement between the council and J. W. and his father.

## Opening of Roads Shown on Plan.

483—J. A. L. M.—In reference to your answer to question No. 463 there is one point you do not make clear—the one that really concerns us most—i. e., "under which section of the Act should the by-law to open and establish be passed?"

In other words, is it necessary in order to legally open and establish streets, as shown on registered plan, to follow the procedure as indicated by section 632 of The Consolidated Municipal Act, 1903, and if so does the by-law require to be registered as directed by section 633, or will the simple passing of a by-law declaring the streets indicated therein, opened and established, be sufficient?

If the roads shown on the plan have been dedicated by the private owner for the use of the general public as a highway, the passing of a by-law by the council assuming the roads is sufficient to vest them in the municipality.



### A Drainage Contract—Collecting Subscriptions— Changing Drain from D. & W. to Municipal Drainage Act.

484—T. W. W.—1. In regard to a drain, the contractor having taken a drain for construction. The drain was to be completed every sixty rods and the whole to be completed by Nov. 1st, 1903, but is not completed, that is, the whole work, but part of 60 rods was complete. During the winter the sides of drain have caved in on the part that was completed and on part that was not completed. Who has the expense of moving the obstruction caused by the bank caving in?

2. Gravelling a townline by subscription and part township money. The work was started in 1901, partly done, and in 1903 there was some more done.

In 1904 the Commissioner wished to complete the work, but some refused to pay what they had subscribed.

Can the subscribers be compelled to pay the amount of their subscriptions?

The subscription was signed as a subscription and a petition combined and with either in cash or work.

3. A drain that was constructed under The Ditches and Watercourses Act requires to be improved.

Four persons receive an outlet. Three owners have sent in a petition to have constructed under The Municipal Drainage Act. Can the council legally improve it under The Drainage Act, or can they be compelled to improve it under The Ditches and Watercourses Act?

1. We cannot express an opinion upon this case without having the contract before us. We may, however, say that if the contractor simply agreed to do the work for a certain sum the work is at his risk until it is done, and he cannot recover the money without being able to deliver up the work completed according to his contract.

2. We cannot definitely answer this question unless we have an opportunity of seeing the subscription list.

3. Section 84 of The Municipal Drainage Act (R. S. O., 1897, chapter 226), authorizes a municipal council to remove a drain from the operation of the provisions of The Ditches and Watercourses Act, (R. S. O., 1897, chapter 285), and may assume it and proceed upon a petition presented to them to do so, signed by a majority of the owners interested in such drain, in the same manner and to the same extent as for the construction of any drainage work. It is optional with the council, however, as to whether it does this or not, on receipt of the petition, and where the drain is a small one, as appears to be the case in this instance, it should not interfere, but leave the parties to the remedy The Ditches and Watercourses Act provides.

### Appeals to Court of Revision Against Assessment of Dogs.

485—A. P. McD.—In answer to your question 401 of 1903 I think you have fallen into an error as to the power of the Court of Revision. Section 3, chapter 271, R. S. O., makes it the duty of the assessor to enter in a column prepared for the purpose every dog which is owned or kept by any person within the municipality at the time of making the assessment. When a dog is entered in the proper column opposite the name of any person the entry becomes part of the assessment roll and subject upon proper notice to revision by the Court of Revision under the provisions of The Assessment Act.

Surely section 71 of The Assessment Act does not limit the Court of Revision to the correction of errors or omissions, etc., made by the assessor at the time of making his calls, but rather to the correction of errors or omissions, etc., existing in the roll at the time of its return to the clerk by the assessor, provided the requisite notice is given to the clerk. Sub-section 1 of said section provides three different grounds of complaint on which any person may give notice to the clerk in regard to himself.

Now these reasons or any of them cannot exist until the completion of the roll by its return to the clerk by the assessor, but at the time of the return of the roll if any of the three grounds for appeal exist, notice may be given to the clerk, and the Court of Revision has the power to amend.

Then if A. was assessed for a dog which he owned at the time the assessor called at A.'s farm, but which A. disposed of before the return of the roll to the clerk A. was not the owner or keeper of a dog, it was competent for A. to give the notice required by section 71, and within the power of the Court of Revision to hear and

determine the matter of complaint. It cannot make any difference whether A. killed or sold the dog.

I am strongly of the opinion that what the statute contemplates is that errors which may exist within fourteen days from the return of the roll are subject to appeal and to the determination of the court.

Kindly give your views on this in next issue.

A person who is assessed has the right to appeal to the Court of Revision against his assessment in respect of any property, but the Court of Revision cannot lawfully strike off an assessment of a dog because the owner killed him after the assessment, and if an appeal in such a case were taken to the County Judge he would undoubtedly restore the assessment.

### Duration of Council Meetings—Adjournment.

486—A. E.—Our council meetings are usually called for the hour of 10 o'clock a. m. The council in different years have voted themselves pay, varying from \$1.00 per day to \$2.00 per day and 5 cents a mile each way travelled.

The members have to travel according to where they live, from one mile to even 12 and 10 miles, the road round lakes being so circuitous and rough.

The roads in this section are extremely rough, and one has to rise very early to make time on the long trip, and if the sitting is late, and it has been as late as 12 p. m., one need be all night travelling to get home.

1. How many hours constitute a day's sitting of the council?

3. Can the reeve prevent an adjournment when proposed by one or more members?

1. In the absence of a by-law of the council defining how many hours will constitute a day's sittings, it will last as long as the members see fit to sit.

3. If a motion to adjourn is introduced and passed by the council this will effectually put an end to the sittings.

### Construction of Local Improvements Under Section 677 of The Consolidated Municipal Act.

487—W. D. M.—The village of G. has not adopted the Local Improvement System by by-law passed under section 682. They have been putting down granolithic walks under the provisions of sections 678, assessing one-half to the properties benefited and paying one-half of the costs out of the general fund, in all cases having petitions before any action taken. The impression which the members of the council had was that since the passing of section 677 they could proceed without petition and put down sidewalks wherever they considered necessary and assessing the cost as they had formerly done, one-half of the costs upon the properties benefited and the balance out of the general fund. Can they legally do this?

If the council decides to lay cement sidewalks in the village pursuant to the provisions of section 677 of The Consolidated Municipal Act, 1903, it must assess the cost of the work against the properties fronting or abutting thereon, as is provided in this section. It has no authority to assume and pay out of the general funds of the municipality 40 or a larger percentage of such cost, as is provided by section 678.

### Collection and Payment of Rates in Union School Section.

488—R. A.—There is an incorporated village situated in this township and certain lots in the township form part of a union school section with the village. The village school trustees look to the village council for all monies for school purposes and the village council makes demand on the township council for the township's share of the levy for general school purposes and for the payment of debentures.

To whom should the order on the township treasurer be made payable, to the treasurer of the village or to the treasurer of the public school?

The board of trustees of this union school section should request the councils of the municipalities of portions of which it is composed to levy their respective shares of the amount required for school purposes in any year, according to the equalized assessment of the union school section. These sums should be collected by the

collectors of the different municipalities and paid by them to their respective treasurers. The latter should pay over these sums to the trustees entitled thereto without any charge or deduction, as is provided in section 49 of The Public Schools Act, 1901.

#### Assessment of Mining Lands.

489—W. C. S.—In our township there are certain mining lands taken up under The Mining Act in the forms of a lease. Our clerk wrote to the Government and inquired of them if these lands were subject to taxation. The Government answered that they were. The council will most likely have them placed upon the roll for taxation, and some of the parties holding the land say that the council has not the power to assess them. Who is right?

We are of opinion that these lands are properly assessable, as provided in section 28 of The Assessment Act. Although the property in these lands is vested in the Crown, they are not occupied by any person in any official capacity, and are therefore not exempt from assessment under sub-section 2 of section 7 of the Act. If, however, it should, owing to the default of the person assessed, become necessary to sell any of these lands to realize the amount of the taxes, only the interest therein of the lessee or occupant could be disposed of. (See section 188 of the Act.)

#### Composition of Police Committee—Contract of Councillor With Corporation—Compelling Cutting of Noxious Weeds—Proceedings on Change of Time for Assessment.

490—D. E. M.—1. Is it contrary to law to have the whole council of seven a police committee as we have here, or does the law specify a less number of the members of the council as police committee?

2. Is it contrary to law for a member of the council to do work for the corporation and draw pay for the same? Men to do a certain class of work were very hard to get, and the mayor requested a member of the council to do this work which he had been accustomed to do before entering the council, and now some ratepayers find fault with him for receiving pay from the council while a member of same?

3. Can the council compel property owners to keep the weeds cut in front of their property?

4. In changing time of making our assessment, and using assessment roll already made this year as allowed by law, instead of making second assessment in same year. How will the increase in value of property, such as new houses that have been put up since assessment was made, etc., be brought in and not escape assessment on roll made up this fall for next year's use?

1. This depends upon the provisions of any by-law that may have been passed by the council regulating the conduct of its proceedings. If such a by-law has been passed, and contains a provision that all the members of the council shall be a police committee, we do not think that any legal objection can be taken to such a provision.

