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THE MUNICIPAL WORLD

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

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Calendar for April and May, 1900.

Legal, Educational, Municipal and Other Appointments.

APRIL.

2. Clerks of counties, cities and towns, separated from counties, to make return of population to Educational Department.—Public School Act, section 69.
Last day for Free Library Board to report estimates to the council.—Public Libraries Act, section 12.
Last day for petitions for Tavern and Shop Licenses to be presented.—Liquor License Act, sections 11 and 31.
Last day for the removal of Snow Fences erected by councils of townships, cities, towns or villages.—Snow Fences Act, section 3.
From this date no person compelled to remain on market to sell after 9 a. m.—Municipal Act, section 579 (6), R. S., 1897.
Last day for Boards of Park management to report their estimates to the council.—Public Parks Act, section 17.
5. Make returns of deaths by contagious Diseases registered during March, R. S. O., 1897 c. 44, s. 11.
7. Last day for Treasurers of Local Municipalities to furnish County Treasurers with statement of all unpaid taxes and school rates.—Assessment Act, section 157.
9. Last day for Collector to return to Treasurer the names of persons in arrears for water rates in Municipalities.—Municipal Waterworks Act, section 22.
15. Reports on night schools, due to Education Department (session 1899-1900.)
20. Last day for non-resident land holders to give notice to clerk of ownership of lands to avoid assessment as lands of non-residents.—Assessment Act, sec. 3.
23. High Schools open (third term.)—High School Act, section 42, Public and Separate Schools open after Easter Holidays.—Public Schools Act, section 91.—Separate Schools Act, section 81 (3.)
25. Last day for clerk to make up and deliver to the assessor, list of persons requiring their names to be entered in the roll.—Assessment Act, section 3.
30. Last day for completion of roll by assessor.—Assessment Act, section 56.
Last day for non-residents to complain of assessment to proper Municipal Council.—Assessment Act, section 86.
Last day for License Commissioners to pass regulations, etc.—Liquor License Act, section 4.

MAY.

2. Last day for treasurers to furnish Bureau of Industries, on form furnished by Department statistics regarding finances of their municipalities.—Municipal Act, section 293.
County Treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
 4. Arbor Day.
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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 Editors
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ST. THOMAS, APRIL 2, 1900.

Mr. J. R. McNeillie was at the January meeting of the county council appointed clerk and treasurer of the county of Victoria, in succession to Mr. Thomas Matchett, deceased.

* * *

In the course of an address, at a meeting of the League of California municipalities, held in the city of San Francisco, on "The Future Work of the League," Mayor Snow, of Oakland, Cal., gave expression to the following: Samuel Johnson said: "Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information upon it. Few of us, if any, have been trained in the work which we have been chosen to perform. We actually know but little about it. Where shall we get reliable information upon it? You know that it is not uncommon to receive a return postal card from some sister city setting forth the fact that the inquirer finds himself ignorant, and almost pathetically begging you, with 300 or 400 others, to tell him upon a postal card, half as big as your hand, what you know. I have never tried this, but it must be pitifully slow and unsatisfactory. To get even a passable idea of city government during one's usually short term of office, is next to impossible. There is need of a clearing-house of information, a place of exchange."

What the League is trying to do for Californian municipalities (particularly urban) the WORLD is endeavoring to perform for the municipalities in Ontario in general. Our aim is to make this periodical a "clearing-house of municipal information," and we extend to our readers an invitation to help us make it "a place of exchange," of thoughts, ideas and suggestions on municipal subjects.

Public Schools Act—Appointment of Arbitrators by County Councils.

In our March issue, under the above title, we drew attention to a dispute, then in its initial stage, between school section No. 17 in the township of Chatham in the county of Kent, and the council of the county. Subsequently, an application was made by a majority of the trustees of the school section to Mr. Chief Justice Armour, for a mandamus to compel the appointment of arbitrators by the county council. The order for the issue of the mandamus was granted. The county council appealed from this decision. In the course of the argument it was contended that the provisions of subsection 3 of section 39 of the Public Schools Act, are permissive, and that the county council, in refusing to appoint arbitrators exercised a wise discretion. After a review of the history of the legislation down to the enactment under consideration, it was held that the terms of subsection 3 are permissive and not imperative.

Another Case for Damages.

In our last issue we drew attention to a case where a party recovered damages from a township, alleging the destruction of his fruit trees by dust from its roads. In the following case a small pig was the innocent cause of the trouble.

In August, of 1899, Mr. Epr. Bricker and his son, of Berlin, drove through the township of Wilmot on a fishing tour, and when a few miles out of Williamsburg a lusty young porker ran across the road directly in front of the horse, causing it to shy and jump over the side of the culvert dragging the buggy and occupants after it. Considerable damage was caused and an action was brought against the township, as there was no railing or protection of any kind to guard against accidents of this nature. The case was heard at Baden before County Judge Chisholm and judgment was handed down in favor of the plaintiff, awarding him \$25 and costs.

At the January sittings the Oxford county council made arrangements for a meeting of the local municipal treasurers with their clerks, on the occasion of the meeting of the latter's association each year. This is another step in the direction of securing information in the performance of local municipal business throughout the county.

* * *

An Italian named Giovanni Izzo recently brought an action against the corporation of the town of Ingersoll for \$2,000 damages alleged to have been sustained by having been run down by one of the hose reels of the fire brigade. After the evidence had been fully adduced, the presiding judge dismissed the action, holding that sufficient evidence had not been put in by the defendant, each party to pay his own costs.

An Interesting Drainage Case.

The application of one John D. McDiarmid, to quash a by-law of the township of Dunwich, providing for the construction of certain drainage works, was heard and disposed of recently by the Hon. Chancellor Boyd. The following is the full text of the judgment rendered:

Having read all the evidence, it does not seem to me that the by-law of Dunwich is open to the objection which was held fatal in *re Jenkins vs Ennis-killen*.

The matter was argued on two grounds: first, that the report was sent back to the engineer for amendment (but that may be done, *Raleigh vs. Williams*.) and, second, that he amended his second report, on which the by-law is based, pursuant to an agreement of a like import made between Dunwich and Aldborough and did not exercise his independent judgment thereon.

The contrary is proved by all the witnesses. There was no agreement between the townships and there was no interference with the free action of the engineer in reporting upon the matter suggested as improvements when the first report was returned for his reconsideration. The modification made was comparatively slight, affecting the grade and outlet, and reducing the cost by about \$500. The whole change was affected by his direction in the last report, that some one hundred rods of outlet creek bottom should only be cleaned out, instead of being excavated.

He was induced to give the larger outlet in the first report by the claims of two owners of land near the entrance to the creek, and he was induced to reduce the outlet in the last report by the withdrawal of their claims and is satisfied that it will work efficiently.

Anyway, the danger apprehended of an overflow at the outlet is but slight; it may not occur, and the lands there are unimproved and cannot be much injured.

Having weighed all these considerations and being left by the resolution returning his first report perfectly free and untrammelled to act as he deemed best, the engineer has made his second report, which reports his own work and embodies his own judgment. Neither municipality knew that he could make a change, and are in no way prevented from appealing in case the report is not acceptable or the outlet insufficient.

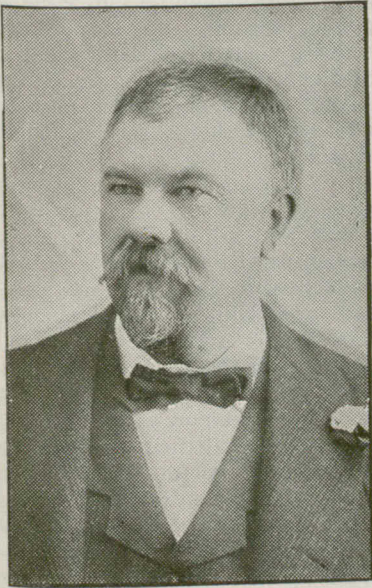
I see nothing illegal or contrary to the intent of the statute in the course pursued and nothing was cited but *re Jenkins*, which does not touch this case at any point. I dismiss the action with costs. The Divisional Court has since confirmed the judgment of the Chancellor.

The North Monaghan council, headed by Reeve Hunter, recently waited on the Peterborough County Council in committee to seek a grant to assist in making the township roads.

Municipal Officers of Ontario.

