THE MUNICIPAL WORLD

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The Municipal World

PUBLISHED MONTHLY

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

K. W. McKAY, EDITOR,

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

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ST. THOMAS, AUGUST 1, 1901.

Mr. Charles Patterson, clerk of the township of King, died on the 21st of June, last. *The Leader and Recorder* says that his death removed from the publ c life of York county an able and efficient officer, and a good citizen.

* * *

At the last session of the council of the county of Peterborough, Mr. George Stewart resigned the office of clerk of the county, and Mr. Richard Watt was appoint d to succeed him. Mr. Stewart was retained in the office of treasurer of the county.

* * *

A Defaulting Tax Collector..

Following quickly on our remarks in the last two issues of the WORLD on the apparent prevalence amongst municipal councils of the practice of delivering up for cancellation, the bonds, of collectors, comes the news that the collector of the city of Belleville has become a defaulter to the extent of some $17,000 and has left the city. The sum mentioned appears to be the aggregate of a number of years' wrong-doing, but the deficit was discovered only a few days ago. The municipal auditors from year to year had apparently reported everything in a satisfactory state. We are not in possession of information as to the condition of this collector's bonds at the time of his flight and of the discovery of the wrong doing, but, if cancelled, the loss to the municipality will be a heavy one. The Kingston *News*, of a recent date, takes this peculiar method of auditing these rolls as its text, and delivers the following homily on municipal auditing generally :

"When the announcement was made that Belleville's tax collector had hurriedly left for parts unknown, the government at once sent an auditor to examine his books. His report shows that the shortage exceeds $17,000 and the question arises, what were the civic auditors about? Did they faithfully perform their duty? When Frontenac's treasurer disappeared, it was found that yearly the county auditors had reported the accounts correctly kept. The reasonable conclusion is that the auditors were either incompetent or to be more charitable, careless. The trouble is that frequently, in county and city affairs, all over the Dominion, personal or political favorites are chosen to do the work, worth not being considered. In every defalcation in municipal matters in the last twenty years, it has been found that the auditors were fooled by the officials. It is high time that the government took out of the hands of the municipal councils the power to appoint surveyors of accounts. Should the government appoint men to do the work and hold them responsible if they failed to discover discrepancies, each municipality would benefit by the change in the system. The present mode of doing business practically offers inducements to clever accountants to go wrong They know that they can so manipulate their accounts that the average auditor would pass by a large deficit without the slightest suspicion. There are many reasons why there should be a change immediately. A government auditor understanding that failure on his part to detect wrong-doing would mean prosecution for conspiracy would be the proper remedy."

Municipal Interests.

A proposal has been going the rounds for the formation of an association to protect municipal interests in connection with the policy of the Ontario legislature looking to the development and facilitation of private corporation schemes. It is right and necessary that this development and facilitation should go on, as it will certainly do, but it is right and it will soon be necessary for the municipalities to co-operate in a persistent endeavor to safeguard those interests, which they hold in trust for the people.

Amongst these none is more important than the franchises of highways, which have been in some cases foolishly alienated in ways that ought to be made generally known by way of warning to other municipalities. The organization of an association would enable the representatives of municipalities to communicate experiences to each other, and thus avoid the spread of an evil which would soon become a danger.

In this connection, it is not amiss to refer to what is known as the "lobby" in parliament. All such legislation as private corporations desire to procure is considered in a Private Bills Committee of the Legislative Assembly. The members of this committee are always seen privately by the promoters, and there is no way of preventing such interviews. These may be counteracted, however, by the municipalities, and the formation of the projected association would enable this to be done effectively. When a principle in which all are interested is at stake in one municipality, the others could easily and properly lend their influence to defend it against encroachment. Such an association would be a welcome protection to the public.—Brantford *Expositor*

Election to Fill Vacancy in County Council.

According to the *News-Record*, of Berlin, the council of the county of Waterloo has obtained the opinion of Mr. Alex. Millar, K. C., in reference to the election of county councillors to fill the vacancies caused by the deaths of two of their number. He says that legislation governing this point is not as clear as it might be, but he is of the opinion that the two vacancies cannot be filled until next general elections. Had the deaths taken place before the June session, and in time for the elections to have taken place before that session, the case would have been different, but as both died after that date, there are no provisions for filling the vacancies until the general elections next January. Section 217, of the Municipal Act, embodies the law on the question.

The Wentworth County Council Election.

The legal objection to the election of a member of this body to fill a vacancy caused by the death of a member, referred to on page 119 of the issue of THE WORLD for July last, according to the Dundas *Star*, has been settled by David Patterson, thecandidate declared elected, acknowledging over his own signature that the odds are against him and that John S. Fry acted wrongly in throwing out the names of Dr. Smith and Wilkie Lawrason. The following explains the whole matter :

DUNDAS, July 15th, 1901.

J. W. Lawrason, Esq., Dundas :

DEAR SIR,--On looking carefully into the matter, and on hearing the opinion of parties whose legal opinion is of great weight in my estimation, I have concluded that John S. Fry was wrongly advised and made a mistake in rejecting the nomination papers of J. W. Smith and yourself at the nomination meeting held in Dundas on June 3rd, 1901. While I realize that an injustice was done both to Dr. Smith and yourself as well to the electors, I assure you I acted in good faith in the matter. In order to remedy the mistake as far as possible and still leave this division with a representative, I give you my promise to resign my seat in December next so that a regular election to the said office of county councillor may be held in January, according to the statutes.

Yours truly.

D. PATTERSON.

The Finality of the Assessment Roll.

An exchange in commenting on the opinion recently expressed in these columns, that where a difference exists between the Assessment roll and the notice required by section 51 of the Assessment Act to be delivered to the party assessed, the roll shall be taken as conclusive evidence of the matters in dispute, says: "Heretofore the *assessment slip* was always accepted in precedence over the roll."

If this statement is correct (and we have no reason to doubt our contemporary had practical reasons for making it), it discloses a state of affairs worthy of more than passing mention, with a view to impressing upon municipal bodies the illegality of the practice and the necessity for its reversal. Councillors who consider the assessment slip the best evidence of an assessment, after the roll has been finally revised, apparently wholly ignore the provisions of section 72 of the Assessment Act, which are as follows: "The roll as finally passed by the court, and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the judge of the county court, be valid and *bind all parties concerned*, notwithstanding any *defect*, *error* or *misstatement* in the notice required by section 51 of this Act, or the omission to deliver or transmit such notice." This seems to us a plain, reasonable and salutary provision and should be strictly observed, the only modifications being those to which we hereafter refer. It is quite right, indeed necessary, for proper protection of all parties interested that the assessment slip or notice (prepared by the assessor in a perfunctory way in making his hurried rounds, and often from imperfect information and statements of facts, which are subsequently ascertained to be untrue) should be relegated to a secondary place to the roll. The latter is, or should be, the resultant work of a competent person, prepared with care and deliberation from information received from the parties assessed, a view of the premises, and all other available sources. It is, or shou'd be, carefully checked over by the clerk and council, before acceptance from the assessor, filed in the office of the clerk, to be examined by all ratepayers of the municipality who care to avail themselves of the privilege, and who, if any error or omission is discovered, may appeal to the court of revision within fourteen days from the date of the return of the roll, to have it considered and remedied. It is further open to persons who think themselves aggrieved, to take an appeal to the county judge. Surely a record which the statutes intend to be official, and which has been, or can be thus "tried in the fire," is and should be the only authentic and reliable evidence of the particulars of any ratepayer's assessment. In case, notwithstanding means provided for the preparation of a correct assessment roll, imperfections or errors are found to exist, the Court of Revision is empowered by section 74, of the Act, and to the extent mentioned in that section to effect a remedy before or after the 1st day of July, in any year. Section 166, of the Act, makes provision for the levying and collection of taxes against lands which arediscovered to have been omitted from the assessment roll.

Municipal Responsibility.

A judgment of considerable interest to municipatities as well as to individuals has been given in Hamilton. One Homewood fell into an open areaway, and sued city, a man named Hughes, the owner of the areaway, being made a third party. Homewood was given a judgment of $250 against the city, which in turn was given a judgment for that sum against Hughes. Homewood's sight is defective, and an effort is being made to escape damage under the plea of contributory negligence. This the court would not listen to. In giving judgment, it was held that a person may walk or drive in the darkness of the night on the sidewalks or streets, relying on the belief that the corporation has performed its duty and that the street or walk is in a safe condition. "He walks by faith justified by law, and if his faith is unfounded and he suffers injury, the party in fault must respond in damages." So one whose sight is dimmed by age, or a dim-sighted person is entitled to the same rights. The judgment is based on common sense and it is presumably good law.—Ingersoll *Chronicle*.

Municipal Co-Operation.

The Monetary *Times* of a recent date has the following to say:

"The question of the disposal of sewage is everywhere pressing for so'ution; in the harbor of Toronto, at Stratford, on the Muskoka lakes, wherever human beings congregate in considerable numbers. Mr. Tarte's position that the federal government is not bound to remove the sewage from Toronto bay, may lead to the end of the system of polluting the water. Stratford, an inland town, is charged with polluting the river Avon with sewage. What is wanted, is some general system of utilizing or rendering sewage innocuous, if indeed any one system is capable of being adapted to localities, which is not yet certain. The drafts on the resources of municipalities are so great that the means of making needed improvements are not always forthcoming, and not seldom is a want of money confounded with a want of capacity. Even enquiries looking to changes and improvements are costly, and in making them, several municipalities might advantageously make a joint inquiry. Two indications of municipal co-operation have recently appeared; one at the suggestion of Mayor Morris of Ottawa. The latter aims at securing cheap coal, and if the object were confined to the purchase of coal required by municipalities in their organized capacity, no objection could reasonably lie against it; but it would be another thing for municipalities to buy and sell coal for the benefit of the ratepayer. At any rate it would not be desirable to go so far at the outset. If it were done at all, after a time, the objects of the municipal organisms would change greatly. This might not necessarily be an objection; perhaps the change is bound to take place at a time not far distant in the future. But only steps in that direction should be tentative and free from suspicious rashness."

Cannot Compel the Opening of this Road Allowance.

The decision in the following action confirms the opinion on the question involved, frequently given in these columns:

Mr. L. owns and resides on lot 25, concession 4, township of Darlington. He also owns the south 140 acres of lot 16, concession 3, Darlington, which he also works, necessitating his going between said farms frequently. The original road allowance has never been opened between lots 16, 17 and 18, in the third and fourth concessions. This forced Mr. L., in travelling between his farms, to go south to the third concession line, and up again to the house on lot 16. The house on lot 16 was about half-a-mile from the third concession line, which caused him to travel a mile each way further than if he could get through the fourth concession line if it were opened along lots 17 and 18. The councils for about twenty years have refused to open the road on the ground that the expense of building a road on that line by reason of there being a bad swamp or muskeg, averaging over five feet deep, would be altogether out of proportion to the advantages gained—and practically Mr. L. would be the only one who would use it. The council, fortified by the opinions of its advising counsel that the opening of a highway that never has been opened was a matter entirely in the discretion of the council themselves, and neither judge nor jury, nor any court in the Province could sit in judgment on its discretion nor review its acts, decided that the road should not beopened. Mr. L. recently launched a criminal prosecution against the council, which was tried at Cobourg by a judge and jury, a short time ago, and resulted in a verdict in favor of the township.

At a recent voting on a by-law to raise $30,000 for the extension of the waterworks system in Owen Sound, the McDowell voting machine was used. According to all reports it seems to have given ample satisfaction.

Ottawa is the first city in Canada to adopt and register civic colors. Here is an example worth following, so that the town's decorations whether at home or worn by a delegation abroad may be distinctive.

Engineering Department

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

Massachusetts Roads.

In connection with the cost of road construction the reports of the Massachusetts Highway Commission are frequently quoted, and the effect is apt to be discouraging. There are several reasons why the average cost of roads in Massachusetts is very great, and are therefore not applicable to Ontario. In its effort to accomplish the greatest good, the commission has undertaken to build the most difficult sections. In carrying out this policy it has been necessary to reduce heavy grades; to widen narrow roadways; to fill low places where they were overflowed by flood waters, or which were likely to fail in foundation on account of the nearness of ground water to surfacing; to build culverts for the quick removal of storm water; to place side drains for the removal of ground water; and to do many other things which increased the cost of building, but which would not appear on the finished road to the most careful observer.