2. A member of a council cannot legally take a contract to do corporation work for his council, and receive pay for doing it. (See section 80 of The Consolidated Municipal Act, 1903.) He may, however, act as commissioner, overseer, or superintendent, over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality, and the municipality may pay him for such service, under the authority of clause (a) of section 537 of the Act.

3. Yes. Section 2 of an Act to Amend the Law Respecting the Destruction of Noxious Weeds, passed by the Ontario Legislature at its last session (1904), amended section 8 of chapter 279, R. S. O., 1897, and provides that "it shall be the duty of every owner or occupant of land in a municipality to cut down and destroy or cause to be cut down and destroyed at the proper time, to prevent the ripening of their seed, all the noxious weeds growing on the highway adjoining such land, not being a toll road, from the boundary of such land to the centre line of such road, etc."

4. We assume that the council has, this year, adopted the provisions of section 58 of The Assessment Act for taking the assessment between the 1st July and 30th September, and that the assessment of the municipality had previously been completed. If this is so, the council may pass a by-law adopting the assessment roll previously made, and such roll shall be subject to revision in the manner provided by sub-section 1 of section 58. All the matters you mention can be adjusted at this Court of Revision.

#### Statute Labor—Line Fence Between Bush Lands—Closing of Private Way—Liability When Bridge Out of Repair.

491—J. B.—1. L. owns a farm in the Township of H., near the townline, on which he resides. He also owns land in the Township of A. for which he is assessed \$35.00. Can L. be compelled to do two days of statute labor for the property in the Township of A.?

2. A. and B. own land, with bush on both sides of the line. Can A. cause B. to build his share of the fence?

3. B. and L. own land. L. has no way to get out except across B.'s property. Can B. stop L. from going across his property, B. having no deed yet?

4. We have a bridge in our municipality over 200 feet in length across a river, which is not safe for a heavy load, and we cannot make it safe at present, as the material cannot be got out until next winter. There is no other way of crossing the river. I want to put up a notice to warn the public, but the reeve thinks it is wrong. What would be best to do under the circumstances?

1. If L. has at his request been assessed on the resident assessment roll of the Township of A. for the parcel of land he owns therein, and two is the correct number of days chargeable against it, according to the scale of statute labor in vogue in the Township of A., he can be properly required to do the work.

2. No. We understand that there is now no fence through this bush land, and it is not "occupied" land within the meaning of The Line Fences Act. Sub-section 1 of section 2 of the Act provides that "occupied lands" shall not include so much of a lot parcel or farm as is unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation.

3. It is not stated what interest B. has in his land, but if he is the legal or equitable owner of it, and L. has not, by user, acquired a right of way over it, the latter has no right to use any part of B.'s land as a thoroughfare without his consent.

4. It is the duty of the council to keep this bridge in a condition of safety, as it will be liable in damages to any person suffering injury without negligence on his part, owing to its unsafe condition. The council should use every precaution to warn the public of the dangerous state of the bridge by posting up notices to that effect in the day time, and red lights at night.

#### Liability of Undertaker Burying Without Permit.

492—D. R.—1. An undertaker engages in the interment of a dead body without the particulars of the death being given to the division registrar or a certificate being issued. Is he liable to a fine for doing so?

2. Is it the duty of the division registrar to lay information before the magistrate under The Act Relating to Births, Marriages and Deaths, or must this be done by the inspector?

1. Sub-section 1 of section 24 of chapter 44, R. S. O., 1897, provides that "no removal for burial of the dead body of any person shall take place, and no undertaker, etc., shall engage in the burial of the dead body of any person unless a certificate of registration has been previously obtained to the knowledge of the person so removing or engaging in the burial of the dead body." Any undertaker who contravenes the provisions of this sub-section is liable to the penalty mentioned in section 30 of the Act.

2. The Division Registrar should report the offence to the Inspector of Vital Statistics, whose duty it will be

under section 31 of the Act to make investigation, and, where necessary, to institute proceedings against the person guilty of the offence.

#### Statute Labor—Recovery of Taxes Paid on Excessive Assessment.

493—D. D.—In 1903 the council passed a by-law, which is still in force, that all statute labor shall be performed in the road divisions in which the assessed property is situate.

1. A. was assessed that year in road division No. 1 for \$900.00, making him liable for five days' statute labor. B., C. and D. were assessed for \$100.00 each in road divisions 2, 3 and 4 respectively, and were liable for two days' statute labor each. This year A. is assessed for all those parcels of land and at the same valuation. How many days' statute labor is A. liable for in each road division?

A person having purchased a certain amount of acres from the Crown Land Department of Ontario twenty years ago, and has been paying municipal tax for full amount of acres purchased since municipality was organized in 1889, has discovered this year that his lot is minus 80 acres, the amount purchased.

2. Can he force the council to refund the amount of overcharge during those fifteen years?

3. If the council are disposed to pay it, can they legally do so?

1. Assuming that the aggregate area of this property does not exceed 200 acres, it should be rated and charged for statute labor as if it were one lot, as provided in sub-section 2 of section 109 of The Assessment Act, and the statute labor should be divided amongst the different road divisions in which it is located in the proportion that the assessed value of each parcel of land bears to the total valuation.

2. No.

3. No.

#### Closing Road Through Private Property.

494—W. P. M.—We have in this township a road over which some difficulty may arise. This road runs through a lot, the owner of which has notified the council of his intention to close up this road at an early date. This road has been without interruption a public thoroughfare for over 30 years. Public money has been expended and statute labor performed thereon. It may be stated the owner of the lot has only very recently secured a deed for the same with the facts as stated.

1. Can the road be legally stopped up?

2. Has the council no redress?

1. In the absence of a conveyance of the land, or the going of some other Act by the then owner of the land, evidencing an intention to dedicate this road to the public for use as a public highway, we do not think that the public can claim and hold it as such, as against the present owner of the land through which it passes.

2. If the council is of opinion that public convenience requires a road in this locality, it can pass a by-law pursuant to section 637 of The Consolidated Municipal Act, 1903, after having strictly observed the preliminaries mentioned in section 632 of the Act, opening and establishing the highway. If any difference arises between the municipality and the owner of the land as to the price to be paid for it, the matter must be settled by arbitration under the Act, as provided by section 437.

#### Building Fence When Creek is Boundary Line.

495—L. & B.—Two people own property on each side of a creek. Neither side is fenced. Would one man's cattle be trespassing on crossing the creek and going in to the other man's property? If so, would not one party have to fence as against the other, or would the expenses have to be borne between the two, the creek being the dividing line between the two properties?

It is the duty of each of the owners of land on either side of this creek to take care of his cattle so that by crossing the creek or otherwise they occasion no injury to his neighbor's land. If, in order to accomplish this, the building of a fence along the bank of the creek is necessary, the owner of the land should build it.

visions of The Line Fences Act are inapplicable to a case of this kind.

#### Payment of Doctor's Bill for Attendance on Drunken Man.

496—F. W. Y.—A man got intoxicated in the police village and went out to the barn to sleep. The hotel-keeper thought he was going to die and called a doctor and they took him to the lock-up. The county constable told the doctor to attend him. Who is liable for medical fees?

The person or persons who employed the doctor to attend this man are liable for his charges. The trustees of the police village are under no obligation to pay them.

#### Responsibility for Building Fence Around School Yard.

497—J. M.—Do the trustees of a country S. S. have to rebuild all the fence around the school yard and keep it in repair, or do the owners of the adjoining property have to rebuild and repair the half?

Sub-section 2 of section 37 of The Public Schools Act, 1901, provides that "any wall or fence deemed necessary by the trustees or required by the regulations of the Education Department for the enclosure of the school premises shall be erected and maintained by the board of trustees at the expense of the school section."

#### Exemption from Assessment of Agricultural Society Lands—Assessment of Dogs.

498—W. D. W.—1. We have in the village of M. twelve acres of land belonging to "The M. Agricultural Society," which is exempt from municipal taxation. A drain is required to be constructed through the Society lands and the lands adjoining. The Society lands will be greatly benefited. Can the lands of the Society be taxed under an award made by an engineer, or are they exempt from taxation or assessment of every kind.

2. Can dogs be placed on the assessment roll at any time during the year, or only on appeal to Court of Revision? Some people in our village have no dogs at the time the assessor is making his assessment, but immediately after the Court of Revision of the assessment roll dogs are plentiful on the streets. Where is the remedy?

1. Sub-section 11 of section 7 of The Assessment Act exempts from taxation the lands of every Agricultural Society, if actually occupied by such Society. Section 7b of the Act (enacted by section 5 of chapter 21 of The Ontario Statutes, 1903), provides that the exemptions provided by section 7 of the Act shall be subject to the provisions of The Municipal Act with respect to the assessment of property for local improvements. If the proposed drain is to be constructed under the provisions of The Municipal Drainage Act (R. S. O., 1897, chapter 226,) or The Ditches and Watercourses Act (R. S. O., 1897, chapter 285,) these lands cannot be charged with the cost or construction of any portion of the drain.