Clerk Township of Mattawan.

Mr. Ribout was born in the Department de la Haute, Marne, in France, in 1851, and received his education in the muni-



MR. A. RIBOUT.

cipal and normal schools in his native country. He came to Canada in the year 1885, and for ten years engaged in business as a tailor, in Ottawa, when he removed to Mattawa, where he has been carrying on the same business ever since. He was appointed clerk of the township of Mattawan in the year 1898, and treas-



MR. JOSEPH MENARD.

urer in 1899. In politics, Mr. Ribout is a staunch Liberal.

Clerk of the Township of Clarence.

Mr. Menard was born at St. Scholastique, in the county of Two Mountains, in Quebec, in 1850, and when a child his parents removed to the township of Clarence, where he has ever since resided. He taught school in the township for fifteen years, and in 1893 was appointed township clerk, to succeed his brother, Gideon. He is also postmaster at "The Brook."

Clerk Village of Woodbridge.

Mr. McClure was born in the year 1839, in the township of Vaughan, county of York, of Irish parentage. He obtained his education at the public schools in his native township. Mr. McClure followed the occupation of a successful farmer until the year 1884, in which year he met with



MR. JOHN M'CLURE.

an accident, which incapacitated him from further hard work. He was appointed clerk of the village of Woodbridge in January, 1885; he is also one of the auditors of the West York and Vaughan Agricultural Society.

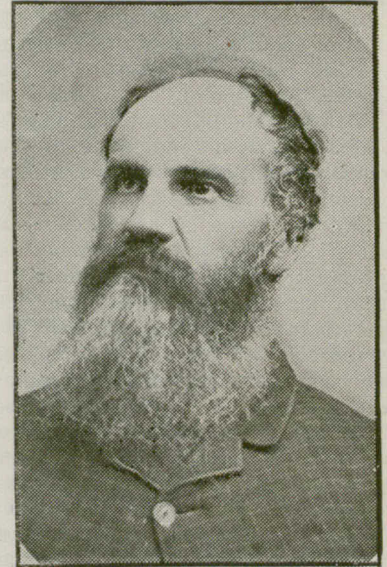
Clerk Townships of Sherbourne, McClintock, Etc.

Mr. Shrigley was born in the township of Pelham, county of Welland, in the year 1835. He was educated in the common schools of that township, and during the greater part of his life he has been engaged in the saw-milling and lumber business. He settled in the township of Sherbourne in the year 1874, was created a Justice of the Peace in 1894, and issuer of marriage licenses in 1898. He received the appointment of clerk of the townships

of Sherbourne, McClintock, etc., on their separation from the township of Stanhope in 1897.

Clerk Township of Wallace.

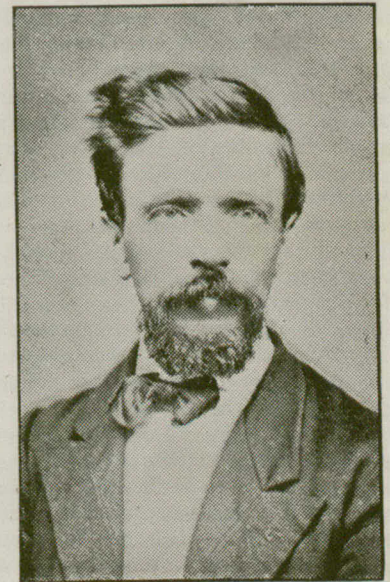
Mr. Roberts was born in the county of Wexford, Ireland, in 1834. He emigrated to Canada in the year 1851, and taught school for a number of years. He was



J. B. SHRIGLEY.

appointed clerk of the township of Wallace in the year 1875. In addition to his office as clerk, Mr. Roberts has been postmaster at Shipley since 1881.

The respondent, in the case of Regina ex. rel. Hill vs. Dowswell, reported on page 34 of our March number, appealed from the decision of His Honor Judge Hughes, to a single Judge in Toronto.



MR. R. G. ROBERTS.

The matter was argued before Mr. Justice Street, who in every particular confirmed the decision of the court below.

Engineering Department

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

The Fire Department.

In this age of association, it is rather remarkable that in Ontario we have not yet a society of firemen. It is, however, but a question of time, and when formed it will no doubt be a valuable addition to the list of organizations of this description. Following is an extract from a paper read by Chief J. D. Paige, of Joliet, before the Illinois Firemen's Association, and is an indication of the wide range of matters which pertain to a fire department. Addressed chiefly to the volunteer departments, Mr. Paige says:

"You should know the necessity of having for your chief a man that ranks in your town with your bank president or leading merchants. Such a man will lift you up and bring to you the material aid you need; and although he may not be an ideal fireman from the standpoint of some, he will make you a much more popular, and a better department, than one with a fog horn voice and that uses large blocks of profanity. Fire departments ought to know that the respect and high esteem in which they are held by their own people comes from their loyalty and unselfish patriotism to the protection of the lives and property of their people, when in peril, the enthusiasm with which they spring to the rescue without expectation of reward when the dread fire alarm sounds. And the volunteer should so conduct himself in his private walks of life as to always merit their esteem, for no other city department is ever met at the gate upon their return from abroad by the populace, and with banners flying and music sounding, the banquet is spread by fair hands, and the speeches of welcome are sincere. If there are any firemen that think it is the correct thing to be loafers, they should quickly disabuse their minds of that idea. Firemen should know that the fire service is one of the best educators known; and whenever possible, members should study cause and effect of everything connected with the service. Meeting in the engine houses to play cards and read the Police Gazette will not qualify you for efficient firemen, nor will working at fires alone make you an expert fireman. The work is simply putting in practice the theory of fire work that should be crystalized and made ready for work when there is no fire. I am aware that this is not always practicable for volunteers in towns where they don't have half a dozen fires in a year, and amusements are scarce, as the volunteer is largely a social organization, and when the town gets large enough to furnish other places of recreation and amusement, then the volunteer association dies, for they have learned very little of the rudiments of fire service, and a paid department has to be built up largely of new material. You

should know, in case of fire, what will be your friend, and what your enemy; whether a fire can burn at all when exposed to a wind with a velocity of thirty miles an hour. Of course, the exposures will show you whether you can make the wind available or not. One experience will not give you the desired information in all cases. If you could have a high wind in a basement fire it would, in a large majority of cases, be your friend.

You should know it is not bravery to not know your danger and face it, but it is to know it and face it. Foolhardiness is not bravery. You should understand friction, and know how much of a stream you are going to get with the various lengths of lines laid; and put such a size tip on your play pipe as will give you the stream desired. You should know that you can destroy more merchandise by water than the fire is likely to destroy. You should know what kinds of merchandise are most damaged by water and smoke. Cigars are most damaged by smoke, and hardware most damaged by water. You should know that the insurance companies are watching you.

You should know that there is considerable valuable information to be gleaned from the papers published in the interests of firemen, although they do print considerable rubbish about some one having a smart horse that can chew tobacco. Of course such stuff will not educate a fireman. You should know that undue haste makes just as much waste at a fire as anything else. Haste to get there is all right, but coolness and brains to direct the work afterwards. You should know that if you have been drinking intoxicating liquor just before the fire or during the fire, that you are incapacitated for going into dangerous places. Nearly all the accidents to firemen happen to drinking men. Water should not be put on an oil fire. Ditch the oil if practicable; otherwise wet down the surroundings and let the oil burn until you can cover it with earth, if that is possible, otherwise let it burn out. Always put your water on the fire. If you cannot see anything but smoke, and cannot locate the fire, then wait until the fire makes its appearances. Fire in a basement often shows as much smoke at the roof as anywhere. Do not in your hurry tear off the roof to begin with. Do not be scared at a gasoline fire. Gasoline makes great flame, but it is quickly over, and then you can understandingly attend to the fire that is left, if any. It is frequently the case that it leaves none.