It will thus appear that there are two distinct kinds of work in a first-class road: First, the surfacing; and second, the preparation for the surfacing and the placing of safeguards for its future protection. On some of the roads built under the direction of the commission the surfacing has not constituted a quarter of the cost, and in the hill or clay districts it is rarely the case that the surfacing has equalled one half the entire cost.

As the work progresses, it should be done at a lower average cost, and a study of the tables in early reports of the commission will show that this is precisely what has taken place. While a reduction in the cost of Massachusetts State roads has been and still is possible, it is not to be expected that it will be as low as in other States. The length of a working day in Massachusetts is by legislative act nine hours, or eleven per cent. shorter than in New Jersey, while the price of labor and teams is twenty per cent. higher; and the total cost is nearly one-third greater from these causes alone.

The methods employed by the commission, in any event, aim at a very perfect type of road. Careful studies are made by the engineering force of soils, drainage problems, gravel, stone, grades and traffic, and the type of road to be built is based upon the results of these studies. With the exception of peat, muck and vegetable loam, all soils in this latitude make good support for roads during a greater part of the year. Sand, gravel and porous soils give no trouble at any time; while clay, sandy loam and all non-porous soils are much weakened by frost action, and in their natural condition afford poor support in the spring months. They can, however, be greatly improved by removing from them the ground water, which in a measure may be done by means of side drains.

The commission has estimated that non-porous soils, drained of ground water, at their worst, will support a load of about four pounds per square inch; and, having in mind these figures, the thickness of the broken stone, the downward pressure takes a line at an angle of forty-five degrees from the horizontal, and is distributed over an area equal to the square of twice the depth of the broken stone. If a division of the load, in pounds, at any one point, by the square of twice the depth of the stone, gives a quotient of four or less, then will the road foundation be safe at all seasons of the year. On sand or gravel the pressure may safely be placed at twenty pounds per square inch.

Acting on this theory, the thickness of stone on State roads varies from 4 to 16 inches, the lesser thickness being placed over good gravel or sand, the greater over heavy clay, and varying thicknesses on other soils. In cases where the surfacing exceeds six inches in depth, the excess may be broken stone, stony gravel or ledge stone, the material used depending entirely upon the cost, either being equally effective.

All broken stone used is separated into three sizes by passing it through a screen with meshes half-inch, one and a-half inches and 2½ inches in diameter. The largest size is placed at the bottom, and is covered with the successively smaller sizes. The different sizes of stone are spread in courses. The sub-grade and each course of stone are rolled thoroughly, and the top course is watered before rolling. All stone-crushing plants in the State, whether employed on State or municipal work, are fitted with elevators and revolving screens, so that the stone when thrown into the hopper passes through the crusher, to the elevator, to the screen, to the bins, and into the carts in sizes as required, without re-handling.

The rock used has come from quarries, banks, fields and river beds. There is great variation in the quality of rocks used. In the selection of road-building rock, traffic and cost are carefully studied, and the cost of maintenance as well as construction is taken into account. Trap rock is unquestionably the most economical material for the surface of roads of heavy traffic, and it has generally been used by the commission on such roads, In such cases where the trap rock has to be moved long distances and its cost is high, and where a low-cost native rock is available, the native stone is used as a bottom course and the trap rock as top or wearing course. This combination materially reduces the cost, without affecting its value. In a few instances the native rock surfacing has not worn well, the cost of maintenance has been considerable, and the surface of the road has been rough. These have been broken up by picks in the wheels of steam rollers, evened up, and re-surfaced with a coating of trap rock from two to three inches in depth, with the proper amount of screenings, water and rolling.

All state roads are compacted by the use of steam rollers, both during construction and permanent repairs. The steam roller gives quicker, better and more economical results than can be obtained by any other method. With a prepared sub-grade, and by rolling the sub-grade and each course of stone separately, no difficulty is experienced in the use of steam rollers that cannot be easily overcome.

The standard width of broken stone roadways, as built by the commission, remains fifteen feet, and on each side of this a width of three feet is shaped to the same cross-section as the broken stone. These side strips or shoulders, are covered with gravel on much travelled highways only; on all others the natural soil is used. Roadways of twelve, and of ten feet, have been built, and are satisfactory so far as the use is concerned, although the ten-foot way is not economical to maintain, except where the traffic is exceptionally light.

Either iron or vitrified clay pipes are used for culverts, up to twenty-four inches in diameter, the ends being in all cases protected by stone masonry. The larger culverts are built of rubble masonry the side walls being laid dry, the ends with cement mortar. Having in mind the experience of towns, the commission has felt justified in accepting only good materials and workmanship in all culvert masonry. The first cost of good work may be greater, but the final cost is surely less.

Reference has already been made to the necessity of removing ground water from the sub-grade of a road. This drainage is affected in various ways, the kind of drain being dependent upon the character of the soil. The drain mostly used by the commission is a vitrified clay pipe, laid with open joints, in a trench about three to three and a half feet deep, and from twelve to sixteen inches wide. This pipe is laid upon a two-inch layer of fine gravel, free from sand or dirt and covered to a depth of six inches, and is surrounded by the same kind of gravel. The remaining part of the trench is filled with stone varying in sizes from one to three inches in diameter. The pipe removes the water quickly to an outlet; the fine gravel allows a free flow of water, and at the same time prevents the passage of silt into the pipe; the removal of sand or dirt from the fine gravel surrounding the pipe removes the possibility of its entering the pipe; and the coarse stone in the upper part of the trench intercepts the ground water in its flow toward the sub-grade. These drains are placed on either side or both sides, as the contour of the ground requires.

To protect the traveller, guard-rails are placed on embankments and at culvert ends. There the cost is not much increased, embankments are given a slope of four horizontal to one vertical, and the rail is omitted. The guard-rail is three and a-half feet high, and is built of cedar posts eight feet apart, a 4 x 4 inch top rail and a 2 x 8 inch side-rail. The posts are shaved, the rails are planed, and all the exposed surfaces are given two coats of light-colored paint, easily seen at night.

While the roadway is of first importance, the commission has not lost sight of the educational effect of a well-kept roadside. The space on both sides, between the roadway and the boundaries of the right of way, or location, have been cleared of debris and generally smoothed up, and left so as to be easily cleared of weeds and brush. Trees that would make shade or add beauty have been carefully preserved, and the planting of shade trees by municipal officers, local improvement societies or abuttors have been encouraged and even urged.

Tar-Concrete Foot Walk.

There have been many failures in the use of tar concrete walks, largely owing to careless workmanship and the use of inferior material. Where reasonable care has been exercised, and they have been laid by men who are experienced in this class of work, they have been very successful. In the city of Hamilton, where tar-macadam roadways are laid to a great extent, foot walks constructed on similar principles are being adopted.

These walks have been in use at Richmond Hill for fifteen years. Those at first laid were not a success, but after some experience better results were obtained. For the past twelve years nothing but tar concrete has been used, and the plank walks are being replaced with it as fast as they require renewal. In laying these walks a curb of 1½ x 4 inch pine is placed on each side of an excavation made to receive the walk. Between the curbs is then placed a gravel foundation, which is thoroughly consolidated and about three inches in thickness. Upon this foundation is then placed a two and a-half inch layer of the tar concrete. This tar concrete is simply a mixture of coal tar and clean, coarse, sharp sand, or fine gravel. The proportion of tar used will vary according to the quality of the sand, the finer the sand the more tar being required. An exact rule cannot be laid down, but about one measure of tar to eight or nine of sand will meet most conditions. Experienced men can lay this walk for forty cents, or even less, per square yard.

These walks do not present so good an appearance as cement concrete, nor are they so durable. They can be easily repaired where minor defects occur, and for use in villages and on the less important streets of towns and cities, if properly made, they will be found very much better and cheaper than plank.

The walks in Richmond Hill, which have been down for twelve years, are still in good condition. They show little sign of wear, and have no appearance of decay, so that their actual life cannot be determined from their twelve years of wear.

Parks.

When a municipality is about to locate or establish a park, the various sites which may be offered for the purpose should be well considered, not only as to the eligibility of the ground itself, but as to its environment, present and prospective.

The site chosen should not be low, wet land; for it must be drained, and is expensive to make attractive. High, rolling land, rugged in places, traversed by a deep ravine or a hill-torrent, is far more desirable; or a tract of land which will embrace both characteristics can be made into a park which is first-class in every respect. The ravine or torrent can be readily bridged, and a pond can be excavated on the low land, which will serve to drain the remaining portion of it. An unfailing source of water is so very essential to the beauty of a park that this feature should not be lost sight of for a moment when the site or sites are under consideration.

When the land is finally selected, then determine the sort of a park you will have; and when doing so, consider Charles Elliott's definition of a park. He says:—"Lands intended and appropriated for the recreation of the people, by means of their rural and natural scenery and character." If this definition is continuously held in view, the park will always be for the people, and fully appreciated by the people.

It has been found by those who have had charge of public parks that no urban park is safe from spoliation by permitting the grounds to be used for purposes utterly foreign to the original design and intention, until a community is educated to the controlling idea of a park in all its essential features; that if we would maintain mental, moral and physical health in large cities, we must have a breathing-space which is not only attractive to the masses, but is also easily accessible.

To preserve and maintain a rural park of quiet, sylvan beauty, we must exclude town-like things, omit from them decorative gardening, monuments and statuary; rigidly exclude all catchpenny devices, trivial amusements, and not afford opportunities that can be found at a county fair for spending money. Make it a place for recreation or rest; furnish good facilities for drinking-water, a reasonable number of seats, boats on the pond, if there be one, and a place for rendering good music, and the public will supply all other needfuls which are nececessary for their enjoyment. Even speed-roads are objectionable in a public park, because of the crowd they gather, not to enjoy the park, but to see the driving and bet upon the horses driven; the youth who frequent the park are thus brought into contact with the manners and language of the race-track. The drivers of the horses may be prominent citizens, very true, but not public-spirited ones, or they would not sanction the use of a park drive for such a purpose. All that they care for is the driving and the opportunity to exhibit their thoroughbreds; they do not seek the park with the same intention or purpose that the business man does who takes an evening drive therein with his family, or the man who goes there with his wife and children for a pleasant stroll.

While it is better to keep all buildings out of a park that is possible, yet in parks of large area, fifty acres or more, it is quite necessary that there should be a pavilion or two, under which visitors may seek shelter when sudden rainfalls occur; and there should be one substantial building, of low-roof, cottage design, for the convenience of women and children. All other buildings are unnecessary.

A park should always be perfected according to its natural features and conditions, not imitating an English park, with its grass and trees; nor should we give it that neat prettiness of the grounds about a villa. Be as original in the design of the park, so far as it relates to the landscape, as we are in the design of buildings and the improvements of our cities. Originality of design is what has made the noted parks of the world famous. Cultivate those trees and shrubbery which are indigenous to the land itself, adding such as grow well in that particular latitude. We should not attempt to create hills where they exist; and avoid the practice of levelling grounds. Use the spare earth to increase the height of undulations, and let the depressions exist. The moisture which they collect will give growth to certain kinds of trees and shrubbery which will not exist without it. John Ruskin said: "The simple uncombined landscape, if wrought out with due attention to ideal beauty of the features it includes, will always be most gratifying in its appeal to the heart."

Pennsylvania's Roads.

A new road bill has just passed the Pennsylvania legislature. This amendment provides for raising $2,000,000 a year for road improvement by tax of one mill on the personal property and capital stock of corporations and the receipts of banks and foreign insurance companies.

In advocating the bill it was shown that considerable corporate property escaped paying a share of tax equal to that paid by other corporate property of the same class. A search of the records of the state shows that the Carnegie company has paid but $1,117 taxes. While corporations are paying less than three mills on the dollar of their investment, real estate owners are paying 16½ mills. Official records show that the taxes re-

ceived by the state in a period of seven years from corporations have increased less than 1 per cent. while the actual value of their holdings has materially increased.

On the other hand, farm property has decreased several millions of dollars in value, but in the last eight years the tax upon real estate has been raised from $30,000,000 to $44,000,000, or an increase of 46 per cent. This excessive and increasing burden upon real estate indicates why people are moving away from the agricultural districts of Pennsylvania and settling in towns and cities. This measure being indorsed by the grange shows that the farmers of Pennsylvania are in favor of road improvement as provided for by this amendment. The position of farmers on the road question is also put before the people in its proper light.

The Road Grader.