2. There is no way of accomplishing the assessment of dogs after the close of the Court of Revision. The assessor should require persons whom he believes to be the owners, possessors, or keepers of dogs to deliver to him the statement, mentioned in section 4 of chapter 271, R. S. O., 1897. This section provides that for every neglect or refusal to deliver the statement and for every false statement a penalty of \$5.00 shall be incurred, to be recovered with costs before any Justice of the Peace having jurisdiction in the municipality. The council may pass a by-law dispensing with the operation of chapter 271 in the municipality, and may then pass a by-law under section 540 of The Municipal Act imposing a tax on the owners, possessors or harborers of dogs and appoint a special collector to enforce the by-law.

#### Voting on Money By-Law—Preparation of Voters' List, etc.

499—L. S. B.—1. In preparing the list for voting on a by-law should owners that have died be copied on the list for voting, their death being on record in clerk's office?

2. Should owners that have been placed on the voters' list of

1903 by the County Judge, but not on the assessment roll of 1903, be copied for voting?

3. If a person is on the assessment roll of 1903 as tenant by mistake, can he demand a ballot from the deputy-returning officer by taking the owner's oath, although his name will not be on the list?

4. Please give form of declaration by clerk under section 348 Municipal Act, 1903.

1. Section 348 of The Consolidated Municipal Act, 1903, provides that the voters' list to be used on the occasion of a by-law vote shall contain the names arranged alphabetically, of all persons, *appearing by the then last revised assessment roll* to be entitled to vote, etc. If the names of deceased persons appear on the assessment roll from which the list is to be prepared, and they thereon appear to be qualified to vote on the by-law under either section 353 or 354 of the Act, we do not see that the clerk has any alternative other than to place their names on the voters' list.

2. No. The voters' list to be used at the voting on this by-law should be prepared by the clerk pursuant to section 348 of the Act, wholly without reference to the municipal voters' list.

3. No.

4. I, \_\_\_\_\_, clerk of the municipality of \_\_\_\_\_, in the county of \_\_\_\_\_, do solemnly declare the within (or annexed) list to contain the names of all persons appearing by the last revised assessment roll, to be entitled under the provisions of sections 353 and 354 of The Consolidated Municipal Act, 1903, to vote in \_\_\_\_\_ of the said municipality on a by-law submitted to the electors by the council of the \_\_\_\_\_ of \_\_\_\_\_, the voting on which has been appointed for \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 190\_\_\_\_.

Declared before me at the \_\_\_\_\_ of \_\_\_\_\_ in the said county of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 190\_\_\_\_.

\_\_\_\_\_ Municipal Clerk.  
J. P.

**Destruction of Noxious Weeds.**

500—A. C.—In your issue for June you refer to a change in the statutes regarding the cutting of weeds and thistles on the roadway. Does this Act come into effect for 1904?

This amendment was passed by the Ontario Legislature at its last session and is now in force.

**Payment of Costs of Criminal Prosecution in Districts.**

501—A. T. R.—An information was laid before a magistrate in the Town of N. L. against a man residing in the Township of D. for wife beating. He was arrested and tried before that magistrate, who sent him back to jail to wait until the stipendiary magistrate would come. After remaining there some two weeks the stipendiary magistrate dismissed the case and sent him home.

A. Is the township liable for the services of the constable?

B. Is the township liable for the cost of his keep while incarcerated?

The township council feel that as this was done arbitrarily by a magistrate from the town on what proved to be insufficient grounds the town should bear these expenses?

A. Unless the constable was appointed by the municipal council of the township, and unless there was a by-law providing for the payment of fees to such constable and there was a tariff of fees fixed for constables appointed by the council, we do not think the township would be liable.

B. No. We cannot say definitely whether the town is liable for these costs or not, not having sufficient particulars before us to enable us to do so.

**Council Can Compel Coal Dealers to Use Market Scales.**

502—E. D. B.—Has a town council power to pass and enforce a by-law to compel coal dealers of the municipality to weigh all coal sold by them on the market scales?

We are of opinion that the council of a town has power to pass a by-law of this kind. Sub-section 9 of section 580 of The Consolidated Municipal Act, 1903, provides that councils of towns may pass by-laws for regulating the measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, COAL and other fuel. This authority involves the power to enact that any of these commodities shall be weighed on the public weigh scales.

**Liability for Damage to Cemetery Fence.**

503—E. McL.—A. owns a gravel pit adjoining a cemetery. He sells gravel to private persons. The Township of E. W. has also taken and paid A. for gravel used for township purposes, both for statute labor and contract work. In removing the gravel the cemetery fence has been undermined, and has fallen, also part of the land of the same. Is the township liable for the damages or is A. liable?

A., the owner of the land adjoining the cemetery should see that it is kept in such a condition as to prevent its subsidence, and the occasioning of injury to the cemetery fence, and he can be held responsible to the owners of the cemetery for the injury done.

**Council Can Make Grant to Agricultural Society in Adjoining Township.**

504—RATEPAYER—Can a township council legally make a grant to Agricultural Society for fitting up buildings and grounds outside of the corporation, located in the adjoining township? The said society is composed of citizens of the town and another township.

Yes. Section 45 of The Agriculture and Arts Act (R. S. O., 1897, chapter 43.) provides that "the municipal council of any city, town, village, county, or township in this Province may GRANT or loan money or grant land in aid of any Agricultural or Horticultural Society formed within the limits of the municipality, or partly within the limits of such municipality, and partly within the limits of other municipalities, or *wholly within the limits of an adjoining municipality*, when such society has made the returns required by this Act to be made to the Minister in the case of a township society, etc." See also sub-section 1 of section 591 of The Consolidated Municipal Act, 1903.

**Liability for Damages Occasioned by Diseased Horse.**

505—D. E.—During the early spring months one A. brought a horse from Toronto that had some kind of a disease, and sold same to B. B. then sold it to C. C. traded it off to D. D. then trades with E. E. takes the horse and gets it examined by a veterinary surgeon, and is advised to get rid of same, as it has an incurable complaint. E. then takes the horse back to D., and they together take it to C. and demand that C. give D. back his original horse. This C. refuses to do, and they tie the diseased animal in C.'s yard and go away and threaten to sue for other horse. Then C., who is a resident of the Township of B., turns the sick horse out on the highway, and it strayed over the townline into the Township of G., and for a week or so just ran on the road.

Then one G., who wishes to turn his colts out to pasture, and is afraid that they will contract the disease, goes one evening and catches this diseased animal and takes it to the township pound (notwithstanding the fact that he had been warned by one of the councillors not to do so) and ties it in the pound-keeper's yard, then goes into the house and tells him what he had done, as he did not wish to have a lot of sick horses all summer. Next day the pound-keeper notified an inspector under The Animal Contagious Diseases Act, who, after examining the horse, pronounced it a case of supposed glanders and quarantined the pound-keeper's premises for a period of three months, but did not order the animal to be destroyed and it ran all over a 27-acre pasture field and finally in a day or so died.

Now this pound-keeper bills the Township of G. for the loss of this pasture field for three months, also for his time and trouble in connection therewith, and also five dollars inspector's charges, amounting in all to fifty dollars.

Who is responsible for these damages—the Township of B., from which the horse strayed, the Township of G., in which it was when put in pound, the man who took it off the highway and put it in pound, or the owner? If the latter, whom do you consider owner?

We are of opinion that neither of these township corporations is liable to the pound-keeper for the damages he has sustained by reason of the leaving of this horse on his premises. If anyone is liable it is G., who left this horse on his premises. He had no authority to take the horse off the highway to the pound-keeper's premises, but should have notified the Minister of Agriculture, pursuant to section 4 of chapter 274, R. S. O., 1897, who would have seen that the proper steps were taken to get rid of the diseased horse and prevent the spread of the disease. It is possible that G. and all the others mentioned who have been the successive owners of this horse have rendered themselves liable to the penalty mentioned in section 15 of the Act for having violated the provisions of section 4.

**Collection of Taxes and Sale of Lands in Arrears in Districts—  
Location of School House—Proceedings Preliminary to the  
Erection of New School House.**

506—J. B. L.—1. The township council passed a by-law in March to sell all lands three years and over in arrears of taxes. Since then the collector has collected a great number of those taxes down to two years and still there is two years behind. Will all these lands be free of the taxes, as none are up for sale yet, or can the collector collect those taxes in this way since the by-law is passed? If he cannot, is he responsible in any way, or are the lands in the sale yet?

2. Can the treasurer sell land for taxes without the council passing a by-law to do so?

3. Can a township council sell a lot of 160 acres, half paid in the Crown land office, private without advertising it for sale for arrears of taxes?

4. What time should the council appoint a tax collector to have 1904 taxes collected before the year runs out?

5. The treasurer of our township had no account of how much arrears of taxes there were when the council passed a by-law to sell all in arrears and the collector had the roll? Will this hurt the sale? If it hurts the sale, is the treasurer responsible for the sale or any part?

6. In our school section there is a lake on the line that is in the centre of the section. Some say that the school has to be built on that line at or within a half a mile of the centre, and if it has, some parties who cannot get to school on account of the lake being on the line, can it be put where the majority of the ratepayers vote it to be put at a meeting called for that purpose, supposing it is not within a mile of the centre of the section as placed the same way by arbitrators?