Iron ladders with stand pipe for hoses should be insisted upon in all cases where buildings are 3 or more stories in height. You should know that flour mills are very explosive. You should know what all the buildings you have to protect contain. If the fire in a building is beyond your control upon

your arrival, let it burn, and devote your energies to saving adjoining property. Firemen should have comfortable quarters, and volunteers should have attractive quarters. They should always have some kind of fire alarm. In these days of plentiful telephones a very satisfactory and inexpensive one can be provided by the telephone management; and, of course, somebody's bell must be rung. Then fire hose, and not too much of it. It may not be taken care of in a manner to get its full value. Hose should be purchased to fit your water pressure. If you cannot get but a hundred pounds pressure, (and you cannot get but half that as a rule at the pipe,) then a single ply cotton hose at about fifty cents a foot, will last longer than the heavier and costlier. If you get it wet, dry it in the sun or on the sidewalk, when practicable. Never wash it. Sweep it off with a stiff broom. A cap and reducer, with a nipple for one-inch hose, is a necessity when you want a small stream to crawl with in cramped places. A hundred feet of rubber hose is about the right thing for this service. It is assumed that you have waterworks or a steamer. Expensive nozzles are not a necessity. A light nozzle that can be grasped anywhere is the best for all uses. Shut off nozzles are not a necessity, and are bad for the hose or the pumps. Deluge sets are only useful when there must be a unity of streams. Learn to put out the fire without deluging it. Insurance companies will make a note of it if you do so. If you must drag your machine to a fire by hand, let that be all that is expected of the men who do the hauling. If they must take the place of horses let them do as horses do—stand and look on—for they are certainly unable to work, and have another set of men to work on the fire. A chemical engine is a grand thing, but of very little use in a manual volunteer department. Hand chemicals of about three gallons each should always be a part of the equipment. A few short ladders, twelve, fourteen and sixteen feet, and capable of being spliced by putting two of them together, are a necessity. A roof ladder of the Pompier style, but with a hook on the end, is handy to assist in crawling over roofs. Three Pompier ladders, fourteen feet long, are a necessity. With these you can scale any height. Some belts and rope belong to this outfit. One wagon can carry all these things with the hose. A wagon is much better than a reel for the good of the hose, and is much more convenient and adaptable for all kinds of service.

When looking for information, only apply to towns of similar size to your own. Much larger and much smaller towns may need an entirely different outfit. Always get what will fit your town. Great attention has been paid to quick hitching and quick getting out of the house, but little attention to quick extinguishment of fires. This is a matter that should be given careful attention, for the quickness with which you can extinguish a fire is everything.

A Cement Concrete Arch Culvert.

Fully one-half of the townships of Ontario report that they are discarding timber culverts and are using more durable material. Small sized culverts and sluices are being made of tile very largely, which were discussed in last month's issue of THE MUNICIPAL WORLD. The larger sized culverts are being built of stone masonry, and cement concrete arches. These are, without doubt, among the most praiseworthy and lasting monuments which councillors can erect to the memory of their connection with municipal affairs. Of the two, stone masonry and concrete, the latter is most deserving of attention, as it is cheaper in the first case, and is less likely to require repairs, if properly constructed.

The dimensions of the arch culverts cannot safely be specified except for individual cases. The following, however, will indicate the manner of their construction, and will provide the basis of a specification:

1. The culvert shall be built in accordance with the dimensions indicated upon the plans and drawings hereto attached and forming part of these specifications.

2. Concrete referred to in this specification shall be known as "fine concrete" and "rubble concrete." Unless rubble concrete is definitely specified, fine concrete shall be used.

3. The abutments are to be erected within a framework of dressed lumber, closely boarded up against the work as it proceeds. The centring for the arch must be well formed, an exact semi-circle. The ribs must not be placed further apart than three feet, and the lagging shall be three inches thick, dressed to the intrados of the arch. The framework, centring and their supports shall be substantial and well constructed, and shall not be removed less than fourteen days from the completion of the work.

4. Fine concrete shall be composed of one part by measure of Portland cement, two parts by measure of sand, and four parts by measure of broken stone. The concrete shall be mixed in a water-tight box placed close to the work by first spreading evenly a layer of sand; upon this shall be evenly spread the proportionate quantity of cement and the two thoroughly mixed in a dry state. To this water shall be added and the whole thoroughly mixed and brought to the consistency of a stiff mortar. The proportionate amount of stone shall then be spread evenly over the mortar, and thoroughly intermixed therewith. The concrete, when mixed as described shall be immediately put in place and thoroughly pounded and rammed until it is perfectly and evenly solid, moisture appearing on the surface.

Within the body of the abutments of culverts, of not less than four foot span, but not nearer than six inches to the surface in any direction, large stones may

be placed by hand in layers. These stones shall be in "rack and pinion" order, and not less than two inches apart. Concrete shall be carefully inserted between the stones thus placed and thoroughly packed and rammed so as to fill all voids. Concrete shall cover each layer of stones to a thickness of half the depth of the stones, then another layer of stones may be placed. A facing of concrete is at all times to be kept at least six inches higher than the rubble concrete; and shall be united with the rubble concrete so as to form a continuous and solid mass. This outer rim of concrete shall precede the placing of the rubble work within, and shall be placed around the interior of the casing to a height of nine inches and a thickness of six inches. It is to be thoroughly pounded so that no cavities shall remain when the outside casing is removed. In no instance is the rubble-concrete to extend higher than one foot below the top of the abutment, which top of the abutment shall be finished with fine concrete. The rubble stone is not under any circumstance to extend into the arch.

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

7. The stone used shall be granite, quartzite, fine grained limestone or other equally strong and durable stone, care being taken to exclude soft limestone, friable sand-stone, and stone affected by the atmosphere. It shall be broken into varying sizes, the largest to pass any way, through a two-inch ring. The sand used shall be clean, sharp, silicious and of varying sized grain. The water shall be clean, and care shall be taken not to use an excessive amount, the concrete when mixed and ready for the work to have the consistency of freshly dug earth.

8. When gravel is used instead of broken stone, it shall be screened to remove all sand and earthy material. If excessively dirty it shall be well flushed to remove loamy matter, the dirty water being allowed to run off; nor shall it contain stones, any diameter of which exceeds two inches.

9. Care should be taken to make the extrados of the arch a smooth, regular surface, such that moisture will not find lodgment. All frame-work and centring shall be of dressed, well-fitted lumber, and the concrete shall be perfectly rammed into place so that all surfaces shall be smooth, without cavities when the casing is removed.

10. While the work is in progress it shall be so arranged that a steady supply of mixed concrete shall pass from the mixing box to the point where it is to be

placed. At any time when the work is interrupted before its completion, or at the end of the day, a wet covering shall be placed over the last layer of concrete; before the work of depositing the concrete is resumed this surface shall be thoroughly flushed with water to remove any foreign material which may have gathered thereon. No concrete shall be laid in wet or freezing weather.

Provincial Aid.

The announcement recently made by the Premier of Ontario that the government is willing to appropriate one million dollars for road improvement has been received with universal satisfaction throughout the province. The people of Ontario have contributed generously towards the building of railways. The Ontario Government has granted railway aid to the amount of \$7,357,115, and the various municipalities have granted \$10,088,074. A considerable portion of this has been paid by the farmers, and it is certainly a step in the right direction to find the government establishing as a precedent, aid to the building of common highways. Railways are undoubtedly a benefit to the farmers, but the advantage of good country roads must not be lost sight of. Whatever assistance the government gives to country roads is a direct expenditure for the benefit of the farmers, but one in which the towns will indirectly share.

The plan on which this expenditure will be made has not been announced, but it is a response to the representations of a convention of county councillors, as the best means of reaching the main roads. Together with this has been suggested a plan for the general removal of toll roads, a measure which should bring widespread satisfaction, as toll roads exist in fifty per cent. of the counties.

If it is decided to expend this appropriation on a county system, it is well that the meaning of a county system should not be misunderstood. It does not mean a number of roads passing through the county from one border to another, irrespective of the territory to be served. It does not mean any change in existing conditions with respect to market towns. It means equal justice to all, and in accord with this, it means the improvement of what are now the main travelled roads. These roads should in the first instance be the principle roads leading to the recognized market town of the districts served, but in addition to this, the intervening links should be connected, so as to form a continuous chain throughout the country. When such systems have been established throughout the province, as no doubt will be the case within a comparatively short period, it should lend a great impulse to the work of rebuilding and maintenance.

Have any of the townships in your county abolished statute labor? Which will be the first? Don't all speak at once.

Road Machinery.