Road graders are now so commonly employed in the construction and repair of roads, and their utility is so generally recognized, that it is scarcely necessary to further urge their adoption. They are a modern, labor-saving implement which do their work better and more cheaply than can be done by hand, and that nearly three hundred townships of Ontario have purchased them is forcible evidence of their value. It is not their use which it now seems necessary to urge, but rather there is need of guarding against their mis-use.

In too many townships the councils have rested content with merely buying a grader, and, having done this, seem to be satisfied that they have done their full duty. Unfortunately the grading machine is not possessed of intelligence, it does not know when or how a road should be graded. So that, unless a method is established, and unless a capable man is engaged to operate it, the grader is likely to give but little service. There are three questions which naturally present themselves in connection with the use of a grader which councillors and road commissioners should distinctly answer.

WHEN?

When should the grader be used?

Arrangements should be made every spring to have the grader ready and in use as soon as the ground is sufficiently dry. The soil is then in its best condition for manipulation, having been mellowed by frost; the roads are rough and most in need of treatment. Roads which are properly graded early in the spring are at once compacted by traffic and they will remain in their best condition all summer. If the work is left until late in the season, clay soils have become baked and hardened, difficult to handle and rough when finished. Sandy soils, if loosened up late in the year will be much more dusty than if treated early in the spring when they are damp and readily compacted by traffic.

WHERE?

Where should the grader be operated?

This is a query which few townships have answered satisfactorily and it is of first importance that they should do so. It should be the duty of the township road commissioners, councillors, or a committee of the council (according to the local system of road management) to go over the roads early in the spring, and determine what grading is required.

This work should be staked out according to definite widths and dimensions of the roads as required by township regulations. The grader, when it commences in the spring, should proceed to each piece of work consecutively, and should be in use continuously until all the grading is done for that year.

At the present time it is customary for the grading machines to go here and there over the township without method—one day on one side of the township, next day on the opposite side, then to another distant part, backward and forward, wasting a considerable part of the wages of men and teams in moving from one part of the township to another. By following the method described above, the cost of moving the machine between the different pieces of work is reduced to a minimum.

Some distinction should be made between the grading of new roads, and repairs of old roads. Where the roads are being metalled from year to year with gravel or broken stone, it is, as a rule, a waste of money to grade a greater length of road than can be graveled or macadamized the same year.

HOW?

How should the roads be graded?

One of the first essentials in providing that the roads will be properly graded is to select the right man to operate the grader. He should be an active, energetic man, with some mechanical experience; one who will take an interest in his work, who will make a study of roadmaking and who will be willing to follow the instructions given him by the township road commissioner or councillor having supervision of the work. When such a man is found he should be engaged from year to year so that his growing experience will render him more efficient.

There are many townships which do not employ a regular operator, but instead allow the grading machine to be handled by any one and every one. In some cases it is even passed around in the performance of statute labor from beat to beat. Managed in so crude a manner, a grading machine will be a source of disappointment only.

The same horses should be used in operating the grader for an entire season at least, and as far as possible, from year to year. "Green" horses are very awkard, will not pull together, waste much time, and even a reliable man as operator cannot, under such circumstances, perform good work. It is a great waste in many ways to attempt to use a grading machine with horses provided, as is sometimes done, as a part of statute labor. Horses used continuously become accustomed to the work, to each other, and to the driver, and will produce much better results.

Some townships, instead of horses, use a traction engine. Where one can be rented from a local thresher, it can usually be obtained very cheaply in the early part of the year. Where a considerable stretch has to be graded without turning, as in cutting off the shoulders of old gravel roads, a traction engine is much preferable to horses. It is more steady and does not stop to rest.

The township regulations as to the width and dimensions of road should be closely followed in grading. These will generally provide for a width of twenty-four feet between the inside edges of the open drains on roads of greatest travel; twenty feet on roads of moderate travel; and eighteen feet on roads of least travel. A rise of one inch to the foot, from the inside edge of the drain to centre of the road, is ample crown for a new road. More than this is unnecessary and an injury. There is a tendency, in the use of the graders, to crown the roads excessively, and this should be guarded against.

Road graders are of much use in the repair of old gravel and stone roads in restoring the crown. Unfortunately, it is no exaggeration to say that miles of roads have been ruined by a mis-use of the grader in this work. Old roads are commonly flat, rutted, sometimes concave, with square shoulders at the side. In repairing these roads there may be a small amount of stone which has been crowded out by the wheels of vehicles, and which it is safe to draw again to the centre of road. On no account, however, should the square shoulders at the side be drawn to the centre of the road. These shoulders are composed of earth and sod, and if placed on top of the stone road will merely turn to slush in wet weather and utterly ruin the road. The only way to repair such roads is to cut off these shoulders, throwing them away from the road, across the open ditch if necessary, and then to restore the crown by placing a coating of new gravel in the centre of road.

The grading machines are exceedingly valuable implements in roadmaking, but there is a proper time, place and way, and councillors using them cannot too soon provide a practical solution.

"Could you do somethin' fer a pore ole sailor?" asked the wanderer at the gate.

"Pore old sailor?" echoed the lady at the tub.

"Yes'm. I follered the wotter fer twenty years."

"Well," said the lady at the tub, after a critical look, "you certainly don't look as if you'd ever ketched up with it," and resumed her Delsartean exercise of determence.

Asphalt.

City engineer Rust, of Toronto, in the course of a report to the Board of Control, upon the relative kinds of asphalt, says :

At present there are in use in the construction of asphalt pavement, Trinidad, both Pitch Lake and Land, which is obtained from the Island of Trinidad ; Bermudez, which is somewhat similar in character to Trinidad, and is obtained from Venezuela ; several California asphalts, and also the Rock asphalt of Europe. Of these the recently organized Asphalt Company of America, known as the National Asphalt Company, controls Trinidad, Pitch Lake, and, in addition to the Pitch Lake,the companies own a large portion of La Brea, in which the so-called land asphalts are located. In California they control the Alcatraz, Standard and others, and also the Seyssel French asphalt. Referring more particularly to the Trinidad asphalt, I understand,in addition to the properties controlled by the Trust, there is a very large acreage upon which asphalt deposits are found. I also understand that the control of the asphalt from the lands owned by this company is practically a monopoly, and they only sell to outside contractors at very high prices and under very arbitrary conditions.

It may be of interest to the Board to give a description of the various kinds of asphalt. Crude Trinidad asphalt contains from 35 to 55 per cent. bitumen. The residue is mostly organic matter. To prepare it for use, it is heated for a certain number of hours, during which time a portion of the dross settles. It is then oiled with a considerable percentage of petroleum residuum. Afterwards the cleaner portion is drawn off into barrels ready for shipment. To prepare it for street work, it is again fluxed with from fifteen to twenty per cent. petroleum residuum.

The manner of preparing Bermudez asphalt is somewhat similar to that of Trinidad, except that the crude material is softer. The following extract from the *Journal of the Society of Chemical Industry* may be of interest : "The State of Bermudez lies on the opposite side of the gulf of Paria from Trinidad. About thirty miles in an air line from the coast an asphalt deposit known as the Bermudez Pitch Lake is found at the point where northern range of foothills comes down to the swamp. The so-called lake is situated between the edge of a swamp and the foothills,and is what might be termed a savanna. It has an irregularly shaped surface, with a width of about one and one-half miles from north to south, and about a mile east and west. It has an area of a little more than nine hundred acres. At different points there is at most a depth of seven feet of material, while at points there is not more than two feet of pitch, and in the bottom groves it is often five feet below the surface.

The Alcatraz asphalt comes from California, and its occurrence is very different from the Trinidad and Bermudez. The material occurs either in veins similar to coal or other minerals, or is mixed with sand, and the asphalt must first be extracted.

In Europe, the rock asphalt is obtained from mines in France, Switzerland, Italy, and Germany. The material is used as it comes from nature. It is simply crushed to a powder, heated and spread upon the foundation to the desired thickness, then tamped and rolled. Rock asphalt has not been used largely in this country, owing to the high cost and the slippery nature of the pavement when laid. It has an advantage, however, in the fact that it is not affected by water in a similar manner to Trinidad asphalt. There are, I believe, several deposits of rock asphalt in Texas and Indian Territory, but I am not aware that it has been used for paving purposes.

The Good Roads Train.

All arrangements in connection with the trip of the Good Roads Train, organized by the Eastern Ontario Good Roads Association have been completed, and work is now in progress.

From Hamilton the train proceeded direct to Gananoque, a point in Leeds county, near the St. Lawrence river, in which vicinity two sample stretches of the road will be built. The first stretch is to the north of the town and is very uneven and hilly. On the afternoon of Tuesday the 23rd of July, a convention was held in the town and addressed by prominent Good Roads advocates. The second stretch, which is near Lansdowne, will next be treated and a meeting be held at that point.

From Lansdowne the train will go to Iroquois, where a stretch will be built, leading directly into the village. Both the above points are on the line of the Grand Trunk Railway.

The next point after Iroquois will be a stretch of road leading into the Canada Atlantic station at Alexandria, in Glengarry county. From this point the train will run up to Ottawa, over the C. A. R. line and back to Plantagenet, in the united counties of Prescott and Russell, over the C. P. R lines, where the road between the station and the village will be improved. This stretch is a very bad one and promises to make a splendid object lesson.

Returning to Ottawa the train will proceed over the C. & N. Y, tracks to Newington, and afterwards back again to Ottawa. The C. A. R. line between Ottawa and Pembroke will then be used. The first stop will be at Bell's Corners, in Carleton county; the second at Carp, also in Carleton county, and the third at Eganville, in South Renfrew. From Eganville an advance will be made to Pembroke, where a very bad stretch in Pembroke township leading into the town of Pembroke will be handled. The C. P R. lines will here be taken by the train, which will run down to Almonte, in Lanark county, where a stretch a short piece out of the town will be handled. From Almonte the train will proceed by way of Ottawa to Kemptville, where the road leading from the station to the town has been selected for demonstration. This piece of road is known all over eastern Ontario, particularly by commercial travelers, for its bad qualities. It will be the last point at which work will be done. The train will return rrom there to Hamilton by way of Prescott.

One of the most valuable features of the whole enterprise will be the demonstration that will be given in each locality to show how concrete culverts are constructed. In almost every township in eastern Ontario nothing but wooden culverts are in use.

Mr. Devitt, the expert, who has commenced to contruct these culverts, has completed three concrete culverts at Gananoque. Two of these were 15 inch pipe and 25 feet long, while the third was 24 inch pipe and 22½ feet long. For their construction he used about six barrels of cement which had been given the Good Roads Association free by the Canadian Portland Cement Co , of Deseronto.

The actual cost of these culverts, had they been constructed by an intelligent laborer, as they can be, would have been about $24. Three wooden culverts of the same size would cost almost, if not quite as much, and in some localities, even more.

When men offer as candidates for municipal honors, they are, if elected to the city council or school board, under no obligation to their constituents as to how many meetings they shall or shall not attend. The electors want every successful candidate to do his duty and live up strictly to his oath of office. They have appointed him to watch their interest as a ward, and also do everything that will lead to the advancement of the whole community. If he does not do this; if he is negligent in the discharge of his duties; if he wilfully absents himself from meetings where important matters are discussed; if he considers there are too many meetings and complains about their frequency; if in a word he regrets entering public life and expresses himself so, that people think he would rather remain at home than be re-elected, he will certainly be rejected at the polls at the next election. Public men must not lose sight of the fact that when in office they are servants of the people, and if they are unfaithful stewards thei. portion will be with those who desire to live away from the public gaze and prefer the company of their families on the long winter evenings, to the long and tedious sessions of the public bodies referred to.—Kingston *News*.

"Sir," said the young man, "I ask for your daughter's hand."

"Young man," replied the father, "I am not disposing of her in sections."

Question Drawer.

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

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

Communications requiring immediate atten ion will be answered free by post, on receipt of a stamp addressed envelope. All Questions answered will be published unless $1 is enclosed with request for private reply.

Equalization of County Assessments.

359—A. W. R.—Can the county equalize on value of real estate only and not take personal property into consideration?

No. Section 87 of the Assessment Act, line 8 provides that the county council shall "for the purpose of county rates increase or decrease the aggregate valuations of real and PERSONAL property in any township, etc." In case valuators are appointed pursuant to section 310 of the Municipal Act as amended by section 13 of chapter 26 of the Ontario Statutes, 1901, their duties extend to the valuation for the purpose of equalization of the REAL estate only in the several municipalities in the county. The latter part of subsection 1 of section 310 provides as follows: "and the equalization of PERSONAL property shall be as heretofore," that is, as provided in section 87 and following sections of the Assessment Act.