7. The trustees of No. 2 school section in our township W. built a new school last summer, and did not call a public meeting of the ratepayers or post any notice up. Is the business legal they did? If not, what steps should be taken to enter an action against them?

8. The township council got them a loan of money to build it. Are they in fault any way?

1. We are of opinion that these lands have not, under the circumstances stated, been relieved from these arrears of taxes, and if they remain unpaid, the lands can be sold to realize the amount as soon as they are three years or over in arrears, provided the preliminary proceedings relating to the returns and enforcement of the payment of arrears of taxes prescribed by The Assessment Act have been observed by the different officials of the municipality. We do not see, however, how any portion of these arrears was paid to the collector, unless the collector's rolls for the years in which they were payable are still in the collector's hands, and this does not seem probable.

2. It is not necessary that a by-law should be passed by the council for this purpose. The procedure leading up to a sale of land for taxes will be found in section 173 of The Assessment Act, substituting the word "reeve" for "warden" wherever it occurs in this section.

3. No.

4. The collector should return his roll to the treasurer on or before the 14th day of December in the year in which he receives it, or on such day in the next year, not

later than the 1st February, as the council may appoint, in accordance with the provisions of sub-section 1 of section 144 of the Act. If the collector fails to return his roll by the last named date, the council may, by resolution, authorize him or some other person to continue the levy and collection of the taxes in the manner mentioned in section 145 of the Act.

5. As intimated in our answer to question number 2, the council has nothing to do with this matter, unless it wishes the sale postponed. The treasurer should be careful that his account of the taxes in arrears is correct before he submits the list of lands liable to be sold to the reeve, pursuant to section 173 of the Act.

6. The procedure to be followed in selecting a site for a school house is that prescribed by section 34 of The Public Schools Act, 1901. The law does not lay down the arbitrary rule that a school house shall be erected in the centre of a school section or within half a mile thereof.

7 and 8. These proceedings appear to have been wholly irregular and unauthorized by The Public Schools Act, 1901, but since the school house has been built, and the money required therefor raised by the council by the issue of debentures, and paid over to the trustees for the purpose, we are of opinion that it is now too late to take any steps to annul what has been done.

**Procedure When Pathmaster Refuses to Act.**

507—J. B.—The township council by by-law has appointed pathmasters. Notices of the parties appointed on the road division were regularly published in two local papers, and also notices were posted up in the public places throughout the township as required by The Municipal Act. One pathmaster now refuses to Act.

1. Can he be compelled to do so if there is no by-law of the township, as mentioned in section 702 of the Consolidated Municipal Act, 1903?

2. Could a by-law be now passed under the said section 702, which would be retroactive so as to affect the said pathmaster?

3. What person elected to office could be affected by a by-law passed under the provisions of section 702?

4. What remedy has the council to compel the said pathmaster to act?

1. No. A pathmaster is not one of the officials liable to punishment under section 319 of the Act, in case of his refusal to accept and make the usual declaration of office.

2. No.

3. "Any person elected or appointed to ANY office in the corporation."

4. The law upon this point is stated in text-books as follows: "It is held in numerous English decisions that by the common law it was the duty of every person, having the requisite qualifications, elected or appointed to a public office to accept the same, and that a refusal to accept was punishable."

**Powers of Township Council as to Sidewalks in Police Village  
—Strengthening Bridge for Traction Engine.**

508—M. M.—1. The trustees of police village claim that the township council has no right to interfere with the building of sidewalks or making repairs in their village. You claim that the township is responsible. How does that come when we have no say in the matter? The village is not incorporated?

2. A traction engine, when going over a bridge, use planks. Who have to furnish the same, the township council or threshers?

1. We are of opinion that the trustees of a police village have no legal authority for making a claim of this kind. Notwithstanding the fact that a certain area has been set apart as a police village, it still remains part of the township in which it is located, and the council of the township has power to construct and repair sidewalks in the police village if it sees fit to do so, especially in view of the fact that the township corporation and not the police trustees are responsible for any injury sustained by reason of the non-repair of the sidewalks.

## 2. The owners of the engine.

**Council Should Not Advertise for Tenders for Township Clerkship.**

509—W. J. S.—1. Is it legal for a township council to advertise for tenders for a township clerk?

2. Would it be legal for them to accept such tenders?

1 and 2. Sub-section 2 of section 320 of The Consolidated Municipal Act, 1903, provides that "no municipal council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof BY TENDER, or to applicants at the lowest remuneration."

**Sale of Lands Purchased by Municipality at Tax Sale.**

510—J. B.—1. Where a township has purchased lands at a tax sale, is it legal for them to sell those lands privately to the reeve or other members of the council without giving notice that such lands were for sale?

2. Can they sell such lands to private parties without letting the public know that such lands were for sale, and for far less money than other parties would have paid for them?

1. Although in the case of Tolten v. Truax (16 O. R. 490) it was held that a reeve of the township in which the lands sold for taxes is situate, is not disqualified ex-officio, from purchasing, since these lands are the property of the council, neither the reeve nor any member of the council can legally purchase them. This would be entering into a contract with the council, and the purchaser would be disqualified as a councillor under the provisions of section 80 of The Consolidated Municipal Act, 1903.

2. The law does not prescribe any special course to be pursued in selling these lands, but the council should use every possible means by advertising or otherwise to obtain the largest possible price for them within seven years from the date of their purchase. (See sub-section 3 of section 184 of The Assessment Act).

**Procedure on Installation of Waterworks in Town.**

511—T. E.—We propose to install a waterworks in this town in the near future, and I have been advised to write you with a view to obtaining needed information.

I would therefore say that a private corporation intends putting in the plant on obtaining a lease or permit from the town to lay the water pipes, the lease to be for no less than twenty years at the least.

The lease not forthcoming then, the men having the power intend leasing the power to the town at a price producing a fair interest on their money, or failing that, again they will construct the power dam and lay the water main to the town limit and then lease the plant to the town on similar terms.

The information we seek is plans, powers, etc., that are in use by municipal corporations in such cases as the above, and information that will show us not only mode of proceeding, but also the power that can be exercised by the town and private capital in such matters.

In case the private company put in the works we would like to know the plan for collecting revenue and the scales of rates usual.

When a waterworks system is proposed for a municipality for domestic purposes, as well as fire protection, one of the first steps is to submit plans, sample of water, etc., to the Provincial Board of Health for approval, under R. S. O., 1897, chapter 248, section 30.

The statutes do not make provision for leasing a system of water mains, but under section 543 of The Consolidated Municipal Act, 1903, a municipality may contract for a supply for fire protection, and may pay a rental for hydrants, the contract to be for a term not exceeding ten years, but which is renewable.

Under section 566, sub-section 3, of The Consolidated Municipal Act, 1903, a municipality may permit a company to lay pipes on the streets under any regulations the municipality may see fit to make; and under chapter 199, section 12, the municipality may take stock in the com-

pany, may loan the company an amount on suitable mortgage, or contribute in any way they may desire.

We have a collection of supplements issued with THE MUNICIPAL WORLD for 1901 and 1902, containing information as to waterworks systems in Ontario, which we sell at \$1.50. In these the Brockville system, you will note, was installed by a company, and the terms of the contract are summarized. A schedule of all systems in the Province is given, and by writing to those in which the water supply is controlled by a company useful information may be obtained.

The rates to be charged should be regulated by the cost of the service, and this is dependent upon the character of the waterworks system, in many ways. A steam plant is more expensive in operation than a gravity system; the system of mains may be extensive or contracted; the source of water supply may be near by, or at a considerable distance, etc., etc. The schedule of rates in The Supplements, however, will indicate what is done in other municipalities.

If the Provincial Statutes do not apply to the special circumstances of the case, as to arrangements with the company, and if the proposal is a fair and useful one, a special Act might be obtained from the Legislature.

**Method of Warning Public as to Dangerous Condition of Road.**

512—J. C. M.—In building abutments on bridges is council responsible to keep a light at bridge, or if it puts up a barricade across the road to prevent a team or travellers going into the opening, is it sufficient? Two years ago, in repairing a bridge, we had timber placed at both ends of bridge, and after night (a moonlight night) two or three young men on bicycles came along down a hill and ran against the timber. One of them was hurt and the council had to pay \$50 to settle without law. This year we are building ten bridges. Are we required to keep lights? I can find nothing relating to it in the statutes.

It is the duty of the council of the township to keep the highways (including bridges thereon) under its jurisdiction in such a state of repair as will enable the travelling public to pass along them with a reasonable degree of safety. If the necessary repair of a bridge renders a highway dangerous, the council should take care to give the public ample warning of its unsafe condition. The law does not lay down any arbitrary rule as to how this warning should be given, but leaves it to the discretion of the council, under the circumstances of each particular case. We are of opinion that notices should be posted up at reasonable distances from either end of the bridge which is undergoing repair, and, whether there is moonlight or not, that lights should be conspicuously exhibited at night at the point or points of danger.