The importance of using modern machinery in making good roads, has become pretty generally recognized since the commencement of the good roads movement in Ontario. A road grader has become a standard implement, employed by a great majority of townships, and wherever they are properly used are a great saving of labor, and do their work more efficiently than can be done by hand. Municipal clerks report their use in two hundred and fifteen townships, a considerable number of these having two. Several, among which are Minto, Trafalgar, Tecumseh, Toronto and Plympton own three or four.

Several townships and numerous towns have supplied themselves with rock crushers. Among the townships owning these implements are: Nottawasaga, Ameliasburg, Front of Leeds and Lansdowne, Mara, Winchester, Bastard and Burgess, Bathurst and Elmsley, Bertie, Rear Yonge and Escott, Smith, Williamsburg, Charlottenburg, (crusher and traction engine,) and North Grimsby. A number of townships, of which are Keppel, Elmsley South, Beckwith, Pittsburg, Elizabethtown and Ramsay, hire a crusher or contract for broken stone. The county of Hastings uses a complete outfit of roadmaking machinery, roller, crusher, grader and traction engine. Victoria also has an outfit of roadmaking machinery, for the use of the townships, and Wentworth rents its crusher to the townships within the county.

Broken stone roads are, when properly made, more serviceable than gravel roads, and wherever there is a plentiful supply of good stone, particularly if gravel is scarce or of poor quality, a crusher with screen attachment should be used. It is profitable also to put certain qualities of gravel through a stone crusher, such gravel as contains a quantity of large stone. If there is much clay or earthy material in the gravel, it will be well to remove it by using a revolving screen attached to crusher.

Townships should, wherever possible, use a road roller, particularly if broken stone is used. A roller will at once consolidate the metal, leaving the road in the best condition for travel, at the same time resulting in a great saving of gravel or stone. Without the use of a roller, the road reaches a condition fit for travel only after a long period, during which time the loose material causes much inconvenience and is mixed with the soil beneath, largely destroying its usefulness. Townships should own a horse roller, or better, should rent a steam roller from a town or city in the vicinity possessing one.

If a steam roller is available, its use may be further extended to picking up the road and loosening the old material before placing the new material on the road; after which the road may be rolled down solidly, the new material and the old road surface having a perfect bond.

Road graders are commonly operated by two teams of horses at a cost of \$6 per day. A traction engine, such as is used

for threshing machines, is, however, a very much better power, and is sometimes hired for about \$3 a day, or half the cost of using horses. The engine gives a steady draught, and does not need to stop to rest, two advantages over the use of horses. It is customary to go two or three miles with a traction engine before turning, and by making one or two circuits, up one side of the road and down the other, it is generally possible to cut off the square edges which have formed, restoring the crown and preparing it for a new coating of gravel or stone.

Some Municipal Bills.

A bill relating to assessment for local improvements has been introduced to the legislature by Andrew Pattullo, M. P. P. This seeks to give town councils the power to divide the cost of permanent streets between the corporation and property owners, the same as can now be done in reference to sidewalks. A bill of somewhat the same nature was placed before the House at its session of 1898, but through some misunderstanding was withdrawn. The measure is a good one, and should be of great advantage, particularly to many of the smaller municipalities where the frontage tax system, without modification, is not entirely suitable. A division of the cost of road improvement in the proportion of one-third paid by the general funds, and one-third by the property on each side of the street, should be equitable and would tend to greatly stimulate street improvement.

Mr. Pattullo is also sponsor for a bill relating to town councillors. This is to make the term of councillors two years, one half of them to be elected each year.

In addition to these exceedingly useful modifications of the municipal code, the member for North Oxford has brought before the house a resolution condemning municipal bonuses. The question is one of much intricacy, but Mr. Pattullo has shown a grasp of the problem which has fully demonstrated his thorough knowledge of municipal and industrial matters. His address in support of the resolution was one of remarkable strength and formed an impressive chapter in the proceedings of parliament. That the municipal bonus is exceedingly pernicious, all who have studied the address must agree, and it is to be hoped that the effect of Mr. Pattullo's lucid argument will not be lost upon future legislation.

The *Toronto Star* is authority for the statement that the farmer spends a couple of days mending the roads in June, but darns them for the rest of the year.

* * *

"The farmer whose family is held in the thralldom of mud for a large part of the year is subjected to the ordeal that trammels progress, fetters social growth, and retards intellectual development." This is the opinion of Governor Mount, of Indiana.

The Cash Basis.

The road movement has progressed steadily for the past four years, and one of the satisfactory effects to be seen is in the number of townships which have already, either in whole or part, placed their system on a cash basis. Among the townships in the Province which have taken the step are Nelson, Blanshard, Orillia, Pelee Island, Ameliasburg, Binbrook, East Zorra, Euphemia, Front of Yonge and Escott, Louth, Sarawak, East Oxford, Ancaster, Toronto Gore, North Grimsby, Malden, North Crosby, Stamford, Clinton, Bastard and Burgess, York, Winchester, Tilbury North, Reach, Barton, Burford, Saltfleet and Sydney. In addition there are many on the eve of a change, and the honor roll will doubtless be largely increased in another year. Wherever a cash basis is adopted and operated under a proper system, and with energy, there can be no doubt as to the advantage which will result. But half-hearted changes are of doubtful benefit.

A study of practical roadmaking will point to three main faults commonly to be found in the roads. These are, bad drainage, poor gravel, and improper methods of placing the metal (gravel or broken stone) on the roads. It is doubtful if any of these evils can be fully remedied under the statute labor system. To overcome bad drainage it is essential that there should be a constant system of repairs, keeping the road well crowned, free from ruts, the gravel or broken stone raked into place, and the side drains and culverts open and without stoppages. The use of poor road metal, (gravel or broken stone,) is likely to continue until someone who, by experience, is able to select the best material available, and is provided with proper implements to screen and crush it when necessary. Nor can statute labor ever provide the means necessary for putting metal on the roads in the right way, first preparing the road by the use of machinery, then properly spreading the metal and rolling it.

Familiarity breeds contempt. Is that why our roads have so little respect meted out to them? They deserve better treatment.

* * *

Our ideas of everything depend on the standpoint. When mud on the road is ankle or axle deep the standpoint is too far below the surface to be a point worth speaking about. Build good roads and farms will look better, pay better, and their value will increase at least twenty-five per cent.

* * *

Roads are trampled under foot. Good roads don't mind it. That is what they are intended for. But bad roads are very ill natured, rough and plainly resent such familiar treatment. They are quarrelsome neighbors or companions and create ill-temper. For the sake of peace, make good roads.

The Township System Outlined.

In every township it is now commonly admitted that the statute labor system is of but little value in making further improvement in the condition of the roads. Many councils express their willingness to make a change, but they have not satisfied themselves with a system to take its place. The following is an outline of the township system, which is now being commonly accepted. A careful study will make its merits plain. Councils, however, which expect to see their way clearly from the beginning will be very apt to be disappointed. The only way is to move ahead with courage and the details will fall into line.

Do away with the statute labor roll entirely. If this plan is not favored the labor may be commuted at a rate per day. This ranges from 25 cents to 75 cents in the townships now commuting.

If statute labor is entirely abolished, levy a rate on the assessment of the township to raise the money required.

For road purposes, divide the township into a convenient number of divisions, usually four.

Apportion the money among the road divisions, keeping in view all circumstances, viz., importance of roads, works needed on them, benefit resulting to the greatest number of people, amount of traffic, assessment, etc.

Appoint one township road commissioner, or, if preferred, one commissioner for each road division, to advise, consult with, and carry out the direction of the council.

The office of road commissioner should be similar to that of township clerk or treasurer.

Councillors should not act as commissioners, as they are subject to undue influence from ratepayers and their term of office is uncertain.

A general plan for road improvement should be laid down by the council for the commissioner or commissioners to follow.

This plan should specify the width to be graded, width and depth of road metal, character of drainage, etc., of all roads.

Roads of importance should not be less than twenty-four feet between the inside edges of the open ditches. No road should be of less width than eighteen feet.

Early in the year the commissioner should go over the roads to consider the work to be undertaken, and report to the council.

Work of construction, such as hauling gravel, ditching and drainage, building of bridges and culverts, should be done by contract, and supervised by the road commissioner.

No account for labor or material should be paid by the treasurer except on the certificate of the road commissioner.

Minor work and repairing should be done by day labor, only the road commis-

sioner being authorized to operate the machinery.