Local Improvements Should be Completed as Soon as Possible After Initiation.

360—W. H. L.—The council of a village purpose laying a piece of concrete walk and went through all the requirements that are necessary in the shape of advertising, etc., also asked for tenders and received the same from four different firms, but have not accepted any of them yet. The question I want you to answer is, would it be legal for the council to lay one-third of the walk this season after having asked for tenders and other preliminaries the law required?

If there is sufficient time to complete the work this summer, the whole of the work ought to be done. It is not fair to the property owners along two-thirds of the line of the work to have to pay for their share of the cost of the whole work when that part of the whole work is not to be done this season. If that can be done why can the council not do simply one-third of the work next season and postpone the remaining one-third until the following year? The work when done is supposed to rule and the value of the property which it fronts and the benefit to the property is the consideration for which it is considered just that the owner deriving the benefit should pay, and therefore we do not think that a property-owner should be asked to pay his share of the cost of the work a year or so before the work is done. In addition to this we might say that the owners along the two-third part of the line of work will be contributing their share of the cost of the work, fronting other people's property.

Exemption of Farm Lands in Towns.

361—G. G. A.—The council have passed a by-law under section 8 of the Assessment Act providing for certain exemptions. A notice claiming certain exemptions under the Act (sec. 8, sub-sec. 3) was filed with the clerk on May 31st and the council in passing the above by-law ignored the notice as being too late. Where the Assessment Roll is filed with the clerk on or before the 30th day of April, is not the last day of giving notice under sec. 8, sub sec. 3, the 30th day of May?

The notice under this subsection must be given to the council within *one month* after the time fixed by law for the return of the assessment roll. The time fixed is the 30th of April in each year (see sec. 56 of the Assessment Act). By subsec. tion 15, section 8 of chapter 1, R. S. O., 1897, the word, "month" means a calendar month. The calendar month succeeding the 30th day of April is May which contains 31 days. Therefore a notice given under this subsection on the 31st of May would be within the time prescribed.

Qualification of Voters on Money By-Laws.

362—T. W. S.—1. A resident in the village is entered on the last revised assessment roll as owner for property assessed for $50. (a) Is he entitled to vote on a by-law for creating a debt? (b) Is he entitled to be entered on the regular voters' list in part one?

2. Mr. and Mrs. John Brown are entered on the assessment roll in a bracket as follows, Mrs. B., owner, and Mr. B., tenant. Can Mr. B. vote on a by-law for creating a debt?

3. Notice of appeal was made to have Mr. A. entered on the assessment roll as M. F. His name was entered at the court of revision which was finally closed. Since notice of appeal was made, he married a widow whose name is on the assessment roll as owner. (a) Can Mr. A. vote on a by-law for creating a debt? (b) If not, who represents the property owned by Mr. A's wife?

4. Mr. and Mrs. Smith live in Toronto. Mrs. Smith is assessed as non-resident and as owner of property in a village. Mr. Smith's name does not appear on the roll. In making out a special voters' list giving the names of those entitled to vote on a by-law, for creating a debt, should I enter Mrs. S., seeing she is marked on the assessment roll as married, and I, as clerk, am not supposed to know Mr. S?

5. Mrs. E. is named on the Assessment roll as a widow. She has since married a non-resident whose name is not on the assessment roll. This is a fact which I know, but as clerk, in making out a special voters' list of names of persons who are entitled to vote on a by-law creating a debt, I am supposed to take the assessment roll as my guide. I find Mrs. E. widow and owner of property. Should I enter her name as I find it on my special list? If I do enter her name as I find it, can she vote on election day seeing she is now married, and if she cannot vote, can her husband vote?

6. Chapter 223, sec. 353 of the Municipal Act reads as follows:—"and who is at the time of the tender a freeholder in his or her own right or (if a man) whose wife is a freeholder of real property within the municipality of sufficient value to entitle him to vote at any municipal election, and is rated on the last revised assessment roll as such freeholder, provided such person is named or intended to be named on the voters' list." (a) Do you give to the husband of the wife who is a freeholder, her legal status even though his name may or may not appear on the roll? (b) What voters' list in the last line of the above section is referred to, the general or special?

7. Jno. James is assessed on the assessment roll as owner of lot 2, his father is entered as tenant of lot 2 on the same roll. If the father comes forward on election day, that is the day on which a vote is taken on a by-law for creating a debt, and is prepared to swear that he is owner of said lot 2, is he entitled to vote? Would the returning officer be justified in refusing him a ballot, seeing that he is not entered on the last revised assessment roll as a freeholder?

8. Three names are bracketed on the assessment roll as being owners of a certain property. One is a resident and the other two non-residents. In making out a special list of those who should vote on a by-law for creating a debt, should I enter the three names?

1. (a) No. The latter part of subsection 1 of section 353 of the Municipal Act provides, that in order to entitle a freeholder to vote on a by-law creating a debt he must be assessed on the last revised assessment roll of the municipality, as a freeholder of real property of *sufficient value to entitle him to vote at any municipal election.* Your municipality being a village, in order to entitle a freeholder to vote at any municipal election his real property must be assessed at a value of not less than $100. See section 87 of the Act.

(b) No. See section 86 and 87 of the Act.

2. Yes, if the property is assessed for $100 or over. He can either vote as owner in right of his wife under section 353 of the Act, or as a tenant to his wife under section 354, provided the terms of his lease conform to those mentioned in the section last named.

3. (a) No. See our answer to question No. 6.

(b) The property would appear to be unrepresented.

4. This lady being entered on the assessment roll as a married lady, and as married women have no right to vote on a by-law creating a debt, you should not enter her name on the list to be prepared by you, under section 348 of the Act.

5. Your guide in preparing the list under section 348 is the last revised assessment roll. On this roll Mrs. E. is assessed as owner of realty (valued in the roll presumably at $100 or more) and a widow. As widows have the right to vote on a by-law of this kind, under section 353 of the Act, you should enter her name on the voters' list to be used at the voting on the by-law. If her right to vote is objected to on her presenting herself to mark her ballot, the oath mentioned in section 356 should be administered. Her husband cannot vote because his name not being on the last revised assessment roll, you cannot enter it on the voters' list, and no person can record his vote on the day of

the election unless he is named or intended to be named on the voters' list. See latter part of sub-section 1 of section 353.

6 (a) No name that does not appear on the last revised assessment roll can be entered by the clerk on the voters' list to be prepared under section 348, so if the husband's name does not appear on this assessment roll, he cannot be entered on the voters' list. Not being entered on the voters' list he cannot vote. See latter part of subsection 1 of section 353.

(b) The special list to be prepared under section 348.

7. This person being on the assessment roll and voters' list as a leaseholder must take the oath of a leaseholder, prescribed by section 357 of the Act in case his vote is objected to. If he will not do this, a ballot should not be given to him by the deputy-returning officer. A choice of oaths is not given to a voter as is the case at a municipal election.

8. These three persons should be placed on the voters' list provided that the property is assessed for $300 or over, and they possess the other necessary qualifications to vote on a money by-law. Both residents and non-residents possessing the necessary qualifications are entitled to vote on a by-law of this kind if their names are on the assessment roll.

Disqualified Persons on Voters' Lists.

363 —TOWN CLERK.—Last year in preparing my voters' list, I placed in part 2, thereof such persons as are disqualified from voting under sec. 4, of The Ontario Elections' act, who are resident here. On appeal by some of them to the District Judge, he ordered that all such officers and persons should be placed on part 1, in the face of my contention to the contrary. I am not satisfied that the District Judge is right, and in preparing my voters' list again this year, before placing these persons on part 1, I desire an opinion from you thereupon. The only possible reason underlying the judge's action is that in the event of resignation or dismissal from office, they would be deprived of a legislative vote if placed in part 2. It seems to me that this remote contingency is not contemplated by the statute, and looking at the matter afresh, as to the manner in which the lists should be made out, vide sub-sec. 3 of sec. 6 of The Voters' List Act, I see that the second part shall contain the names of the varions persons enumerated to vote on municipal elections only, and not at elections for members of the legislative assembly. This seems to me an express contradiction to include such disqualified persons as I have mentioned. If you agree with me, I shall be compelled to make my lists out in accordance with what I believe to be the law and leave the parties to appeal if they desire to do so.

2. What is the practice in regard to the placing on the voters' list of non-resident owners? Kindly refer me to the section governing same.

1. We agree with your contenton, provided the cause for the disqualification appears on the assessment roll. In preparing the voters' lists you should be guided by the evidence on the assessment roll. If, for example, the name of a person specially disqualified appears upon the roll, the disqualification does not appear, you should put his name in the proper place on the voters' list, even though you happened to know that by reason of his holding a certain office he was disqualified. We do not agree with the learned district judge that a person whose name appears on the assessment roll but whose disqualication also appears, should be put in the voters' list, so that in case of his ceasing to hold office, he might not be disqualified. If you leave such a person's name off the voters list, and he appeals to the judge, and the evidence disclosed in his application to have his name placed on the list shows that his office disqualifies, the judge ought not to put him on the list. Sub section 1, of section 6, of The Voters' Lists' Act, (chap. 7, R. S. O., 1897,) requires the clerk to make out a voters' list in three parts, immediately after the final revision and correction of the assessment roll. Sub-section 2 provides that part 1 shall contain the names of all persons entitled to vote at both municipal elections and elections to the legislative assembly; and sub-section 3 that part 2 shall contain the names of all persons entitled to vote at municipal elections only. The persons named in section 4 are not entitled to vote at legislative elections, but may be possessed of the qualifications of a municipal voter, and if so, have the right to vote at municipal elections. If by the assessment roll they appear to possess the latter qualification, but to be disqualified under section 4, of the Ontario Election Act, the clerk in preparing his voters' list should place their names in part 2 of the list.

2. Non-residents, if their names are on the assessment roll, and they possess the necessary qualification as owners, should be placed in part 2 of the voters' list. Both the Dominion and Ontario Election Acts contain restrictions as to residence, which are not embodied in the provisions of the Municipal Act relating to voting at municipal elections. (See sub-section 1, section 86, of the Municipal Act, under heading "Firstly.")

Maintenance of Townlines by Adjoining Municipalities.

364.—W. E.—Are townlines between counties according to law kept in repair by grants from County Councils of the different counties, or do the township councils have to grant money for that purpose? My opinion is that the county has to keep them up.

Section 621 of the Municipal Act provides that "township boundary lines forming also county boundary lines, and not assumed or maintained by the respective counties interested shall be maintained by the respective TOWNSHIPS bordering on the same, except where it is the duty of the county council, under the provisions of this Act, to erect or maintain bridges over rivers, streams, ponds or lakes forming or crossing boundary lines between two municipalities.

Authority of Head of Council Under Civic Holiday Proclamation.

365. SUBSCRIBER.—A requisition is sent the Mayor asking for a holiday by proclamation. If therequisition is signed by a majority of voters, can the mayor or reeve compel all to observe the day?

No.

Council's Power to Lease Town Hall Lot.

366.—C. T.—Kindly inform me if the council has power to lease a part of the lot on which the town hall is situated for building purposes, and is there any specified number of years for lease to run, if given?

If the lands were bought by the council free from any trust, we think they can lease such part thereof as is not required for the purpose of their town hall, and the Municipal Act does not limit the term during which the lease may run. If, on the other hand, the land is subject to any trust they cannot do so. See section 637 of the Municipal Act.

Liability for Accident Through Absence of Bridge.

367.—J. B.—A teamster and owner of the team were going to market with a load. They took a public road, one which is not much used, but was in a good state of repair the last time they went through the road, but on coming to a small creek they found the bridge had been washed away some three or four months. There were tracks of rigs that had gone through the creek at the side where the bridge had been. The water was 5 or 6 inches deep and about 7 feet wide with gravel and stones in the bottom. There was no notice of anything to show that the creek was dangerous, and teamster and owner decided they could drive through. The teamster was on the front end of the load and the owner on the back end, and when the front wheels went into the water, the one wheel went down over the axletree, pitching the teamster into the water, striking his head on a stone. He will probably recover, but will not be able to work for at least six months and will be badly disfigured for life.

1. Is the owner of the team liable for damages?

2. Is the municipality liable for damages? If the municipality is liable, what would be a reasonable amount for it to pay, providing it could be settled out of court?

1. No. The teamster was not bound to drive the team through the place of danger. He, as well as the owner, appeared quite willing to try the experiment, and he cannot recover any damages from the owner for the injury he sustained.