**Maintenance of Sidewalk on Townline.**

513—E. M.—The Village of V. is situated on townline between the Townships of N. and E. Said village consists of the following business places, viz., grocery, saw mill, chopping mill, hotel, church, post office and blacksmith shop. The last two named were in E. Township, the balance in N. Sixteen years ago a sidewalk was built on N.'s side of the road, which has been kept in repair by N. during that time. Now, however, the citizens of V. have asked for a new sidewalk and have naturally looked to N. for the same. The commissioner for N. notified commissioner for E. to meet him and arrange sidewalk. At said meeting the two commissioners agreed and mutually hired a man to tear up old sidewalk and arrange a date to meet for the construction of a new one. In the meantime commissioner for E. changed his mind and on date aforesaid declared that his township was not liable in any way for construction of new sidewalk. Can the citizens of V. compel a new sidewalk to be built since the old one has been removed? And if so, can N. compel E. to perform an equal share of doing the same or to pay an equal share if N. does all the work? The sidewalk is altogether on N.'s side of road.

The citizens cannot compel the council of either township to rebuild this sidewalk.

**Method of Preparing By-Law for Opening Road—Preliminary Proceedings.**

514—I. A.—Will you kindly let me know the proper way to draw up a by-law to establish a public road? Also say if it should be drawn up any differently if only a change is made on a public road, and say if there is any guide in the statutes as to the above and where to find same, and if convenient I would be obliged if you would send me a copy of a by-law for both the above purposes. You might also let me know how many notices should be posted and how long before the passing of the by-law and how many weeks same should be advertised in the local paper before passing of the by-law. Also let me know if it is necessary to have a by-law establishing a new road or a change on an old road sanctioned by the county and registered in the county, and if so, is that sufficient without a by-law by getting deed registered. Also say if a road would be legal where it was properly surveyed and notices posted up and advertised in the local paper, and no objections made before the passing of the by-law, as sometimes roads have to cross lands of unknown parties, non-residents, where no title can be got.

The general form of a by-law of this kind is the same as that of any other by-law of a municipality. It should recite the posting up and publication of the notices mentioned in Sec. 632 of The Consolidated Mun. Act, 1903, and should provide that the following lands (describing accurately by metes and bounds the lands of which the new road is to be composed) be and the same are thereby opened and established as a public highway. If the location of the road is to be changed from one place to another, a by-law closing the old road should be passed in addition to the passing of the by-law opening and establishing the new road in its place. Clause (a) of section 632 of The Consolidated Municipal Act, 1903, provides that notices of the intended by-law must be posted up in SIX of the most public places in the immediate neighborhood of the road, for ONE MONTH, and clause (b) requires the notice to be published for four successive weeks in some newspaper published in the municipality; or, if there be no such newspaper, then in a newspaper published in some neighboring municipality; and, where no newspaper is published in the municipality or in a neighboring municipality, then in the county town, if any such there be. It is not necessary that the by-law opening and establishing a new road should be confirmed by a by-law of the county council, but it should be registered in accordance with the provisions of section 633 of the Act. If a by-law is passed closing the old road allowance and it is an original road allowance, the latter should be confirmed by a by-law of the county council, as provided by sub-section 2 of section 660 of the Act. The by-law opening and establishing the new road should be registered whether the owners of the lands out of which it is to be composed, convey them to the municipality or not. If a road is opened and established by a by-law passed in accordance with Sec 637 of the Act, after the preliminary proceedings prescribed by section 632 have been strictly observed, non-resident owners, if the by-law is legal in form, cannot annul the proceedings. They will, however, be entitled to compensation for lands taken for the purposes of this road, pursuant to section 437 of the Act, if a claim for such compensation is made within one year from the date when the land was taken. (See section 438).

**Grant to L. O. L. for Celebration Purposes.**

515—A. M.—Will you be kind enough to advise if a village council can legally make a grant of money to a secret society for the purpose of celebrating a day that is not a statutory holiday?

The council of our village, at its last meeting, passed a grant of \$22.00 to the L. O. L. of this place to assist in defraying expenses of celebration of 1903. The reeve refuses to sign the order on the treasurer, thinking it is illegal, and has asked me to write and get your opinion on the question.

We are of opinion that the village council has no authority to make a grant of this kind, whether the celebration is held on a statutory holiday or not, unless it

can be justified under sub-section 2a of section 59 of The Consolidated Municipal Act, 1903, which authorizes the making of grants to aid and encourage amateur athletic or aquatic sports.

**Vote Necessary to Carry Resolution.**

516—C. P. B.—Our council was petitioned in June to submit a by-law for the purchasing of \$15,000.00 of the bonds of the Ontario Electric Railroad proposed to run from Kingston to Toronto through our village.

The petition was moved and carried. I called for the yeas and nays (being the only nay).

This month only the reeve and two councillors (M. and myself) were at the meeting of the council. M. made a motion to have the first reading of the by-law. I called for the yeas and nays. The reeve then seconded the motion and declared it carried, but the clerk said it was not legal when only the three of us were in attendance and I had called for the yeas and nays.

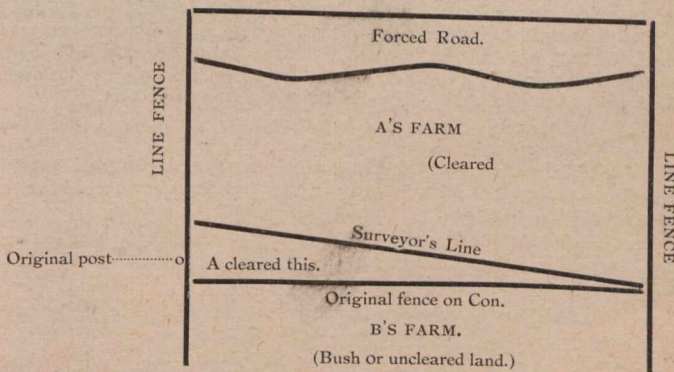
1. Was it legal?
2. If it was legal and we did not give the by-law its first reading, are we liable to be sued for damages? The petition contained 84 names of ratepayers.

1 and 2. This resolution was not legally carried. Section 269 of The Consolidated Municipal Act, 1903, provides that "where a council consists of only five members (as in this case) the CONCURRENT votes of at least THREE not disqualified to vote on the question shall be necessary to carry any resolution or other measure."

**A Line Fence Dispute—Compensation for Lands Taken for Road.**

517—R. H.—A concession line is not opened up, but a forced road instead. This road runs through A.'s farm, who claims all concession in lieu of road. B., whose land butts across concession, claims half concession, and will not fence half unless he gets it. A surveyor ran a line on said concession line last spring and put down picket about 60 feet from old post, which is still there. A then moved his fence in, fencing in all concession with surveyor's line, losing about 35 feet of ground to where his old fence was. He has cleared this ground and worked it for over 40 years. We think the surveyor should have struck the old post. He has no field notes nor bearings with him. But A. is willing to lose the ground if B. will only fence his half. The council has notified B. to put up his fence, which he says he will not do unless half concession.

1. Can A. force B. to fence, and how?
2. Should the surveyor have struck original post?
3. A. received no compensation for said road. Is he not entitled to all of said concession?
4. What course had A. better take to get up fence?  
A. has moved his fence from old place to surveyor's line, which, as you see, runs with an angle?
5. Taking it for granted that new line is right, could A., if he wished, move his fence back to old line and hold the ground he gave up to B.?



1. The original road allowance between A. and B.'s lands never having been closed and conveyed to A. A. and B. are not adjoining occupants of lands and therefore A. cannot compel B. to build any part of the line fence.
2. We have not sufficient particulars to enable us to answer this question, but, in the absence of evidence to the contrary, must assume that the surveyor knew his

business and made the survey of the line as the law requires.

3. Yes. See sub-section 2 of section 641 of The Consolidated Municipal Act, 1903.

4. See our answer to question No. 1.

5. Assuming that the fence stood on the old line for over 40 years as stated, and A. has not deeded the 35 feet between the old and surveyor's lines to B., we do not see that he can be prevented from moving the fence back to the old line.

#### Powers of Township Constable in Districts—Mileage of.

518—J. L.—1. Can a township constable in an unorganized territory, act outside of his municipality? If not, quote chapter and section?

2. Can a constable collect mileage on each summons when there are three or more to be served in the same house and on the same case that is mileage three times. If no constable can be found, or if the one available is not competent to perform his duties has not the J. P. a right to get a substitute and will not a township council do as such substitute?

1. No. Section 37 of chapter 225, R. S. O., 1897, authorizes the councils of townships in unorganized territory to appoint one or more constables within the municipality, and it has no authority to appoint an official of this kind to act outside the limits of the municipality.

2. A constable is entitled to mileage only for the number of miles ACTUALLY travelled to effect a service, and therefore in the case mentioned would be entitled to only one allowance for mileage. A Justice of the Peace has no authority to appoint a constable under the circumstances mentioned, but the council of the township may do so under the authority of the above section.