If a member of the council desires to interfere in any of these matters he should do so through the commissioner.

The same man and teams should be hired to operate the machinery for the entire season, or longer if possible, as they become proficient and do better work. This applies particularly to the operation of a road grader; or for the grader, a traction engine may be hired.

The commissioner should keep a payroll, to return quarterly to the council, showing who have been paid and the amount, the roll to be then filed for the auditors.

This roll will act as a check on favoritism on the part of the commissioner. Work should be divided as much as possible among the residents of the township desiring it.

Work should be commenced with a definite end in view and continued systematically from year to year if necessary, until the entire road mileage has been brought to a proper standard.

The Cost of Railway Construction.

An article appeared recently in the *Engineering News* on economic railways for country districts, in which relative costs are compared in a most interesting manner. It is shown that short tracks with equipments of stations, water-tanks, etc., for exceedingly cheap steam railways have been laid under exceptionally favorable circumstances for from \$2300 to \$3000 a mile. This estimate does not include rolling stock. These very cheap railways have been intended chiefly for hauling lumber and similarly rough traffic.

The cost of electric railways is referred to. A well built railway twenty miles long, double tracked, running out of Philadelphia, through a rich farming country, cost \$23,000 per mile, exclusive of buildings and power plant. Another extending twenty five miles out of Dayton, Ohio, and all complete, ready for rolling stock, cost \$16,000 per mile. A low estimate for this class of work is placed at \$12,000 a mile. These roads are built on the highways, the grading is comparatively light, but the poles, wiring and electrical equipment represent a considerable expense. It is noted that a double track electric line, substantially built for fast traffic, and having its own right of way, masonry culverts, and a third of a mile of trestle, cost \$31,600 per mile.

The article states that where conditions are such that it is essential to reach the very lowest point of first cost, the steam railway has a more favorable showing, and this is especially the case where the line is built across the country. There is, however, a third and intermediate character of railway that may be adopted to advantage where the existing highway affords an easy route with a small amount of grading, bridging and trestling. In this case the

line would be built practically the same as the light electric railways, but without poles wires or electric plant. The power will be furnished by gasoline, oil or other engines, with suitable gearings and connections, mounted in a car and driving one of the trucks or axles. In such a line probably the very lowest figure for construction could be reached, while the cost of rolling stock and its operation would be materially less than for ordinary steam locomotives and cars.

Appended to this paper is a general estimate of cost per mile for a light country electric railway five miles in length, with a limited amount of traffic:

80 tons of 50-lb. rails at \$35.....	\$2,800
360 angle bar joints at 85 cts.	306
2,640 ties at 35 cts.	924
3c kegs spikes at \$5.10	153
360 rail joint bonds	144
Miscellaneous material	150
Grading	300
Tracklaying, surfacing and bonding	1,320
Teaming and incidental expense and labor	300
45 cedar poles at \$2.40	108
45 pole arms at \$2.00	90
Overhead wire and materials	445
Labor	200
Special work	300
Power plant, at \$10,000	2,000

Total cost of construction per mile	\$9,540
Power station and car house, at \$5,000	1,000

Total cost per mile \$10,540

The Abolition of Statute Labor.

Not only is statute labor in itself wasted, but the system is used as a basis to expend the money appropriation, and this like the labor is scattered and misapplied. Thus one defective wheel disarranges and impedes the whole machine.

All the money collected for statute labor is again spent in the township, and is thus returned in a great measure to those who paid it in the first instance. It merely leaves the original owner for a little while until he earns it back by doing honest labor on the roads. Under the system of commutation, work is distributed among the rate payers year about; but it is directed every year by from one to four supervisors along the right channel. None need fear the effect of commutation for it is the one way of giving justice to all. Any rate-payer who is willing to give his best work, can get work on the roads; not every year perhaps, but the aim is always to give to each man asking it, at least as much work as will pay his road taxes. Townships are rapidly turning towards the abolition of statute labor in its old form, and it is safe to predict that within two years a marvellous change will have been worked in this respect. Already about thirty townships have made the change wholly or in part.

Aid to the Farmer.

The legislation proposed at the present session of the Ontario Legislature is not so exceptional for its volume as for the number of new measures proposed. Heretofore it has not been unusual for a session to do little more than guide the various departments of government and government aid along their various channels.

The proposed assistance to highway construction has been commented on elsewhere in this issue. In addition to this and of special interest to municipal officers, is the aid to be granted to drainage construction. The difficulties which have arisen in the operation of the drainage laws have largely resulted from the construction of expensive outlets. When many of the drainage systems now in use were first undertaken the conditions which they would create could not be foreseen. The large volumes of water collected, however, have created responsibilities for its disposal which have involved an immense outlay, far in excess of the anticipated cost. Not only so, but much expensive litigation has been created thereby. With the object of removing these unfortunate circumstances, it is proposed that the Government shall assume, in large drainage schemes, some portion of the cost of expensive outlets, in order that districts now heavily taxed may be relieved, in order that new work may be more readily undertaken, and in order that the cause of expensive litigation may be avoided.

There is, too, the cold storage legislation which marks a decidedly new departure. Laws are being enacted to permit the ready establishment of cold stores on operative plan, so successful in the spread of cheese factories; also to permit municipal councils to combine for their use. In both cases financial aid is promised, to the extent of one fifth the cost of construction, however, not to exceed \$2,500, thus limiting the government aid in each instance to \$500.

Such measures as the foregoing, aid to road improvement, aid to cold storage, should prove of incalculable benefit to the Province, particularly to the farming community, and we look for most satisfactory results.

The ice has been broken and statute labor is going under, to appear above the surface no more. Thirty or more townships have already done more or less to bring about this very desirable end.

* * *

Paris takes the lead in Ontario in the campaign against spitting in public. A committee of the town council has recommended the putting up of enamelled signs in principal streets and parks with the inscription: "In the interests of the people and to avoid the spread of contagious diseases, you are requested not to spit on the sidewalk." Detroit put up similar signs last summer.

The Voting Machine.

The difficulties resulting from improperly marked ballots in all our elections, municipal and otherwise, has been felt in many quarters of Ontario. Some attention has been given to the matter in the Dominion Parliament recently, and its correction by the use of voting machines. In this connection the following extract from the Brooklyn, N. Y., *Times* is of interest:

"There is on exhibition in this city a voting machine which is one of the modern wonders of mechanical science. It permits men to vote in any manner in which they are able to vote at present. They can vote any kind of a split ticket that they can now prepare with the ordinary ballot and lead pencil. At the same time it prevents them from spoiling their ballots or marking them in any illegal fashion. It allows each man but one vote. Another advantage it possesses over the ordinary blanket ballot, such as we use now, is that half an hour after the polls are closed the full return is in and accurately counted. There are no long delays and no disputes over rejected ballots. There would also be no appeals to the courts for a recount. Voting by machinery is certainly the future method of balloting. New York City should follow the example of some of the wide-awake up-to-date cities and adopt this method of casting and counting ballots."

Bridge Construction.

Councils in many parts of the province will this year have to consider the reconstruction of some of the bridges under their charge. Unless there are local reasons for the use of timber, the use of concrete abutments and piers with steel superstructure will be found, after a term of years, the most satisfactory. Timber every year is becoming more expensive, and at best it is but temporary. Although it may be cheaper in first cost than steel and concrete, yet the more frequent repairs, and early renewal, make timber bridges, in the end the more costly.

The experience of the Grand Trunk Railway, which has the oldest iron and masonry bridges in the province is noteworthy. Some of these structures have been in service for forty-five years, and the old material is still there. Properly constructed and cared for, the steel superstructure of a highway bridge should last fifty years, and concrete abutments should last twice that period.

Concrete abutments are better than masonry in that, if properly constructed, they are the cheaper of the two, and require fewer repairs. A rubble concrete abutment can be built for half the cost of one of masonry and should be quite as durable.

All of this, however, is work which should be under the supervision of an experienced man. There is as much difference in iron bridges as in wooden

bridges, as much opportunity for good and bad workmanship, good and bad materials. The same is true of concrete. The services of a good engineer in such cases are a measure of economy. It is a mistake to suppose that engineers should be employed on large and expensive works only, where the appropriation is liberal. Wherever the expenditure is limited, the necessity is greater for strict economy; and it is in securing this economy that a good engineer shows his skill to greatest advantage.