2. No. These parties drove into, and attempted to cross the dangerous place, with a full knowledge of its existence and condition.

Liability for Injury to Hedge Fence by Sheep Running at Large.

368.—W. D. M.—A ratepayer of this township, owning 100 acres of land, has a honey locust hedge fence planted along the front of his farm. This, until this year, has been protected by a rail fence, but the party now has it trimmed and lashed with four strands of wire and considers it of sufficient size to take the place of a fence. He has therefore removed protecting fence from same, and sheep on the roadside, which are allowed in this municipality to run on the highway are attacking this hedge and eating all the young leaves off it, and he claims will eventually destroy it. He has protested to the council and in fact, threatens them, that if they do not give him sufficient protection, he will hold them liable for damages. So far a hedge fence has not been recoginized as a legal fence in this township. Would the party therefore have any claim for damages? If so, against whom could he lay

the claim, the township or the party owning the sheep?

This party has no claim for damages against the municipality. He can, however, compel the person or persons owning the sheep to make good any injury they may have occasioned him.

Council's Share of Cost of Sidewalk - Councillor's Contract with Corporation.

369.—A. M. 1. Is a town council supposed to pay for any part of a sidewalk built on the Local Improvement system, the street crossings for instance?

2. Can I legally do any work for the town council being a member of it, blacksmith work for instance?

1. By subsection 1 of section 679 of the Municipal Act, the council of a municipality may (if they think fit) by by-law provide for constructing at the expen e of the general funds of the municipality, such part of a local improvement as is situate upon or in that part of any street, lane, alley, public place, or square, which is intersected by any other street or as would otherwise fall on property exempt from assessment.

2. No. If you did any work for the council, the contract would be void under section 83 of the Act, and the council would not be bound to pay you, and proceedings could be taken to unseat you pursuant to the provisions of section 208.

Signatories to a Drainage Petition.

370.—H. C. - 1. We had a petition sent our council which contained a majority of names in the area described in the petition to be drained. When the engineer's report was read, two ordered their names taken off the petition. The petition then had no majority; the council took no action on the petition. There is now a second petition sent in on the same drain. If there is a majority on the second petition and the council go on with the drainage work, will the council charge those two who took their names off the first petition, double the expense on the second petition or not?

2. Has a farmer's son who is down on the assessment roll as joint owner, a vote on the drainage work?

3. If a man's lot is not marked on the assessment roll proper, does that bar him from a vote on the drain; suppose it is not marked right lot or concession?

1. No. Only the expenses in connection with the first petition are collectable in the manner mentioned in the latter part of section 18, of the Drainage Act. (R. S. O., chap. 226.)

2. If these farmers' sons were assessed on the last revised assessment roll as joint owners of lands in the described area to be drained, they are proper persons to sign the petition. In the recent case of the Township of Warwick vs. the Township of Brooke, it was decided that the assessment roll on which a council is required to act, if they act at all, is conclusive upon the question of the status of petitioners, and the referee erred in admitting the evidence, (viz.: that the farmers' sons assessed as joint owners were not ACTUAL owners.) The legislature must have meant to give some effect to the assessment roll by referring thereto in successive Acts, from R.S.O., 1877, hitherto in uniform phraseology different from that which had been used in earlier Acts on the same subject. It is not unreasonable to hold that the legislature meant what it said, for opportunities of dealing with the question of ownership are afforded on appeals to the court of revision and to the county judge. An inquiry is not open in the case of farmers' sons any more than in the case of other persons. The section takes the roll as finally revised, and gives effect to it, and it is conclusive for the purpose of conferring jurisdiction upon a council to entertain a petition.

Collector Cannot Appoint a Substitute.

371.—A SUBSCRIBER.—Is it lawful for a municipal collector to get a subsitute to collect the taxes for him?

No, unless it be a bailiff to enforce payment of the taxes. If the collector for any reason is unable to perform the duties of his office, he should resign, and the council should appoint another person, by by-law, collector in his stead.

Municipal Loan to Flour Mill.

372.—T. W. S.—A few weeks ago in our village, a large flour mill in which was also a chopper for chopping grain, was destroyed by fire, leaving the engine and boiler-rooms in very good state of repair, also the brick walls standing. The person who had this mill leased has since the fire, bought the remains and asked the council to aid him to erect a flour mill within the said village of — — by a loan of $5,000, and to provide for the issue of debentures, etc. The council submitted a by-law to the electors which has been carried. This mill has been a going concern for years. There is also a one-horse chopping mill in the same village, which has been working for a few years and which is now in use. This mill could not accommodate one-quarter of the customers who patronized the chopper in the flour mill. The by-law provides for a loan for a flour mill and no mention is made in said by-law of a chopper. The loan covers a period of 15 years, payable in equal annual instalments, of principal and interest which instalments are paid yearly by the person asking the loan, who also pays all taxes that may be levied against the property. The mill when complete, will cost over $10,000.

1. Can the owner of the small chopping mill prevent the owner of the new flour mill placing therein a chopper, seeing that the council did not aid him as to a chopper?

2. Would you not suppose that any other industry apart from the aid given by the council to the flour mill could be erected or placed therein and not be considered as covered by the loan, and therefore not objectionable to statute?

3. Could not the owner of the proposed new flour mill, supposing objections could be taken to the introduction of a chopper in the new mill, build an annex and have it run directly from the engine which is now in a good state of repair. Is not a man at liberty to run an industry even though there are other similar industries in the same place, as long as he does it at his own expense?

4. Is it the spirit of the statute to mean that a small industry insignificant, so to speak, should bar a corporation from granting a loan to such a one as referred to, as I do not think the person asking the loan would build if he could not introduce a chopper?

5. How would you overcome the difficulty if one exists?

1. No. If the person to whom the loan is made complies with the terms of his agreement with the municipality as to the erection, equipment and running of the flour mill, he can erect and run in connection with it or otherwise a chopper or any other kind of mill or manufacturing institution.

2. Yes.

3. Yes.

4. No.

5. We do not see that any difficulty exists.

Performance of Statute Labor—When Does Day's Work Begin?

373.—A. B. C.—At our last council meeting a dispute arose as to whether a person doing statute labor should be in gravel pit at eight o'clock in the morning or only starting away from that part of the road division on which they are to put the gravel. Now, I claim that a man is working in going for the first load after he gets to that part of the road division that is to be graveled, just as much as he is in going for the second or any other load, and if a man is to be docked the time lost in going for the first load, why not dock him for the time lost in going for the others? I know the statutes say that a man must commence work at eight o'clock in the morning, but that is the dispute as to what is actually commencing work.

This is a matter that should be governed by by-law of your municipality regulating the performance of statute labor. If no such by-law has been passed we are of the opinion that the day's work of a person doing statute labor begins when he reports for work, with such team, vehicle and tools, and at such time and place as the pathmaster of his road-division has directed.

Clerk's Duties.

374.—A. B. C.—The clerk of a township is appointed with a stated salary. Please enumerate the duties he will be required to perform without extra pay?

The clerk should perform ALL the duties pertaining to his office for the salary agreed upon by him, and the council which employs him, unless the statute which imposes any particular duty upon him specifies that he is to receive extra remuneration for its performance. For example, the Voters' List and Ditches and Watercourses Act provide for remuneration to the clerk for performing the duties imposed on him by those Acts respectively, and extra fees are allowed by the statute for the registration of births, deaths and marriages.

A Question of Tax Liability.

375.—J. C. B. A.- Last year lot 220 was assessed to A. I bought the lot after the Court of Revision was held, naturally the taxes were billed to A who is a non-resident. I told the collector I owned the lot which adjoins my own but I did not pay the taxes. There was lumber on the lot that could, and I think should have been distrained or the taxes. The council of this year, in January last, accepted the roll from the collector, the latter making the statutory declaration and returning the taxes as unpaid. I have ample proof that there was plenty of dressed lumber on the lot to pay the taxes three times over when the 14 days notice which the collector gives had expired, although the lumber was all removed when the roll was accepted. Kindly advise me if I can be compelled to pay and what steps should I

take in the matter. I have received a notice from the municipal treasurer, who acts as county treasurer, stating that the taxes have been returned unpaid, and that 10% will be added annually. This is in the district of Algoma West.

If the lumber on lot 220 belonged to A, who was actually assessed for the premises, and whose name appeared upon the collector's roll for the year as liable for the taxes, the collector should not have returned the taxes as uncollectable. He should have seized the lumber and sold it to satisfy the amount of the taxes and costs of seizure. (See section 135, of the Assessment Act) Since he did not do this, and the taxes were improperly returned against the land, the lot cannot be legally sold as provided in the Assessment Act to realize the amount. The only remedy the municipality has is against the collector and his sureties. But we may further say, however, that the collector may show that he went to the premises to seize for the taxes, and that there was no property thereon which he could seize. The collector cannot be all over the municipality in one day, and it is not enough to show that there was property on the premises at about that time liable to seizure, and therefore we think that a case of negligence must be made out against the collector before you can succeed in resisting payment of the taxes. We have not sufficient information upon this point to enable us to express an opinion upon it.

Grading and Protection of Railway Crossings.

376.—O. J. W.—1. Kindly advise me as to what sections of the act (if any) provide for the grading up of approaches to a railway on a public road?

2. Is there any law compelling a railway company to place danger signals and gates on their crossings in an unincorporated village? What is the law in this respect.

1. Assuming that the railway you refer to is under the jurisdiction of the Dominion Parliament, as is the case with nearly all the railways in the province, section 186 of the Railway Act, 1888, provides that "the inclination of the ascent or descent, as the case may be, of any approach by which any roadway is carried upon, over or under any railway, shall not be greater than one foot of rise or fall to every twenty feet of the horizontal length of such approach."

2. Yes. If the crossing complained of is in a dangerous condition, complaint should be made by parties interested to the Railway Committee of the Privy Council. Section 187 of the above Act empowers this committee to require the railway company to place or erect such gates, signal or watchman at the crossing as they think will remove or obviate the elements of danger.

Closing of Road--Taking Gravel From Roadway.

377.—T. S.—A road has been used for 30 years. Said road runs through certain lots and is not on the concession line, but it could be built on concession line as there is no difficulties in the way of its construction. On this road government and statute labor have been done.

1. If the parties or owners of said lots can shut this road, what steps are to be taken?

2. There is a gravel pit on said road. The council has taken off gravel from either side of the road not farther than 66 feet. The council claim this can be done without paying the owner of said lot, so long as the commissioners do not go beyond the 66 feet. Has the council power to do this without paying the owner for the gravel outside of, say 20 feet, used as road allowance?

As we understand the facts of this case the road referred to is not the original allowance for road, but is a road running through what was originally at all events private property, and the public cannot claim more than what has been actually used as a public highway and the council has no right to dig for and take gravel out of land on either side of the travelled highway. We cannot, upon the information given, express any opinion as to whether the private owners of the lots through which the road runs can close up the travelled road. Their right to do so or not depends upon whether there has been a dedication of the road expressly or implicedly for the use of the public as a highway. If you refer to the original allowance for road, it occupies a very different position. Time does not run against the crown and it remains a public highway and the council has jurisdiction over it and has the right to dig up and take gravel from it. See section 640, subsection 7 of the Municipal Act.

Payment of Expenses of Families in Quarantine.

378.—SUBSCRIBER.—Five of our families were quarantined in our township a couple of months ago by the Provincial Health Inspector or his assistant. The latter notified the reeve to appoint a constable. The Board of Health have appointed a messenger for the safety of the public and ordered the medical health officer to visit the parties quarantined. Who should pay the messenger and medical health officer, the parties quarantined or the corporation? The parties quarantined can afford to pay the expense.

If the parties quarantined are able to pay the expense it should be collected from them. If they are poor and unable to do so, the council of the municipality will have to do so. (See section 93, of the Public Health Act. R. S. O., 1897, chap. 248.)

Opening Village Street—Liability of Railway Company Excavating the Street.

379.—J. I. C.—1. Can a village council be compelled to open a street that has not been used for some years, and what steps is it necessary to take to get them to do so?

2. The council has given a railroad permission to grade down a street, from 3 to 4 feet deep, in order to give the said railroad earth to make a road-bed on their property. The ratepayers on said street are left on a hill, with no way of getting into their front gates without climbing a bank from 3 to 4 feet. What redress have the ratepayers?

1. No. It is discretionary with the council as to whether they open this street or not. If the convenience of the public requires it, they should exercise their discretion in the direction of opening the street, pursuant to the power conferred by section 637, of the Municipal Act, after the provisions of section 632 of the act have been complied with.