#### Change of School Site and Erection of New Buildings, etc.—Rights of Parties Tendering for Contract.

519—P. S.—A new school site has been selected by the trustees and approved of by the majority of the ratepayers of the school section. The site selected was purchased by the trustees and paid for. Notices were posted up signed by two trustees advertising for tenders to move the present school house on the new site during the summer vacation. The tenders were to be opened at a public meeting to be held on June 21st last. The tenders were received and accepted by the trustees, but the majority of the trustees refused to have them read and considered at the meeting, and after some arguing and quarreling it was decided to adjourn the meeting and to hold another one on the first of July for the purpose of reconsidering the whole question of changing the site and moving the school house. At the last meeting only three of the ratepayers desiring a change of school site were present because a report had been circulated that no further opposition would be made to have the school house moved on the site selected, but at the meeting it was moved, seconded and carried by a majority of those present, that the school site be not changed and that the school house remain where it now is.

1. Under the circumstances stated what steps could the parties desiring the change of school site who have a slight majority if they all attend take to gain their object and what length of time would have to pass before another public meeting for that purpose could be called?

2. Have the parties who tendered for moving the school house any cause for an action against the trustees because their tenders were not opened and considered?

1. The question of changing this school site appears to have been definitely settled by the trustees and ratepayers of the school section in accordance with the provisions of section 34 of The Public Schools Act, 1901. As a matter of fact the new site was purchased and the removal of the school house decided upon. We are of opinion that the trustees can be compelled by mandamus to carry out this arrangement, and do not think that the proceedings at the meeting held on the 1st July affect the rights of the parties in any way. In answering the above question we are assuming that the proceedings prelim-

inary to the holding of the first meeting were regular and in accordance with The Public Schools Act.

2. No.

#### Adjournment of Drainage Court of Revision—Qualification of Auditor.

520—T. S.—1. About two years ago a petition was presented to council in accordance with The Municipal Drainage Act which was received and township engineer ordered on. The council on several occasions tried to get the engineer to prepare and put in report but without effect until June, 1904. In the meantime several of the petitioners sold their land and when the report came before the council for consideration many others withdrew and the old assessment roll not being at hand which contained the names of the original petitioners the council were unable to decide whether the majority was for or against the drain, therefore adjourned for a week to look into the matter. Was the adjournment lawful?

2. A owns a gravel pit, is also a pathmaster. Other pathmasters go in and take gravel. Also the township road commissioners take gravel. It is all paid for by the council. Can A. be appointed and act lawfully as township auditor and subscribe to oath of office?

1. We are of opinion that there can be no legal objection to this adjournment.

2. Sub-section 1 of section 299 of The Consolidated Municipal Act, 1903, provides that "no one, who, at such time (that is the time of his appointment) or during the *preceding year*, is or was a member, or is or was clerk or treasurer of the council, or who has, or during the preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the corporation, except as auditor, shall be appointed as auditor." The sale of the gravel to the council, constituted a contract with the corporation, and, if it took place the year preceding his (A.'s) appointment as auditor, he could not legally be appointed.

#### Dimensions of Subways Under Railways.

521—L. C.—Is there any law regulating the width or height below the superstructure of sub-ways under railways, and where is it to be found?

If this is a railway under the jurisdiction of the Dominion Parliament (as is probably the case) section 188 of The Dominion Railway Act provides that "the highway at any overhead railway crossing shall not at any time be narrowed by means of any abutment or structure to an extent less than twenty feet, nor shall the height from the surface of the highway to the lowest portion of the overhead structure be less at any point than twelve feet." The Provincial Railway Act (R. S. O., 1897, chapter 207) does not contain a provision similar to the above, but, if the railway is one under the jurisdiction of the Legislative Assembly of Ontario, and a subway thereunder is deemed to be of insufficient size to accommodate the traffic passing through it, the matter should be brought to the attention of the Railway Committee of the Executive Council of Ontario, appointed under the authority of chapter 27 of The Ontario Statutes, 1902. Section 3 of this Act vests in the above committee all the jurisdiction and powers conferred upon the Lieutenant-Governor-in-Council and the Commissioner of Public Works or either of them by "The Railway Act of Ontario," etc. See section 57 of the latter Act.

#### Levy and Collection of School Monies in Union Sections—Qualification of Land Surveyor.

522—R.—1. Should the clerk of the township in which the union school is or the assessor advise the clerk of the neighboring township in regard to amount required from his township?

2. Is it necessary to give notice, and if so, should it be given every year or once in three or five years as the case may be?

3. Is there any limit as to time in which notice should be given?



4. In what Act can the necessary information be found ?

5. What steps are necessary to qualify one to act as surveyor with a view to undertaking township work ? What time would be required in which to qualify ?

1, 2, 3 and 4. Sub-section 1 of section 54 of The Public Schools Act, 1901, requires the assessors of the different municipalities out of which a union school section is formed to forthwith notify the secretary-treasurer of the union school section and the clerks of the respective municipalities of their determination of the proportion of the annual requisition made by the trustees for school purposes to be levied upon and collected from the taxable property of the respective municipalities out of which the union school section is formed. The trustees should annually file their requisition for school moneys with the clerk of each municipality interested, and each clerk should place on his collector's roll the amount for which the portion of the union school section is liable according to the equalized assessment of the union school section. Section 49 of the Act provides that "the collectors of each municipality in which part of a union section is situate shall collect the school rates for that part; and the amount collected from the several rate-payers in each part of the union section shall be paid by the respective collectors to the treasurer of the municipality in which such part of the union section is situate, and the treasurer shall pay over the same without any charge or deduction to the trustees entitled thereto."

5. A candidate for admission to practice as a surveyor must pass the examinations mentioned in sections 22 and 25 of chapter 180, R. S. O., 1897, and serve three years apprenticeship with a practising land surveyor as required by section 25 of the Act. Write the secretary-treasurer of the Association of Ontario Land Surveyors, Toronto, and he will furnish all the information required.

#### Running Powers of One Railroad Over Another — Consent of Council — Status of Parties to Agreement.

523—ENQUIRER—The Grand Valley Railway Company operating under a Dominion charter, is seeking an arrangement with the Galt, Preston & Hespeler Street Railway Company, operating under an Ontario charter along the streets of Galt, to run electric passenger cars of the said Grand Valley Railway Company for the purpose of carrying "passengers, baggage and small freight packages such as parcels, over the line of the said Galt, Preston & Hespeler Street Railway Company from the southern limit of the said town of Galt along South Water Street" for a term of five years, and asks for the consent of the municipality of Galt to such an arrangement.

1. Can the Grand Valley Railway Company and the Galt, Preston & Hespeler Street Railway Company under their respective charters enter into such an arrangement legally, and if so, is the consent of the shareholders of either or both roads to be obtained ?

2. If the municipality gives its consent to the arrangement and it is found such an arrangement cannot be legally entered into between the two companies mentioned, how far does the municipality of the town of Galt make itself liable in giving such consent ?

3. Can the corporation of the town of Galt restrict the Grand Valley Railway Company to the running of electric passenger cars only as per agreement ? or,

4. Provided the Grand Valley Railway Company obtains consent of the municipality to such an arrangement as mentioned before, can the said Grand Valley Railway Company operate under its charter regardless of any agreement to the contrary ?

5. Presuming the Grand Valley Railway Company lives up to the restricted agreement mentioned for five years, at the expiration of the term set forth in the agreement, can the Grand Valley Railway Company then operate its road in and through the corporation of the town of Galt and on its streets under their charter which gives them the privilege of running freight and using any motive power they choose without the further consent of the municipality ?

1. The Act Incorporating the Grand Valley Railway Company (chapter 73, 1900, and chapter 91, 1902, Dominion Statutes), and The General Street Railway Acts Ontario under which the G., H. & P. Street Railway Co. is

incorporated, do not authorize the leasing of any part of the line of the latter company to the former, and we are therefore of opinion that special legislation must be obtained before an arrangement of the kind suggested can be entered into.

2. The council of the town should not give its consent to an arrangement of this kind until it ascertains that it can be legally entered into. If it has already given its consent, we do not think it will be binding, as it has no power to aid or countenance an illegal transaction.

3. This depends upon the powers the company obtains from the Legislature, and if the town council desires to have a voice in the matter it should see that the Legislature protects its interests.

4. No, assuming that the agreement is one that the company is authorized to enter into.

5. No.

#### CONSOLIDATED SCHOOLS.

Section 2 of chapter 40 of The Ontario Statutes, 1902, empowers the councils of townships to pass by-laws to consolidate two or more sections into one for the purpose of providing a central school. The only consolidated school in Canada is located at Middleton, Nova Scotia, and was opened in September last. The following answers to questions submitted to the secretary of the board of trustees of this school recently by a ratepayer of the Township of Stamford will be read with interest :

Q.—How many vans ? A.—Twelve.

Q.—How long are your routes ? A.—From three to six miles.

Q.—How many children are carried ? A.—From 200 to 300.

Q.—What is the average wages of the drivers ? A.—\$2.25 a day.

Q.—Who owns the vans ? A.—The school board.