Bonus Legislation.

A few years ago the Ontario Legislature by statute, practically prohibited the granting of bonuses to manufacturing institutions by municipal corporations. As the general law in this regard now stands, the farthest that municipalities can go in this direction is to exempt such institutions from taxation (except as to school taxes) for any period not longer than ten years, and to renew this exemption for a further period not exceeding ten years. Before passing the necessary by-law, however, the assent of the electors shall first be obtained in conformity with the provisions of the Municipal Act in respect of by-laws for creating debts. (See section 25 of the Municipal Amendment Act, 1899). Our attention has been drawn to the large number of applications to be made to the legislature at its present session for the passing of special Acts, enabling the municipalities making them to grant large sums by way of bonus to manufactories about to be established therein. These sums aggregate, where the figures are given, nearly \$200,000. The following is a partial list:

St. Catharines is asking for legislation to secure control over streams in the district where power may be developed, that it may be offered as an inducement to companies. It also asks power to erect buildings and let them to corporations.

Meaford wants to bonus a manufacturing establishment.

Strathroy wants to raise \$20,000 and spend it on any kind of bonuses.

Other bonus applications are as follows:

Dunnville, \$10,000, for a canning factory.

St. Catharines, to keep the assessment of the Welland Hotel to \$15,000 for ten years.

Warton, for beet sugar industry.

Preston, \$4,500 for a furniture company.

Collingwood, \$50,000 for ship-building yards.

Tottenham, \$15,000 and exemption from taxation for a furniture company.

Port Arthur, exemption from taxation for the Ontario and Rainy River Railway Company.

Goderich, \$10,000 for a furniture company.

Oshawa, \$50,000 for carriage works.

The enacting of so much legislation of this kind would amount to a practical evasion of the existing law on the subject; and the insertion of the "thin edge of the wedge" towards a return to the old system, which was abolished by reason of the many evils found to be attached to it.

The Pembroke Town Council will submit a by-law to the people to raise \$30,000 for the purpose of installing a municipal electric light plant.

Legal Department.

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

LEGAL DECISIONS.

Township of M'Murrich vs. Doran.

Crawford vs. Township of Ellice.

Judgment on appeal by plaintiffs, Crawford, J. E. Kerr and C. Kerr, from judgments of drainage referee dismissing the three actions brought by the appellants, which were referred by orders of Street, J. The actions were for damages and a mandamus directing defendants to properly maintain and repair the Maitland drain. The damage alleged by the plaintiffs was the flooding of their farms, but the referee held that this was too remote, the rain and snow which came there in the course of nature having been the proximate cause of the loss complained of. With respect to the mandamus the referee held that defendants were proceeding bona fide, and were entitled to a reasonable time to begin repairs, which reasonable time had not elapsed when the actions were brought. Held, that there was no sufficient notice under the statute of injury and call for repair, but that the actions should be referred back for assessment of damages. Appeal dismissed, but reference back directed.

Atkinson vs. City of Chatham.

Judgment on appeal by defendants from the judgment of Ferguson, J. (29 O. R. 518), awarding plaintiffs \$995 damages for injuries caused by the collision of a vehicle, in which the plaintiffs were seated, with a telephone pole erected on King street in the city of Chatham. The horses attached to the vehicle ran away. The pole had been placed on the street 21 feet from one side of it, and the trial judge found that the street was out of repair within the meaning of the Municipal Act, and that the Bell Telephone Company, third parties, were not liable to indemnify defendants, because the pole in question had been placed in the street under the direction of the corporation inspector of streets. Appeal of defendants allowed as against the third parties with costs, and defendants to have judgment for relief over against such third parties with costs.

Pedlow vs. Town of Renfrew.

Judgment in action brought to restrain the defendants from interfering with the fence in front of plaintiff's property on Barr street, in the town of Renfrew. Held, that the twenty feet of land in question had been sufficiently dedicated by the owners and accepted by the public to create a new highway, and that plaintiff in using it was encroaching upon the public street. Action dismissed with costs.

This case was tried by His Honor Judge McCurry, at the last sittings of the Sessions for the District of Parry Sound. It was an action of the township for the ejection of Mr. Doran from some lots claimed by the township. At the sale of lands for taxes held in 1897, the township bid in two lots of 100 acres each, on which was built a house and barn and some thirty acres of land cleared. Some time during the year the council passed a resolution authorizing the reeve and clerk to sell lands held by the township. In October of that year Doran agreed with the clerk to purchase the lots in the event of their not being redeemed, and to pay the back taxes, amounting to some \$83. He deposited with the clerk \$50 on the understanding if the lots were not redeemed he would get a deed from the sheriff; if the lots were redeemed he was to get back his money with interest at 10 per cent. per annum. The money went into the corporation funds. Doran went to the house and fastened up the doors by putting a stone against them inside. Subsequently the clerk reported the occurrence and the reeve refused to ratify the bargain. Defendant was notified the sale was not agreeable to the council and told he could have one lot for \$100, or the two for \$200. He refused, and his deposit was handed him in an envelope by a member of the council. He mailed the money back, and the reeve refused to receive it. At the expiration of a year from the tax sale he took possession of the property and did some improvements. After action was commenced he paid the sheriff a further sum of \$16.83, which was all the taxes against the property up to the time of the alleged sale.

After hearing the evidence on behalf of Doran, Mr. Patterson, for the corporation, took the ground that there was no sale, as the proper agreement had not been made out, and the reeve was not a party to it; further, as the reeve and clerk had power jointly to make sale, the clerk could not bind the corporation by any bargain which he might make apart from the reeve.

The judge did not require the corporation to call their witnesses, and ruled that the clerk could not bind the corporation apart from the reeve or council, and gave judgment for the township, with an order of ejectment with costs.

Re Prince Arthur Avenue, Toronto.

Judgment on application by William A. Medland under section 666 of the Municipal Act, R. S. O., chapter 223, as amended by 62 Victoria chapter 36, section 41,

for an order respecting the keeping of the pavement on Prince Arthur avenue in such a state of repair as is reasonable and proper, and as is required by the section. The pavement (block pavement constructed as a local improvement) is now in a very dilapidated condition and worn out, and to put the roadway in a proper state of repair new blocks must be provided throughout the whole extent of the pavement, and the whole work, except the substratum on which the blocks are laid, be practically renewed. Held, that the gravel-bed is an integral part of the pavement, it and the blocks together constituting the pavement. Held, also, that it is impossible to construe section 666 as imposing on the municipality generally so great a burden as would rest upon it if the applicant's contention should prevail. What the legislature contemplated was that the initial cost of the construction of the local work or improvement should be borne by the owners of the property benefited by it, but that they should not be responsible for keeping it in repair, that duty being cast upon the municipality generally, and that when it should become necessary to reconstruct the work or improvement, the cost of doing so should be defrayed as the cost of construction has been. The duty of the municipality to repair imposed by sec. 666 ends when the time arrives for reconstruction, and whenever it is in such a condition that practical men would say of it that it is worn out and not worth repairing the municipality cannot be compelled to do that which is (ex hypothesi) impossible to be done. In this case there is nothing remaining of the pavement which can be repaired except the gravel bed, which is such an insignificant part of the whole work that it cannot reasonably be said that there is a block pavement in existence which can be repaired, in the sense in which the word repair is used in the section. To construe and apply the section as the applicant contends would result in casting on the municipality the duty of forever maintaining the pavement in question, though when the construction of it was undertaken its span of life was estimated to be not more than ten years. The case on the evidence is not one in which the present condition of the roadway is due to any past default of the corporation. Motion refused without costs.

McKinnon vs. East Hawkesbury.

Dr. McKinnon, of Vankleek Hill, brought an action against the Township of East Hawkesbury, for the recovery of a sum of \$430, for professional services rendered during the small-pox sickness in that township last winter. The township had already paid Dr. McKinnon a sum of \$429, and thinks that they had paid the doctor most liberally, while the latter was of the opinion that he was only half paid. The case was tried at the last assizes. Judgment was given for the plaintiff for \$380, with interest from September last.

Ricketts vs. Town of Markdale.