2. The ratepayers are entitled to damages to be recovered by action, or to compensation, but we cannot say which without a full knowledge of the facts. If the railway company did the work under lawful authority, the ratepayers must seek compensation by arbitration. On the other hand, if the company did not have authority to do the work, the villagers may sue it and recover damages for the injury done to them thereby.

Clerk's Fees—Proceedure on Appeal From Court of Revision to County Judge.

380.—J. F. C.—In your answer to an enquiry in the July issue of THE WORLD, question No. 357, you state that clerks are not entitled to any fees for services performed under the assessment act, for serving notices, etc., unless some agreement for payment of same was made with him at time of hiring.

1. What does sub-sec 13 of sec. 71 of the assessment act mean? Does it not provide for paying the clerk for services performed, re appeal, etc?

2. Though the assessment act does not give any tariff of charges for services performed by the clerk re appeals, sec. 80 of said act states that the Judge's fees shall be the same on assessment appeals as on courts revising voters' lists; why should not the clerk's fees be the same as on courts revising voters's lists, if he is entitled to any when there is nothing in the by-law for his appointment stating that he is to perform those services as his ordinary clerking duties for his set salary?

3. A ratepayer in this township served a notice on the clerk of his intention to appeal to the Judge against the decision of the court of revision, claiming that he was overcharged on farm property. The clerk notified the Judge in proper time of the appeal, and the Judge appointed a time and place to hear said appeal. The clerk notifed the appellant forthwith and also posted up the necessary notices. On July 12, the clerk received a letter through the post-office from appellant dated July 5th, containing a notice of withdrawal, stating that he had abandoned his proceedings in the matter of said appeal. The post-mark on the envelope containing said notice, showed the letter to have been posted on July 10. Was this notice of withdrawal served legally and in proper time, and what is the clerk's duty in the matter as it stands at present, as I can find no provision in the statutes for a case of withdrawal of appeals?

4. Can the appellant be charged with any expenses incurred re the matter, and if he can, how can the same be collected from him?

5. Would it be lawful for the clerk to post up a notice stating that the appellant had withdrawn his appeal? My idea for said notice would be to avoid disappointing parties in the township who would go to hear said appeal.

6. What is the penalty on any person who is guilty of tearing down, destroying or in any way defacing a public notice, regarding municipal business, and where can penalty for same be found in the statutes?

1. The sub-section you quote makes no provision for payment of extra FEES to the clerk for services rendered in connection with the holding of the municipal court of revision. It merely makes provision for the payment of any sums that may necessarily be DISBURSED by the clerk to persons employed by him to effect the services which he is required to make. The payment of such disbursements does not put any money in the clerk's pocket.

2. The clerk is not entitled to extra *fees* for services performed in connection with appeals from the municipal court of revision to the county judge, for the reason that the Assessment Act does not make any provision for the payment of such. The performance of this work is an incident of his office. The Voters' Lists' Act does make provision for the payment of the fees mentioned therein to municipal clerks for services performed by them in connection with the revision of the voters' list. The fact that section 81 provides for the payment of the fees named to the *County Judge* does not affect the *clerk's* position either one way or the other.

3. The clerk appears to have done all that the law requires in this matter, and we are of opinion that the notice of withdrawal of the appeal sent to the clerk is not sufficient to do away with the necessity for holding the judge's court appointed to hear it. If the appellant does not appear, the presiding judge will simply dismiss the appeal.

4. The only expenses legally collectable would be the costs of witnesses, and of procuring their attendance, in case the presiding judge ordered them to be paid by the appellant, as he has power to do under section 79, of the Act. (See also section 80, of the Act.) Payment of the costs so ordered to be paid can be enforced in the manner mentioned in section 79.

5. We do not see that this notice, if posted up, could have any legal effect, and the posting up would entail unnecessary trouble on the clerk.

6. The council should pass a by-law pursuant to sub-section 5, of section 547, of the Muncipal Act, imposing a penalty of not more than $50, exclusive of costs, for any breach of it. See section 702, of the Act.

Township not Liable for This Accident.

381—A. R.—The ratepayers are doing their statute labor by drawing stone on to the road to be broken. They are put in the centre of the road in heaps. On one side of the heap there is just room for a rig to pass between the heap of stone and the ditch. On the other side there is more room between heap of stone and the ditch.

A man and some women are driving along and turn out on the narrow side between the heap of stone and the ditch and upset the rig. One person got an arm broken and others injured.

The horse shied at the heap of stone. The stone had not been on the road more than ten minutes before the accident happened. Is the township liable for damages?

From your statement of the facts we are of the opinion that the municipality is not liable.

A Dog-Tax By-Law—Road Fences—By-Laws Regulating Running at Large of Animals.

382.—C. A. W.—In January, 1900, upon the petition of 25 ratepayers, a by-law was passed by the council of this township, abolishing the dog-tax. In January, 1901, the council wished to levy a dog-tax, but not for the full amount required by chapter 271, sec. 1, R. S. O., 1897, and by resolution abolished this by-law and imposed a tax of 30 cents on each dog. They afterwards found that it could not be done by resolution, and at the February meeting they gave notice of a by-law to rescind the one which abolished the tax, and to provide for levying a tax on dogs as per chapter 271, sec. 1, R. S. O., 1897. This was passed in March, 1901, and the assessor was notified to assess dogs, and as they did not wish to levy the full amount, a petition was brought in at the July meeting by 25 ratepayers, asking that a part of the dog-tax be not levied and a notice was given to introduce a by-law to provide that 3-5 of the tax be not levied.

1. Was this done in proper form, with the exception of the resolution at the January meeting, which we know was not correct?

2. Was it not correct to rescind by the by-law which abolished the tax, and then upon the petition of 25 ratepayers, provide by by-law that said tax or any part of it shall not be levied as per chapter 271, sec. 2 of R. S. O., 1897?

3 Are property holders obliged to build road fences?

4. If a council pass a by-law allowing certain animals to run at large in the township, would a judge recognize such by-law if a case were brought before him?

1 and 2. The following is the proper course to accomplish the object desired: a by-law should be passed pursuant to section 2 of chapter 271, R. S. O., 1897, providing that the tax mentioned in section 1 be not levied in the municipality. Then the council should pass a by-law pursuant to sub-section 3, of section 540, of the Municipal Act, providing for the imposition of such a tax on dogs in the municipality as they may deem snfficient, or the council can pass a by-law pursuant to sub-section two, of chap. 271, fixing the proportionate part of the tax mentioned in section 1, that shall thereafter be levied in the municipality. We think that the proceedings in the council were too late to effect the assessment made by the assessor for this year.

3. No.

4. It is not necessary to pass a by-law to allow any animal to run at large. They are all permitted to do so by the common law. If you have reference to a by-law passed pursuant to sub-section 2, of section 546, of the Municipal Act, restraining and regulating the running at large or trespassing of any animals, such a by-law would be legal, and a judge would have to respect it as such.

Council not Obliged to Have Building Removed.

383.—RATEPAYER.—Is the council of a township obliged (upon the request of one ratepayer) to pass a by-law to have a building removed, which stands a few feet over the line of an original allowance for road, said building not interfering with the public travel in any way, and not being a source of danger or inconvenience to any one? The object of the party desiring to have it removed being apparently a little personal spite. I know that the council may pass a by-law and have it removed, but can the council be compelled to do so? The party wishing the building removed has threatened to have the council brought befor a police magistrate or indicted before the grand jury, and I know not what, if it does not pass a by-law to have said building removed. Can he do so and will the courts take action and issue a mandamus, or in some way compel the council to pass the by-law and have the building removed?

Sub-section 4, of section 637, of the Municipal Act provides that councils of counties, townships, etc., "may" pass by-laws "for preventing and removing any obstruction upon any roads within its jurisdiction." It is therefore discretionary with the council whether they pass this by-law or take steps to have the house removed to its proper place or not. If the house is not a nuisance and does not prevent the free and uninterrupted use of the highway by the general public, the council can properly exercise this discretion in the direction of refusing to pass the by-law. We are of the opinion that the council cannot be indicted for maintaining a nuisance, as, from your statement of the facts, the encroachment of the house on the highway is not a source of annoyance to, nor does it impede the free passage along the highway of the general public.

Disposal of Rubbish—Filling Vacancy in Council.

384—W. E.—1. Would like to know if persons have a right to draw their rubbish out on the road such as old pans, stoves and refuse of all kinds, they having drawn them past their own places and dumped them off along another man's fence? If they have no right what steps would you advise to make them remove them, it having been done some years ago as well as this spring?

2. One of our councillors has not been able to attend meetings for some three months. He is deranged in mind. He has not resigned and we have been carrying on business without him to see if he would get better. They took him to the Hamilton Asylum about the 9th July,

Will we have to elect a new member or is it legal for us to carry on business with three councillors and the reeve?

1. Your council should pass a by-law pursuant to the authority of sub-section 6, of section 557, of the Municipal Act, which, (as amended by section 28, of the Municipal Amendment Act 1900,) provides that councils of townships may pass by-laws "for preventing persons from throwing dirt, filth, glass, handbills, paper or other rubbish, upon any street, road, lane or highway." The by-law should provide for the imposition of a penalty not exceeding $50 for the breach of its provisions. See section 702, of the Act.

2. The latter part of section 207, of the Municipal Act, provides that if a member of a council absent himself from the meetings of the council for three months without being authorized so to do by a resolution of the council, entered upon its minutes, his seat in the council shall thereby become vacant, and the council shall forthwith declare the seat vacant and *order a new election*. Therefore your council has no alternative but to declare the afflicted member's seat vacant, and order a new election to fill the vacancy thus created.

Assessment Roll Should not Have Been Accepted.

385.—A TOWNSHIP CLERK.—The township council of B held a court of revision and made several amendments to the assessment roll for year 1901, and the council, as usual, passed a resolution adopting the roll as amended by the court of revision. After so doing several other mistakes appear. Some parties are assessed in the wrong school section, another party is assessed for a wrong lot and concession and about double the acreage and valuation as his own place. In fact it seems plain that a neighbor's assessment has been copied by mistake. Several other mistakes appear, such as a party

being assessed for several items of real estate and the total as carried out being in excess by several hundred dollars, etc. According to sec. 72, of the assessment act, the said errors must remain and bind all parties concerned, notwithstanding such errors. To do so will raise a breeze, when the collector calls for the taxes. The time has gone by to appeal to the County Judge. Can you suggest a remedy?

It is unfortunate that this assessment roll was accepted by the council in its apparently imperfect and unsatisfactory state. It affords practical evidence as to the advisability of checking over an assessor's work, before his roll is accepted, and his salary paid. We do not see that the several parties affected by the errors in the roll have any remedy, unless they can show the circumstances to be within the purview of either section 74 or section 166, of the Assessment Act, and obtain redress under either of these sections. Though we refer to these sections we doubt very much if they apply to the matter involved in this case.

By-law Granting Railway Franchise.

386.—D. J.—Please answer the following: You will find enclosed sections of by-law, the main is sec. 33. The warden demanded a cash deposit, they would not give it, consequently no agreement was signed, which, according to sec. 30, should have been done. Now can the council legally repeal said by-law and give franchise to another company. Sec. 7 has not been complied with, although the company has commenced a little work in one of the townships, but not on the county road. The company lay the blame on the warden, and say they were ready to sign an agreement and claim "security" did not mean cash.

By section 34 of your by-law the security to be furnished thereunder, by the company, was to be to the satisfaction of the warden and county solicitor. If the only security satisfactory to them was a cash deposit of $1,000 that is the security that the company should have furnished to comply with the terms of your by-law. Sec. 30 of your by-law is as follows:

30. "This by-law and the powers and privileges hereby granted shall not take effect or be binding on the said corporation unless formally accepted by the railway company within two months after the passing of the by-law, by an agreement executed which shall legally bind the said company to perform, observe and comply with the agreements, obligations, terms and conditions herein contained."

You say no agreement was signed in accordance with the provisions of this section, therefore the by-law and the powers and privileges thereby granted do not take effect or become binding on the corporation, and the council can pass a by-law granting a franchise to a new company whether the by-law passed on the 8th of February, 1901, is first repealed or not.

Peddling Cannot be Prohibited or Restricted to any Particular Class.