Q.—Will the cost of carrying become less within two years ? A.—Yes, materially so we anticipate. The reason is that we find the drivers are being overpaid now. Competition will reduce the amount, we think, by one-third. (The average wages for drivers will then be \$1.50 a day.)

Q.—Have the children been carried comfortably ? A.—Yes, very comfortably indeed.

Q.—Did you heat the vans ? A.—No, we did not heat the vans, and found that, although we have had the severest winter in years, the children did not care even for the lap rugs.

Q.—Were there any accidents ? A.—No accidents in any way.

Q.—Were there any days when vans could not get through ? A.—Very few days but all twelve vans were here on time with their loads, and never a day when more than two of them were absent. Possibly three or four days.

Q.—Any injurious effects on the children ? A.—All are happy as can be.

Q.—Do parents six miles away find fault now with the long drive ? A.—No, there is no fault found with long ride.

Q.—Has consolidation any effect on the value of property in the outlying parts ? A.—Yes. Properties are in ready demand at good prices. Two or three farms have already been bought by people wanting to educate their children. One man who bought his farm eight years ago for \$6,000 and had improved it some in way of buildings, etc., sold it a week ago for \$9,000 and in addition reserved about \$1,000 worth of land.—O. A. ROGERS, Secretary.

# Legal Department

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Of Osgoode Hall, Barrister-at-Law

## WARD v. LOWTHIAN ; GREEN v. MARR.

Proceedings to Prevent Spread of Infectious Disease—Damage Resulting to Persons and Businesses—Actions for—Good Faith of Defendants.

Judgment in action tried without a jury at Chatham. Action for damages for alleged injuries to plaintiffs' persons and businesses by reason of proceedings taken by defendants as members of a local board of health to prevent the spread of infectious disease. Held, that defendants were not influenced by malice or improper motives, but acted to the best of their judgment in the interest of the public safety, and without any intention of injuring plaintiffs, or any of them. Defendants were bound to use, and did use, all possible care in preventing the spread of infection. They found themselves suddenly and without previous experience, face to face with a great public exigency, and they adopted all the means which, in their judgment, were most effectual for the common safety. The results were highly satisfactory, so far as concerned the community, although there were cases of individual hardship. If plaintiffs had any reasonable causes of complaint these arose from error of judgment on the part of defendants, or some of them. Defendants, acting in good faith and with reasonable precaution, ought not to be held liable for errors in judgment. The question as to the right to maintain action such as the present against a board of health is being considered elsewhere. Action dismissed without costs.

## Re FIELDING AND TOWN OF GRAVENHURST.

Award Fixing Price of Electric Light Plant—Collection of Interest on Amount Fixed.

Judgment on motion by the corporation of the Town of Gravenhurst for an order to amend the proceedings by limiting the collection of interest from the date of entering judgment upon an award published on the 26th September, 1902, under The Municipal Act, fixing the price to be paid by the corporation to Robert Fielding for an electric plant at \$18,012. By sub-section 4 of section 566 of The Municipal Act, as amended by 63 Vict., chapter 33, section 30, the municipality had three months from the publication of the award within which to accept or reject it. No appeal having been launched and no notice of refusal to accept given, the award became absolute and enforceable against the town on the 26th December, 1902, but the town had not raised sufficient money to pay the price, and it was not until May, 1903, that a by-law for that purpose was carried, and further delays followed from the town not having been able to make sale of its debentures, and in the meantime Fielding remained in possession of the plant at the request of the town, and he benefited by whatever profits may have been made out of operating it. Shortly after the award became absolute Fielding commenced and continued to urge the town to raise the money and take over the property. On the 5th May, 1903, as a term for his continued indulgence, he obtained from the corporation a consent that the award might be enforced in the High Court in the same manner as a judgment. Under section 466 of The Municipal Act, and pursuant to the consent, an order was obtained on 3rd September, 1903, directing that judgment for the amount of the award might be entered in favor of Field-

ing. Neither in the award nor in the order was any provision made for payment of interest. Fielding, relying on section 116 of The Judicature Act and rules 866, 869, issued a *fi fa* for the amount of the award and interest from the date of publication. Held, that interest upon the amount of the award was recoverable only from the 26th December, 1902, at which date the award became absolute, and might have been enforced by summary application under section 466, or by action for specific performance. The amendment to the statute and the award must be read together to determine the date when the moneys are payable, and the effect of the statutory provision is the same in postponing the right to enter judgment upon the award as if the date for entering judgment was set forth in the award itself. Order made directing that execution be amended by providing that interest be computed from the 26th December, instead of the 26th September, 1902. It was also argued that no interest should be payable by the town before judgment was entered, because the owner remained in possession. Held, that this question could not be determined upon this application, but this order should not prejudice the corporation in taking steps to compel Fielding to account for rents and profits. No order as to costs.

## Re SOMBRA SCHOOL SECTION No. 26.

Award of Arbitrators—Action to Set Aside—Arbitrators Can Only Determine Whether or Not Site Selected by Trustees Was a Suitable One.

Judgment on application by the trustees of section 26 to set aside an award of arbitrators appointed under section 34 of The Public Schools Act (1 Edward VII., chapter 39), in consequence of a difference of opinion between the trustees and the ratepayers as to the suitability of the site which the trustees had selected for the school house of the section, a recently formed one. Held, that the arbitrators' only jurisdiction was to determine whether or not the site selected by the trustees was a suitable one. Order made setting aside the award, but without costs, unless the respondents desire that the matters referred should be remitted to the arbitrators in order that they may make an award approving or disapproving of the site selected by the trustees, with a declaration as to the powers of the arbitrators under the reference, in accordance with the opinion I have expressed. If the respondents so elect, such an order may go, without costs to either party, unless the applicants desire to be heard on this point, and if they desire to be heard, no order will issue until after argument.

## TODD v. TOWN OF MEAFORD.

Compensation for Land Taken for the Purpose of Straightening a River—Consent Operating as an Estoppel to Suit in Trespass.

Judgment on appeal by plaintiff from judgment of Falconbridge, C. J. (2 O.W.R., 12), in so far as it was in favor of defendants, in action against the town corporation and the Grand Trunk Railway Company to recover compensation for lands taken for the purpose of straightening the Big Head River and damages to plaintiff's property thereon, etc. Held, that the plaintiff's consent to the railway company proceeding with work on the land (though "without prejudice") precluded him from suing

as in trespass. The taking possession became a rightful act, and it was not to prejudice plaintiff in getting proper compensation. But the method of ascertaining compensation was to be restricted to the statutory proceedings which preclude a right of action in the ordinary manner. *Knapp v. Railway Company*, 2 H and C, 212; *Jones v. Stanstead, L. R.*, 4 P. C., at p. 115, and *Parkdale v. West*, 12 App., Cas., 602, referred to. Held, on the merits that sufficient compensation was not awarded by the judgment in appeal, as nothing was allowed for the severance of the land, and the price is not so liberal as is usual in compulsory acquisition of land, but it is not open to award more in this action as against the railway company. The judgment deals with the money paid into court by the town corporation, and declares this to be sufficient compensation. The judgment should direct that amount of money to be paid on account of the plaintiff's claim, without prejudice to his prosecuting proceedings for further recovery from the company, if so advised, and with this qualification the appeal should be dismissed without costs. There appears to be no cause of action against the town.

#### FORBES v. GRIMSBY PUBLIC SCHOOL BOARD.

Raising of Money to Buy New School Site and Erect New School House—Trustees Requisition For—Notice of Meeting to Consider—Adjournment of Recital of Debt—Payment of by Equal Instalments.

Judgment on motion by plaintiff for interim injunction restraining the defendants the municipal corporation of the village of Grimsby from issuing or selling the debentures of the village authorized by by-law 179, and from paying to the defendants, the school board or any other person any monies arising from such debentures, and restraining the defendant Van Dyke from authorizing any further work in connection with the erection of a proposed public school building, and restraining the defendant Lipsit from proceeding with any further work upon the school building. This action was begun on 15th November, 1903, after the refusal on 5th November of an order to continue the injunction granted in a former action (2 O. W. R. 947). On 11th November at a meeting of the school board a new resolution was passed asking the municipal corporation to pass a by-law for the issuing of debentures to the amount of \$12,500 for the purchase of a school site and towards the erection of a school house thereon. This requisition was presented on the same day to the municipal council at a meeting of the council then held, and by-law 179 was passed. There were five members of the school board. All of them were orally notified by the chairman of the meeting to be held on 11th November. Four of them were present, and the fifth, on being notified, stated that it would be impossible for him to attend. None of them objected to the manner of giving the notice. Held, that in the absence of some rule requiring the object of the meeting to be stated in the notice calling it, it is unnecessary that the notice calling any meeting of a school board or municipal corporation should specify the business to be transacted. *Rex v. Pulsford*, 8 B. and C. 350, and *LaCompagnie de Mayville v. Whitney* (1896), 1 Chy. 788, followed. *Marsh v. Synod of Huron*, 27 Gr. 605, and *Cannon v. Toronto Corn Exchange*, 5 A. R. 268, distinguished. The meeting of the village council held on 11th November was an adjourned meeting from the regular monthly meeting held on the 9th of November. The adjournment was general, and the business to be transacted at the adjourned meeting was not restricted. The requisition of the school board was sent in in the interval. Held, that if this had been the first requisition made by the school board for the sum of \$12,500 it might be open to doubt whether the council could regularly and

properly have dealt with it at the adjourned meeting, but the requisition of 11th November was unnecessary, and only given as a precaution; the former requisition was sufficient as a basis for by-law 179. Held, also, that the by-law sufficiently recited the amount of the debt intended to be created, it recited that application had been made by the school board to the council to raise \$12,500 by the issue of debentures, and it proceeded to authorize the issue of debentures to that amount. Held, also, that sub-section 1 of section 396 of The Municipal Act, 1903, authorizes the issue of debentures and interest together by equal instalments spread over the whole period for which the debentures are to run, and is alternative to the provisions of sub-section 5 of section 384. Application dismissed with costs.