Judgment on appeal by plaintiff from judgment of Falconbridge, J., dismissing action to recover damages for alleged negligence of defendants in allowing square timber to be piled near and partly on the sidewalk on Mill street. The trial judge found as facts that the plaintiff's child, seven years old, was lawfully walking on the highway, when he was attracted by the pile of timber and, proceeding to walk on one of the timbers, it slewed, and he fell between it and another and was killed; that the defendants were negligent in allowing the timbers to be where they were; that there was no contributory negligence, and he assessed the damages at \$400. The learned Judge, however, found that the child was on the highway for the purposes of play, and in the absence of direct Canadian or English authority, following *Stinson v. Gardiner*, 42 Me., 248, and other cases cited in Amer. and Eng. Ency. of Law, 1 Ed., Vol 9, p. 200, held that children using the highway for purposes of play are putting it to a use for which it was not intended, and cannot recover for injuries due to defect or obstruction, and dismissed the action without costs, and directed defendants (the corporation) to pay the costs of Ryan, to whom the lumber belonged, and who had been made a party by them, and from whom they claimed indemnity. Held, that the plaintiffs are entitled to recover. The English cases referred to are broadly distinguished from Canadian ones on historic grounds. The English highway is the outcome of dedication by private proprietors who still remain owners of the soil, subject to public right of easement, that is, a mere right to pass and repass. Hence, it has been held that if the street be used for any purpose, lawful or unlawful, other than that of passage, it is a trespass; *Crompton, J.*, in *Reg. vs. Pratt*, 4 E. & B., 868, as modified by *Esher, M. R.*, in *Harrison vs. Rutland* (1893), 1 Q. B., at p. 46. In Ontario there is no private proprietorship in the soil of public roads. In England repair of roads originated in immemorial custom; in Ontario such obligation is ascertained by the Municipal Act, secs. 532 (2), 599-601, and cast upon the local municipality, in which is vested the control, etc., and the measure of duty to repair is to be found in the language of the Legislature. In the American States the conditions relating to highways much resemble those which obtain in Ontario. There are, however, a few states wherein the legislation as to repairing streets is limited, so that the duty arises only for the benefit of travellers, and the cases relied on and cited are those from these states, whereas in Ontario the obligation is made to extend to all persons, e.g., R. S. O., ch. 223, sec. 606. "Every public street . . . shall be kept in repair by the corporation . . . and in default shall be civilly responsible for damages sustained by any person." See also sec.

609. There are many other modes of use of a highway so long as public convenience is not interfered with. R. S. O., ch. 236, is not confined to travellers, but extends to other persons "being upon the highway." Dogs and swine may be at large upon the streets, and so may drunken persons, if not disorderly. There may be crying and selling of small wares, etc., etc., though subject to regulation, but the permission to be on the streets is assumed unless prohibited by particular by-law. So as to children, a child found begging or wandering may be taken in custody, and curfew bell may ring pursuant to by-law, as also the custom of riding behind wagons, etc., may be restrained. Thus is deduced the conclusion that children may play on the highways when there is no prohibitory local law, and their presence is not prejudicial to the ordinary use of the street. The American state law generally is to the foregoing effect. The Canadian case of *Griffith vs. Portland*, 11 S. C. R., 333, is under the New Brunswick law, and the local statute making general provision for repair does not say for whom. There was a difference of opinion among the members of the court, and the case is rather in favor of the plaintiffs here. Even if it more clearly appeared that the child in this case was at play when the accident happened, still the conclusion of the court below on this point should not prevail. It is well said that children so young as not to be sui juris cannot be guilty of contributory negligence, and those who have attained an age where not wholly irresponsible are not required to exercise the same care and prudence as an adult. Under all the circumstances the damages fixed by the court below are not unreasonable. The timber, the cause of the accident, was not placed on the highway with the knowledge or consent of Ryan, against whom as a third party the defendants desire relief, and he cannot, under the authorities, be held responsible. Appeal allowed and judgment directed to be entered for plaintiffs for \$400 and costs. Claim of defendants to recover against Ryan dismissed with costs.

Re Robertson and Merritt.

Judgment on application by Mr. Robertson, an owner of land on Queen street, in the city of Chatham, for a mandamus to Merritt, clerk of the city of Chatham, to compel him to revise the assessment of the land in question respecting a sewer built under the local improvement system. The county judge of the county of Kent had directed a reduction of the assessment to an amount which he considered equal to the benefit derived by the land and the amount of the reduction to be assessed pro rata over the other properties included in the assessment. Upon appeal both a divisional court (30 O. R. 158) and the court of appeal were of opinion that the county judge had no jurisdiction. Motion refused; under circumstances without costs.

Trustee and Guarantee Co. vs. City of Rossland.

Judgment on appeal by plaintiffs from judgment of Falconbridge, J., dismissing action without costs. Action for \$10,000 damages for breach of alleged contract for sale to plaintiffs of \$50,000 worth of debentures of the city of Rossland. The trial Judge held that the by laws under which the debentures were to be issued, and for the passage of which the agreement provided, having been quashed by the Supreme Court of British Columbia, and no suggestion of collusion made, the defendants were relieved from the contract. It was contended for plaintiffs that the contract was properly executed as provided by section 26, chapter 144, R. S. B. C., and that a by-law was unnecessary and could not affect the legal contract to deliver the debentures. It was contended, for defendants, inter alia and apart from the merits, that the courts of Ontario had no jurisdiction to grant the relief claimed. Per *MacLennan, J. A.*, the contract was ultra vires. Per *Moss, J. A.*, whether contract was or was not ultra vires, it was not properly executed. Appeal dismissed with costs.

Re Township of Adelaide and Warwick and Township of Metcalfe.

Judgment on appeal by the corporations of the townships of Adelaide and Warwick from order of Drainage Referee, made upon the application of the township of Metcalfe, referring back the report, plans, specifications, assessments and estimates of the engineer for the township of Metcalfe for review or amendment, the present appellants having appealed from the report upon a scheme of drainage initiated by the township of Metcalfe. The work contemplated affecting lands in the appellant townships. The appellants contended that the referee had no jurisdiction to make the order, but should have allowed the appeal of the appellants. Held, that the Drainage Referee had not power to make the order in question, which was not an interlocutory order. Appeal allowed with costs.

Re London Street Railway Co. and City of London.

Judgment on appeal by the company from the judgment of a board of county court judges, one judge dissenting, confirming assessment by the city of London of the poles, rails, wires, etc., of the company. It was contended that the assessment was based on the value of the articles to the railway as a running concern, and not on the basis laid down in *re Bell Telephone Co. and city of Hamilton*, 25 A. R. 351. Held, that the amount fixed by dissenting judge below for poles, etc., and bridges is right, and that nothing should be allowed for track allowances. Appeal allowed with costs.

Question Drawer.

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

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

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

Licensing Milk Vendor.

160.—SUBSCRIBER.—A man who supplies our town with milk, lives just outside of the corporation limits. He does this to avoid paying tax. Can we charge him a license fee, or get at him some way to equal a tax?

Sub-Sec. 23 of Sec. 583 of the Municipal Act, empowers councils of towns, etc., to pass by laws "for licensing and regulating milk vendors," and sub-sec. 24, "for fixing the fee (not to exceed \$1.00 for one year) to be paid for every license required under by-laws passed under the preceding clause 23." Sec. 37 of the Municipal Amendment Act, 1899, sub-sec. 2, makes provision for revoking any license so granted, etc. The power given by the above section is the only one provided, and is of little value.

Audit in December.

161.—H. L. B.—Are municipal auditors required, in townships where no by-law relating to auditors exist, to audit township books or accounts during December, or give a statement (written) at the nomination? Our council was organized last spring and auditors appointed. One of our members maintains that our books, etc., should be audited and printed, or written statements signed by auditors distributed at nomination meetings in December.

The auditors are not required to audit the books or accounts of the municipality during December, or prepare, give or sign a written statement for use at the nomination meeting.

The statement required by sub-section 6, of section 304, of the Municipal Act is to be prepared and published by the council, with such assistance from its officers as may be necessary, and is to be signed by the reeve (or mayor) and the treasurer of the municipality.

Defaulting Collector.

162.—T. S.—Collector of 1896 roll appropriated a few hundred dollars of the taxes to his own use. He acknowledged he used the money, and said he would pay it if he got time. Since 1896 he has paid about half, but the remainder he is inclined not to pay, and asks the question, what can we do?