387.—SUBSRIBER.—Please give me all information as to by-laws re pedlars. Can we raise the license way up? Can we prohibit peddling in the municipality? We are annoyed with an army of Assyrians, men and women, peddling almost day and night. They bought a couple of licenses, but seem to hand them around and are hard to identify.

Your town cannot pass a by-law prohibiting peddling in your municipality. Sub-section 14 of section 583, of the Municipal Act, empowers councils of towns, to pass by-laws for "licensing, regulating and governing" hawkers, etc., but confer no express power to "prevent," "prohibit" or "restrain" peddling in the municipality. The judicial committee of the privy council decided that this sub-section did not confer the power to "prohibit" peddling, etc., in the case of Virgo vs. City of Toronto. (A. C. P. 88.) And in Bollander vs. City of Ottawa, (30 O. R., P. 7) a similar decision was given in reference to auctioneers. Neither can your municipality pass a by-law discriminating in favor of or against any particular class or individual. Except in the case of cities having a population of more than 100,000, apparently no limit is given by sub-section 16 of section 583, to the amount that may be exacted for the payment of the license, but it must be *reasonable*, and what amount would be considered reasonable depends upon the circumstances of each particular case. (See note (w) on page 360 and 361, and note (m) on page 416 of the fifth addition of Harrison's Municipal manual.)

Assessment of Postoffice—Illegal Flooding of Land By-law Changing Road.

388.—SCUNCE.—1. In a rural district where the postmaster is paid according to the amount of business done in his office, office 10x12 feet attached to dwelling house. Can office and dwelling house be exempted from taxation?

2. In a village district of Parry Sound, skating rink in suburbs on a plateau according to diagram. In spring of year the surplus water from skating rink flows over the street and fills all the cellars across the street. The street has been graded this summer. Can pathmaster grade the road in such a manner as to carry all the water in spring down to farm A, and put a culvert across the road and flood a garden on farm A, after he has been notified by owner of farm A, in writing not to do so?

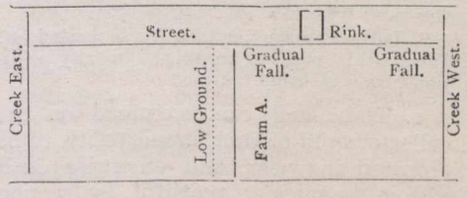
3. Who is liable for damages, pathmaster or township?

4. Can township be compelled to make proprietors of rink cease flooding street in spring?

5. Give form of by-law to change government road from one part of lot to another.

6. Is it necessary first to pass by-law before closing old and opening new road?

7. If one ratepayer objects to change of road will it be sufficient to stop proceedings?



1. That part of the building which is actually used as a post-office is exempted from assessment and taxation by sub sec. 1 of section 7 of the Assessment Act, but we see no reason why the portion used and occupied as a dwelling should not be assessed and liable to taxation in the usual way.

2. No.

3. On the authority of the case of Stalker vs. Township of Dunwich (15 Ont. Rep., p. 342) the municipality is liable for the amount of the damages sustained by the owners of the farm, whether the pathmaster in doing the work complained of, acted in such a manner as to disentitle him to the protection of chapter 88, R. S. O., 1897, or not. If the pathmaster, professing to act as such, uses his position to promote his private interests, making his private interest paramount to his public duty, he may be proceeded against for any act so done by him as if he were a private individual, and is equally liable with the municipality for the damage sustained.

4. The township municipality, as well as any individual injuriously affected, can institute proceedings to restrain the proprietors of the rink from flooding their respective lands.

5. If this is a GOVERNMENT road we do not see that the municipal council has any authority to deal with it in any way. If it is a road over which the township municipality has jurisdiction, if the council deems such a course advisable in the public interest, it may pass a by-law closing the old and opening the new road, pursuant to section 637 of the Municipal Act, after the preliminary proceedings provided by section 632 have been taken. In case the lands of private persons are taken for the purposes of the new road, the question of making compensation for the lands taken will have to be considered. Section 437 and following sections of the Act embody the statutory provisions applicable. If you will furnish us with an exact description of the lands intended to be taken for the road and of the part of the government road to be closed we can prepare a by-law for you A special by-law is required. But as we have stated, if this is a government road, the council cannot close it. It is possible, however, that you mean an original allowance for road and if that is what you mean, the council can close it.

6. Yes.

7. No. It is optional with the *council* whether they make the change or not.

Council Should Build Bridge or Close Road.

389.—J. S.—A man has a farm with a side-road along it (government survey). Statute labor has been performed for years on it. A creek crosses it. Can he, by law, compel the council to build a bridge across it? It will only be of service to a very few. The council refuses to do so, and he threatens legal proceedings.

The council should either build the bridge, or, if it is not necessary for the convenience of the public that it should remain open, close the road. As long as the road remains open, the public is tacitly invited to use it as a highway, and it should be kept in a reasonable condition of safety. In refusing to build the bridge while allowing the road to remain open, the council is running a double risk, that is, an indictment may be preferred, or if an accident happen, the municipality may be liable for damages.

Removal of Fences on Highway—Compensation for Lands Taken for Roads.

390. C. W.—A public highway was established by by-law on a line on which the adjoining neighbors A and B had a common fence at, or near the middle, and the parties were notified to build their fences at proper distance from the centre line. As this road was only for the use of one man T, this man employed a P. L. S. to prove the centre of the line and A built his fence according to it, but B did not, after repeated warnings. At last the council appointed, by resolution, the man T to throw down the fence after a certain date, (about two weeks after the last warning). A few days previous to that date. B notified the reeve that the P. L. S. declined to swear to the exact site of the line, as the post from which he started had been partly destroyed by fire. The reeve immediately notified T not to proceed until further orders from the council. T held that the reeve had no authority to suspend a resolution of the council and threw down the fence.

1. Has the reeve power, in urgent cases, to suspend a resolution of the council?

2. Has B any claim on council for the destruction of his fence?

3. Has T any claim on council for work performed?

4. The greater part of roads in this township are not on original road allowances, but were given free and without compensation by settlers to their less favorably situated back neighbors. Sixteen years ago the council established by by-law a certain road which had been used by a number of settlers for 20 years previous. R, who had lately purchased a lot through which the said road runs, put in a claim for compensation, and the council appointed an arbitrator and notified R to do the same, to value the damages. R changed his mind and thought it better to do as others had done, and did not respond, and the matter dropped into oblivion. R is dead now and his son threatens to take proceedings to re-open arbitration. Can R make any claim yet for compensation after such a long lapse of time?

1. No. He should summon a special meeting of his council pursuant to section 270, of the Municipal Act, to consider the matter in urgent cases.

2. There are not sufficient facts before us to enable us to fully answer this question. If A and B had entered into a binding agreement with the council to give sufficient land on either side of the line fixed by the surveyor to make the road, and to build their fences free of compensation, they can be compelled to do so. If, on the other hand, the lands necessary for the building of the road have to be expropriated or taken from A and B under the provisions of the Municipal Act, they are entitled to compensation under the provisions of section 437, of the Act, and if the building or removal of a fence becomes necessary, the trouble and expense of so doing are proper subjects for compensation. Then, again, there seems to have been some doubts as to the line upon which B should properly build his fence. This line should have been definitely established before the council proceeded to destroy the existing fence.

4. The council having appointed T to do the work unreservedly, they should pay him what it is worth for doing it.

4. No. Section 348, of the Municipal Act, as enacted by section 27, of the Municipal Amendment Act, 1899, provides that "Every such claim (that is for lands taken,) except in cases of infants, lunatics and persons of unsound mind, shall be made within one year from the date when the real property was entered upon, taken and used, etc."

Liability to Replace Farm Crossing Moved by Pathmaster.

391.—T. I.—A ratepayer has a small crossing of plank over ditch on road at entrance to his gate. When pathmaster in doing statute labor with road grader, he finds it necessary to remove this crossing to properly grade the road.

1. Must the pathmaster or council replace said crossing?

2. If previous covering is not sufficient, (in case your answer to No. 1 is "yes") would pathmaster or council have to furnish other material required?

It has been decided that a municipality is not bound to provide a crossing to enable an owner of land to reach the highway but this case, according to a recent decision, appears to come within the principle laid down in re Youmans vs. the Corporation of Wellington, where the law is propounded thus: the owners of property abutting on a public highway are entitled to compensation from the municipality under the Municipal Act for injury sustained by reason of the municipality, having for the public convenience raised the highway in such a manner as to cut off the ingress and regress to and from their property abutting on the highway which they had formerly enjoyed, and to make a new approach necessary. According to this decision, it appears that where a man's approach to a highway is destroyed by work done on the highway for its improvement so as to require a new approach, he is entitled to compensation, and as that compensation would be measured by the cost of making a new approach it would amount in dollars and cents to the same thing as if the council restored the crossing.

Correction of Error in Assessment Roll.

392.—T. S.—The court of revision met on the 3rd of June. As there were no appeals the assessment roll was finally passed. Since the above date the clerk has discovered many errors, viz.: 17 ratepayers left off the roll, some of whom were assessed and whose names were marked on the first roll, but were not copied on the roll which was confirmed and passed by court of revision.

1. Can said errors be rectified immediately, and if so, what steps must be taken?

2. Is the assessor liable for these omissions? What is his position in regard to any additional costs incurred therein?

1. These lands can be entered on the collector's roll of your municipality to be prepared this year, and otherwise dealt with in the manner provided by section 166 of the Assessment Act.

2. Unless it can be shown that the assessor has wilfully and intentionally committed the errors complained of, we are of the opinion that he cannot be punished or held liable for the penalty mentioned in section 251 of the Assessment Act nor can he be held responsible for the extra expenses, if any, necessitated by the defects in his roll.

Payment of Rent of House for Holding Inquest.

393.—F. A. E.—In the district of Muskoka a short time ago, an inquest was held over the body of a man who died while visiting his son-in-law.

1. Can the son-in-law collect pay for the use of his house for holding the inquest in?

2. And to whom should he look for his pay?

1 and 2. Unless some special bargain was made by some one with the son-in-law for the use of the house for the purpose of holding the inquest we do not know from whom he can collect his pay. The municipality is not liable. There is no statutory provision authorizing the coroner to hire a hall or room for the purpose of holding an inquest and render any municipality liable for the price agreed to be paid for the use of such hall. In this connection see Dark vs. The Municipal Council of Huron and Bruce, 7 C. P., p. 378.

Removal of Fence Obstructing Road Allowance.

394.—J. J.—In our township there is an original road allowance that has never been open for public travel. On one side of the road the farm is cleared right up to the said road allowance. On the other side the lot has not been cleared up to the road, but the owner has some bush land along the limit of said allowance for road. This bush is fenced in with the clearing. The owner of the land that is cleared has no fence at the back of his clearing, but has run a fence across the road allowance and joined it to the other party's fence at the edge of the bush, thus obstructing the road so that the owner of the bush land cannot get to his bush land without throwing down the fence that is placed across the road. What steps should the party owning the bush land take in order to have access to and from his bush without having to open the fence across said road allowance? Or what are the proper steps for the council to take to have the fence removed from the road, and also have stone piles removed which have been placed on the same road allowance?

2. We have a by-law defining the duties of pathmasters which I enclose. Has the pathmaster under clause 12 of said by-law, power to compel the removal of said fence and stones?

1. Your council should pass a by-law, pursuant to subsection 3 of section 557 of the Municipal Act, providing for the removal of any fence, timber, stone, etc., placed upon any highway, under their control. In this by-law provisions can be made under authority of subsec. 4 of this sec. that the person placing any such obstruction upon any highways, shall, after notice to remove the same, and upon default for five days after such notice, be liable for the expense of the removal of the same. Subsection 5 authorizes the council to empower the pathmaster in their several road divisions to carry out the provisions of the by-law.

2. No. We are of opinion that the clause is not sufficient for the purpose, and we know of no authority for the imposition of a penalty for disobedience of the order of the pathmaster as is provided in this clause.

Legal Department.

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

Rex v. Dungey.