#### Re MEDLER AND TOWN OF TORONTO JUNCTION

Expropriation of Land for Market Site—Appointment and Day of Arbitration to Determine Compensation.

The town corporation, appealed from award of James Proctor, official arbitrator, dated 29th October, 1902. Certain lands were taken under 63 Vict. ch. 103, sec. 6, to be used as a market site. Part of these lands, one lot with a frontage of 50 feet, was owned by J. P. Medler, the respondent, and under The Municipal Act, the arbitrator was appointed to determine the compensation to be paid for the lot in question. The arbitrator found that the owner was entitled to \$4 a foot frontage and costs of arbitration. The appellants contended that the arbitrator did not confine himself to the real value of the lands and that the award was excessive. Appeal dismissed with costs, on the ground that the finding of arbitrator was not excessive.

#### Re MELDRUM AND TOWN OF PETERBOROUGH

By-Law Authorizing Execution of Contract for Lighting of Streets—Motion to Quash—Mayor an Interested Party—Exemption of Dividends of Company from Taxation—Interest Granting of Bonus.

Ratepayer of the town of Peterborough, moved for orders quashing two by-laws passed by the town council on the 5th day of October, 1903, authorizing the execution of contracts between the town corporation and the Peterborough Light and Power Company and the Peterborough Radial Railway company for the lighting of the streets of the town and the granting of a franchise for an electric railway upon the streets of the town, the principal ground of complaint being that the town corporation were indirectly granting a bonus of \$14,000 to the companies, because the contract for lighting the streets allows the light company \$1,400 a year for ten years in excess of what another company tendered to do the lighting for, and this is alleged to be a reward for introducing the electric railway. The applicant also contended that the by-laws were bad, because the Mayor of the town was interested in one of the companies as secretary and because the dividends of the railway company were exempted from taxation. Order made quashing with costs the by-law authorizing the execution of the contract with the light company, the learned judge holding that there was an intention to give and get a reward for introducing the railway. Stay for 30 days. The other by-law is unobjectionable, except upon the ground that the dividends are exempted. It was said that it was not intended that it should provide for that exemption. The motion to quash this by-law is adjourned till the first court day after the vacation, to enable the council to amend. If the by-law is in the meantime amended, the motion will be dismissed without costs. If it is not amended, the motion will be further considered.

### BURYING GROUND CANNOT BE LEGALLY SOLD FOR TAXES.

An action was recently brought by Col. W. W. White of Guelph, to recover damages for trespass to part of lot 64, on the west side of Edward street, Arthur. The plaintiff purchased the lot for taxes. The defendant has taken gravel from it at the instance of the trustees of St. Andrews church, Arthur. Gravel was valued at about \$80.00.

The church trustees were also parties defending the case. They counter claimed, asking that the plaintiff's deed be set aside on the ground that it was void. One of the principal objections to the plaintiff's tax deed was, that the land was a burying ground formerly attached to the Free Church, in Arthur, and could not therefore be assessed or sold for taxes.

County Judge Chadwick delivered judgment, holding that the land was a burying ground and deciding that as such it was exempt from taxation and that the tax sale was void, he, therefore, set aside the tax deed and directed judgment to be entered for the defendant and for the church trustees, dismissing the plaintiff's action with costs to be paid by the plaintiff both to the defendant Connery and to the church trustees.

### Re RAWDON VOTERS' LISTS

Mistake in Voters' Notice of Complaint Against List—Amendment of.

Judgment upon case stated by the junior judge of the county court of Hastings and referred to a judge of the Court of Appeal under section 38 of The Ontario Voters' Lists' Act. One Robert Totton, a duly qualified voter, filed with the clerk of the municipality six several notices of complaint, one in respect of voters in each of the polling sub-divisions for the township for that purpose, in each case using the form No. 6, prescribed by section 17 (1) of the Act. In each of his notices the complainant made the mistake of placing in list No. 2 of the form, which is intended for cases of misnomer only, names which should have been placed in list No. 3, as being persons whose names should for various reasons not have been inserted in the voters' list at all. The ground of objection was stated opposite each name. Held, that there is no ground on which a notice of objection such as that in question should not be amended by the Judge as freely as any other notice. Nor can it be an objection to an amendment that the time limited by the Act for serving notice of complaint had elapsed, inasmuch as the matter cannot come before the Judge at all until after that time. Therefore, the Judge might, under section 32, have amended, if he thought any amendment necessary. But in this case no amendment was necessary. Although the names were not placed in the proper list as intended by the statute, no one could be misled by that, inasmuch as the objection to each name is distinctly specified and set forth opposite to each name. The complaints should, therefore, be referred back to the judge to be heard and disposed of according to law.

### GARNER v. TOWNSHIP OF STAMFORD.

Action for damages.—Nuisance on Highway—Ante-Mortem Statement as to Cause of Injury.—Joint Liability.

Judgment on appeal by plaintiffs from judgment of MacMahon, J., at the trial at Welland, dismissing the action, which was brought against the municipal corporations of the township of Stamford and the village of Niagara Falls to recover damages for the death of plaintiff's daughter Mabel, caused by the alleged negligence of defendants. The trial Judge excluded evidence of statements made by deceased as to how she received her injuries. Held, following Regina v. MacMahon, 18 O. R. 502, that the statements were properly excluded as

mere narrative of what had happened. But, excluding these statements, there remained a bond of evidence upon which the court could properly find in favor of plaintiffs that deceased met her death by reason of a dangerous nuisance in a footpath for which defendants were responsible. Appeal allowed with costs and judgment to be entered for plaintiffs with costs for \$1,000, \$700 to the father and \$300 to the mother. The defendants are made jointly liable by sec. 610 of the Municipal Act, and no evidence was given at the trial upon which a division of their liability could be based.

### WASON v. DOUGLAS

Action for Trespass—Ascertaining Boundary Line—Centre Line of Channel of Stream Proper Boundary.

Judgment on appeal by defendants from judgment of Lount, J. (1 O. W. R., 552) in favor of plaintiff in an action for trespass to land, an island in Blind Creek. The action was first tried by a jury, who found in favor of plaintiff. A Divisional Court (21 C. L. T., Occ. N., 521) directed a new trial for the purpose of ascertaining the true boundary between plaintiff's and defendant's land, holding that the description in the conveyance to defendant entitled him to the medium filum aquae as his boundary, and the position of the centre line of the stream, was the matter to be determined; that the centre line of whichever channel was the main channel in 1883, would be the centre line of the stream, and the jury should be asked to find, if there were two channels, which was the main channel in 1883. The case was then tried without a jury, but the trial judge did not make a finding upon the point indicated by the court. The court as now constituted find that the northerly channel was originally, and at the time of the conveyance to defendant the main channel of Blind Creek, and that the boundary line between plaintiff and defendant is the centre line of this northerly channel. Appeal allowed without costs, and action dismissed with costs.

### EQUAL ANNUAL PAYMENTS ON DEBENTURES.

To find equal annual payments required to pay off debentures issued for any number of years at any rate per cent., the following formula may be used:

\$1,000 worth of debentures payable in five years at five per cent.:

Principal.	Interest.	
1. \$1,000 00	\$ 50 00	} Add interest for first year to principal of that year to give the principal for the next year, and then the interest of the second year to give the principal for the next year, etc.
2. 1,050 00	52 50	
3. 1,102 50	55 12	
4. 1,157 62	57 88	
5. 1,215 50	60 78	
<u>\$5,525 62</u>	<u>\$276 28</u>	
\$ 5,525 62 = \$1,000 00		
1 = 1,000 00		
	\$5,525 62	
\$1,000 = 180 97 = 1st year's principal		
Interest 50 = " " interest		
	<u>\$ 230 97 = equal annual payment.</u>	

At a recent sittings of the Division Court in Owen Sound an action brought by Thomas Kennedy against the corporation for work done in keeping open Union street from Brown street to the corporation limits was heard. The Judge was of the opinion that the plaintiff did the work on the understanding that it was to be paid for, and stated that he could not understand upon what principle the affairs of the town were being run, when payment was refused of a claim which its own officer stated should be paid. The suit arose over the impassable condition of the roads owing to the great snowfall in the month of March. Judgment was given in favor of plaintiff for \$25 and costs.