Judgment on motion by defendant for writ of certiorari to remove conviction of said defendant for exposing and offering for sale on the public market of the town of Mitchell, a quantity of meat (dressed beef), unfit for food for man. The information laid by the sanitary inspector of the town, charged that defendant did "expose and offer for sale * * * meat unfit for human food, contrary to the laws and statutes relating thereto." The case came up for hearing on March 6, before the convicting justices, and after taking the evidence of witnesses, (who were also cross examined for defendant), in support of charge, was adjourned until March 14. On that day the justices announced that a case had been made out under the public health act, though not sufficiently serious to warrant a committal for trial under the criminal code, and thereupon all parties agreed to an adjournment to the 19th of March, to enable the defendant to defend if he desired. On the 19th the defendant, by counsel, objected to proceed under the health act, and asked for a dismissal, whereupon the hearing was further adjourned without defendant's consent, for one week, and coming then on again, the case was heard and defendant objected to the jurisdiction under the act, but offering no defence, was convicted and fined $5 and costs. It was contended for the prosecution that as the conviction was under the act the proceedings are not removable, owing to the provisions of sec. 121. For defendant, it was contended that the complaint having been treated as one under sec. 194 of the code, and defendant having been asked to elect for or against summary trial, there was no jurisdiction to dispose of the case under the health act, and Reg, v. Brady, 12 O. R., 358, and other cases were relied on. Held, that though it may have been intended to charge defendant under sec. 194 of the code with an indictable offence in which case scienter must be alleged, the information did not go far enough to warrant such an assumption. All that is necessary under sec. 11 of the by-law pursuant to sec. 122 of the health act is that the party charged offered for sale as food meat, etc., which by reason of disease, etc., is unfit for use and the information sufficiently complies with these provisions. The defendant was not charged with "having knowingly and wilfully exposed," etc., and the mere asking him to elect as to summary trial does not oust the jurisdiction which, in the absence of such a request, the magistrates undoubtedly possessed. Here the proceedings really amounted to a complaint under the act. The accused was given ample opportunity to defend, and his refusal to do so, and his objection to the jurisdiction, is frivolous. If a person voluntarily appears before a magistrate, and a charge is there made against him, it seems that neither information nor summons is necessary; Reg, v. Shaw, 34 L. J. M. C. 169 per Eyre, C. J.; see also Reg, v. Carr, 16 W. R. 137; Taylor, v. Clemson, 11 Cl. and Fin. at p. 642; Reg, v. Preston, 12 Q. B. 825, and Reg, v. Wallace, 4 O. R. 127, and as to costs R. S. O., 1897, ch. 90, sec. 4. The motion must therefore under sec. 121 of the health act be refused, and with costs.

Ottawa Board of Park Management v. City of Ottawa.

Judgment on motion by plaintiffs (heard at Ottawa) for an interim injunction restraining the defendants from using for purposes other than park purposes the land or any part thereof, situate in St. George's Ward, in the city of Ottawa, comprising about 17 1-3 acres, known as "rifle range," and acquired by the plaintiffs for park purposes under the Public Parks Act, R. S. O., ch. 233; and restraining the defendants from interfering with the plaintiffs in the management, regulation and control of such park land; and restraining the defendants from applying permanently such land or any part thereof for the purpose of erecting thereon a contagious diseases hospital. The action was brought by the Board of Park Management of the city of Ottawa against the corporation of the city and George A. Crain, for an injunction merely. Section 104, of the Public Health Act, R. S. O., ch. 248, provides for the erection and maintenance of a contagious diseases hospitals by a municipality. Section 106 provides for a temporary hospital in case of emergency. There is no provision in the act for the expropriation of land to be used in perpetuity, (as was claimed by the notice given under the act). The outlay contemplated was $40,000, which indicated that the building was to be one under sec. 104, and not under sec. 106. Held, that under the restricted powers given to the local board of health, they were seeking to deprive the plaintiffs permanently of the property legally set apart for the purposes of a public park; that the actual or virtual expropriation of the land for the use of a hospital in perpetuity, or during the existence of the substantial building contracted for, is not within the powers conferred by the public health act on the local board and that this radical infirmity attaching to the local board is not overcome by the sanction of the provincial board of health or of the order-in-council. Injunction continued until the trial or further order.

Turner vs. Township of York.

Judgment in action tried at Toronto, brought to recover $2,000 for damages occasioned by the flow of water upon the plaintiff's land—part of lot 10, in the second concession of York, on the south side of townline running east and west—and to compel defendants to restore the road way which plaintiff alleges they have raised at its centre so as to form a dam or impediment to the natural flow of water from the lands to the north and to remove a culvert across the highway, through which pent up water flows on to plaintiff's land.

Held upon the evidence, that the water that came through the sluice-way of the culvert and over the road to the south side of the highway, and on to the plaintiff's land, did not come in any appreciably greater volume after the road was raised and culvert built than it had done prior thereto. Rowe vs. Rochester, U. C. R., 590, is quite different, because there drains were dug for some distance along the highway and stopped in front of plaintiff's land, which was thus overflowed by waters gathered which would otherwise never have reached the plaintiff's land; and that there being no appreciable damages to plaintiff's land caused by defendants, the action should be and is dismissed with costs.

Winterbottom vs. Board of Police Commissioners of the City of London.

Judgment in action at London with a jury, brought to recover damages sustained by plaintiff, a young unmarried woman, who was knocked down and injured by the horses attached to the patrol wagon kept and used by the police force, and driven at the time of the accident by police constable E. Walsh, while on duty. The jury assessed the damages at $1,000, and judgment on motion for nonsuit reserved. Held, after an exhaustive review of the cases on the subject that no legal liability is cast upon defendants: Halford vs. New Bedford, 16 Grey, 927, followed Maximiliam vs. New York, 62 N. Y., at p. 165. The action is unique in England and Canada. There is no case to be found in which a Board of Police Commissioners have been sought to be held responsible for damages occasioned by the negligence of a policeman while in discharge of his duty. Such actions have been brought without success in the United States. See also McGorley vs. St. John, 6 S. C. R., at p. 544 and Beaven on Negligence, 2nd ed., pp. 388, 389; Forsyth vs. Caniff 20 O. R., 478; Wishert vs. City of Brandon, 4 Man., L. R, per Taylor, C. J., at p. 455. This case is easily distinguishable from Hesketh vs. City of Toronto, 25 A. R., 449; see per Burton. C. J. O., at page 451, for the law applicable to the present action.

Here also the wagon and horses belonged to the corporation of London and not to the defendants. Action dismissed with costs.

Re Village of Markham and Town of Aurora.

Judgment on motion by the corporation of the village of Markham and John Flintoff, for a summary order quashing by law 192, of the town of Aurora, "to authorize the issue of debentures of the town of Aurora to the amount of $10,000, bearing interest at the rate of four per cent. per annum, for the purpose of granting a bonus of $10,000 to Messrs. Underhill & Sisman (who are now carrying on the business of manufacturing boots and shoes in the village of Markham, and who are about to remove their plant and machinery and carry on the said manufacturing business in the town of Aurora,) to enable them to erect and equip a factory and other necessary buildings for the purpose of carrying on the business of manufacturing boots and shoes in the town of Aurora," and quashing by-law 293 of the town of Aurora, to exempt Underhill & Sisman from all municipal taxation for ten years, and to provide them with water free of cost for ten years. Held, after a careful perusal and con ideration of the evidence, that upon the question of fact the motion failed. The business in question is not an industry established elsewhere than in the town of Aurora, viz., in the village of Markham. The corporation of the former, in good faith, and only after it had become publicly known that the firm had decided, in January, 1901, to leave Markham, communicated with them. Held, also, that the by-laws came under section 386 of the municipal act, which provides for making deb s payable in annual instalments, adopting the provision of sections 384-5-6, and are in substantial compliance with them and not affected by sec. 399, sub-sec. 6. See re Farlinger & Village of Morrisburg, 16 O. R. at p. 724; re Caldwell and Galt, 30 O. R. at p. 381. Motion dismissed with costs.

Re Ontario Voters' Lists Act: Township of Madoc, County of Hastings.

Judgment upon the question submitted as in township of Marmora case. In this one the clerk of municipality posted up the lists of voters in his office on August 23, 1900, and on September 21, 1900, notice with the list of names in the form (6) required by the act was received by the clerk through the mail by registered letter. The question to be decided is whether the sending of the notice by mail is a compliance with the provisions of section 7, of the act, which requires that the "voter or person entitled to be a voter making complaint shall give to the clerk or leave for him at his residence or place of business notice in writing." It was contended on behalf of certain voters that the notice must be given or left by the voter himself, and that service by any agent was not a compliance with the terms of the section. Held, that service of the notice may be effected by an agent; that the post-office may be such agent, and that the service in this case was valid.

Re Hill and Township of London.

Judgment on motion by Robert Hill, a ratepayer of the township, to quash by-law No. 430, passed on the 3rd June instant, prohibiting the hauling, carrying or bringing of night-soil or other filth within the township. Held, that the objections to the scope of the by-law are well taken, and that it cannot be sustained. It was sought to support it under section 586 (1) of the municipal act. It may be that the object and intent of the council was to prevent the bringing and depositing or leaving within the limits of the municipality of night-soil or other like filth in such manner as to be or cause a nuisance. But the enactment goes beyond that. It is a total prohibition, nuisance or no nuisance.

Order made quashing by-law with costs against the municipality.

Mitchell vs. City of Hamilton.

Judgment on appeal by the Hamilton Street Railway Company, third parties, from judgment of Rose, J., in favor of plaintiff, and directing the third parties to pay the amount of the judgment and costs, and the costs of the defendants. Action for damages for injuries sustained by plaintiff, who, on March 9, 1900, when driving a sleigh on York street, in the city of Hamilton, was thrown out and had his leg broken. The trial judge found that the third parties had in clearing the street of snow from their tracks on the street negligently left a bank of snow on the south side, of from a foot to eighteen inches above the level of the track, thus leaving the street in an unsafe condition, and that the plaintiff was entitled to recover against the corporation, and that the latter were entitled to recover against the third parties, because as between them and the corporation they had not performed the contract by which they acquired the right to use the road. Held, that upon the proper construction of the defendants' by-law 624, section 17, to the terms of which the third parties were bound to conform, they had failed to remove the snow so as not to obstruct or render unsafe the street. Appeal dismissed with costs.

Rex ex rel. Carr vs. Cuthbert.

This was an appeal by relator from order of Master in Chambers dismissing application to set aside election of respondent as reeve of the township of West Oxford, upon grounds of bribery, the hiring of carriages by respondent and his agents to convey voters and the reception of the ballots of a large number of persons who were entitled to vote. The master found that no evidence was offered in support of the objections as to the hiring of carriages and the voting of persons not entitled to do so. The charges of bribery, consisting of the alleged giving of car tickets to one man, calling off a debt of $2 owing by a voter to an agent of respondent and the promise of 25 cents by the same agent to another voter, were held by the master not to be proven, and in his opinion the relator had no good reason for believing the respondent guilty of bribery, and such an application ought not to have been launched by the relator without having previously made more inquiry than he admits having made on his examination. Appeal dismissed with costs.

Sturgeon Falls Electric Co. vs. Town of Sturgeon Falls.

Judgment in action tried at North Bay and Toronto, brought to restrain defendants from trespassing upon certain land described as block C, in Holditch's survey of part of lot 4, in the first concession of the township of Springer, District of Nipissing; and to recover damages for past trespasses. The defendants admit entry for the purpose of laying certain pipes, and claim, under a right acquired from J. Holditch, the patentee from the crown. Held, that the object of the reservation by J. Holditch, when he conveyed to one Clark, of an easement across block C, the servient tenement, was for the benefit of blocks A and B, the dominant tenements, and by the transfer from Clark to Russell of C, and from Holditch to Russell of A and B, and of Holditch's removing interest, if any, in C, the dominant and servient tenements become united in the same owner, and the right to the easement, which had never been exercised, became extinguished. Injunction made perpetual and defendants to pay $120 damages and costs of action and motion for injunction on high court scale.

Re Ontario Voters' Lists Act; Township of Marmora, County of Hastings.

Judgment upon a case stated under sec, 38 of the Ontario voters' lists act by the junior Judge of the County of Hastings. A list of appeals containing some 225 names to be added to the voters' lists was preferred, and a voter's notice of complaint in form 6 of the Act was signed by the complainant, attached to the list of names to be added, and handed the clerk in his office within 30 days required by statute. When the list was presented by the clerk in court the notice of complaint was absent and it was objec ed that there were therefore no appeals before the court. The question asked is, whether a complaint in regard to a voters' list can be heard without the papers before the judge containing a written notice of the complaint and intention to apply to him, it being shown by parol evidence that such notice has been left or given to the clerk at the proper time, but subsequently lost. Held, that it was competent for the judge to hear and receive parol evidence as to form and effect of the notice in question, and of its loss, and that upon being satisfied by such evidence that a sufficient notice of complaint was duly left with the clerk as by the act required, the complaint may be dealt with by the judge as prescribed by it.