1. What is the best way to proceed to enforce payment?
2. Would his bond on guarantee company for that year be any good to fall back on, or would the fact of him not making an oath on return of the roll have any effect with proceedings if taken against him?
3. Is the treasurer liable for not looking after him sooner?

1. The council should sue the collector and his sureties to enforce payment of the balance still due the municipality.

2. The fact that the collector did not take the necessary oath on returning the roll, will not affect the liability of the collector or his sureties.

3. No. It is the council's duty to see that the collector and his sureties be compelled to pay the amount of the defalcation.

Grant to Pickle Company.

163.—C. H. G.—A pickle company wish to establish a salting plant in this municipality providing we guarantee them to get the farmers and gardeners to grow 200 acres of cucumbers tomatoes, and other vegetables and grant them exemption of taxes. (School taxes excepted) for a term of years, also five acres of land on which to build their plant. Have the council power to purchase said land and turn it over to said company without first getting the voice of the ratepayers, or what procedure should they take in the above matter?

Under the provisions of section 25 of the Assessment Amendment Act, 1899, a municipal council may by by-law exempt a manufacturing establishment, etc., in whole or in part from taxation except as to school taxes, for any period not longer than ten years, and to renew this exemption for a further period not exceeding ten years. Such by-law must, before the passing thereof, have received the assent of the electors in conformity with the provisions of the Municipal Act in respect of by-laws for creating debts. (See clause "b" of the section above quoted, and following clauses of the section) The council has no power to give the guarantee you mention, or purchase the land and turn it over to the company.

Hotel Keepers Qualification—Legal Resolutions.

164.—X. Y. Z.—1. Can a man qualify as councillor in his wife's name, she being a hotel-keeper, and all the property being in her name on the assessment roll as owner, as well as the business being carried on under her name?

2. Are the resolutions of a council legal when one of the councilmen moves some of the motions, afterwards disclaims all right to his seat on account of his property qualification not being good?

1. Yes.
2. Yes. Dillon on Municipal Corporations, third edition, at page 276, says:—"In this country the doctrine is everywhere declared that the acts of *de facto* officers as distinguished from the acts of mere usurpers are valid, the principle extends not only to municipal officers generally, but also to those composing the council or governing body of a municipal corporation.

Tree Planting Bonus.

165.—J. McA.—Our township has not a by-law regarding planting trees at the side of the road. I have some planted out about 8 ft. from the line and about 22 ft apart. I am no posted in the law relative to tree planting and there is no by-law in our township for the same. I would like to know.

1. Can I get pay for the trees I plant?
2. Can I have any parties fined or punished for destroying the trees, and how should I proceed?

3. What amount should I get from the council for each tree?

4. Kindly explain the law in this matter.

1. Not unless the council has passed a by-law pursuant to the provisions of the Ontario Tree Planting Act, (R. S. O., 1897, chap. 243), or sub-sec. 1 of sec. 574, of the Municipal Act, granting a bonus for trees planted in accordance with the provisions of the by-law.

2. Yes. See secs. 6 and 7 of the Ontario Tree Planting Act, where the necessary procedure is fully set out.

3. This would depend entirely on the amount fixed by the council in a by-law passed pursuant to the above authority.

4. The above answers and a perusal of the sections referred to sufficiently dispose of this question.

Statute Labor.

166.—J. B.—If the owner of property has it rented and both owner and tenant are on the assessment roll, the tenant paying the taxes and performing the statute labor. Can the owner, who is living in another part of the township on property not assessed to him, be compelled to do one day's statute labor, he being under 60 years of age?

No.

Return of Collector's Roll.

167.—What is the last day that,—

1. Municipal councils in towns can extend the return of the collector's roll?

2. Town council passed a motion on January 24th that the collector's time for returning roll be extended one month. Is the motion legal?

3. What is meant by section 145 Assessment Act?

4. Has the collector's roll to be returned on the 1st day of February?

1. Sec. 144 of the Assessment Act provides that "in towns, villages and townships, every collector shall return his roll to the treasurer on or before the 14th day of December in each year, or on such day in the next year, not later than the 1st day of February, as the council of the municipality may appoint." Sec. 145 enacts that "in case the collector fails or omits to collect the taxes, or any portion thereof, by the day appointed or to be appointed, as in the last preceding section mentioned, the council of the town, village or township may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes. Until the taxes have all been collected, and the roll returned to the treasurer, the collection may be continued.

2. No, the council has no power to extend the collector's time for the return of the roll beyond the 1st February.

3. This section means, that although from any cause the roll is not returned and all the taxes collected and accounted for by the first day of February, and although the council cannot extend the collector's time beyond this date, yet, to prevent the possible loss of the taxes remain-

ing uncollected on that date, the council is empowered to instruct the collector or some other person to proceed with the collection of the taxes.

4. Yes, but after the return of the roll the council has no power to appoint the collector or any other person to continue the collection of the taxes. See article on page 96 of the "WORLD" for 1899, entitled "Return of Collector's Roll—Collector of Taxes."

Mode of Assessing—Exemptions.

168.—W. H.—1. At what rate of the supposed value should an assessor base his assessment on?

2. Are horses and cattle included in valuation?

3. Also machinery, etc.?

4. How should store goods be assessed, and at what rate?

1. Section 28, of the Assessment Act, provides that, "except in the case of mineral lands hereinafter provided for, real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor."

2. No. See sub-section 16, of section 7, of the Assessment Act.

3. We assume by "machinery, etc.," you mean "farming machinery or implements, etc." On this assumption they are not liable. See section 1 of the Assessment Act, 1899.

4. "Store goods" are personal property, and should be estimated as mentioned in our answer to question number one; but so much of the personal property of any person as is equal to the just debts owed by him on account of such property, (except such debts as are secured by mortgage upon his real estate, or are unpaid on account of the purchase money therefor,) is exempt from assessment.

Toll-Road Abandonment.

169.—E. D.—In the February number of the MUNICIPAL WORLD you very kindly answered my questions re the abandonment of certain portions of their road by the Proof Line Road Co. I now inform you that one of the portions abandoned is partly in the city of London and partly in the County of Middlesex. I ask you to examine section 26, chap 239, vol 2, R. S. O., and give me your opinion as to its value in connection with said abandonment?

The section you refer to does not apply to your case. It applies only to a road extending from one county into an adjoining county.

Priority of Registration.

170.—M.—Two brothers A and B owned property, lot 40, con. 8, township Cronje. B in 1895, and for some years previous, was not in his right mind. In 1895 a largely signed petition was presented to the council to make a deviation of the sideroad coming down a steep rock, to get a better grade for winding on to lot 40. The second name on petition was C, next neighbor to lot 40 and owner of lot 41. Petition was granted and road legally opened by by-law and Deed of Indemnity signed by A and \$20 paid for one acre taken for deviation. Some three years after B died and lot 40 was sold to C next neighbor. Deed was very carefully taken care of by the reeve at the time, but forgot to register it till a few days after lot was sold to Mr. C. Now Mr C wrote the petition, was second name on it, helped to

make the deviation road and has used it for four years more or less.

Will the deed hold as good against C notwithstanding he got a deed from the judge for the whole lot?

You say the reeve forgot to register the deed of the road until a few days after the lot was sold to C. You do not say whether C's deed was registered before or after the deed to the township. If the deed to the township was registered first, of course, it takes priority over the deed to "C." If "C" registered his deed first, having actual notice and knowledge of the execution and existence of the deed to the township, the latter still will have priority. (See section 87 of the Registry Act, R. S. O., 1867, chap. 136.) If "C" registered his deed first, without having such notice or knowledge, it will take priority over the deed to the township. See also sections 97 and 98 of the Registry Act.

Purchase of Road Machine—Opening New Road.

171.—A SUBSCRIBER.—1. Last summer there was a road machine purchased by the reeve and two councillors. The other two councillors were against it. The reeve is agent for the firm from which the road machine was purchased, and as agent he sold the machine to his municipality. I may say a forced sale. They have never passed any by-law to that effect. The three above members made a verbal agreement between them, saying that the road machine would be payable in three years, three payments. There has been no notes signed and given to the company. Last fall they ordered the treasurer to pay a certain amount of money on account. The treasurer did it. Was the whole matter lawfully done?

2. This year are new members of the council except the reeve and councillor. The councillors are claiming that the purchasing was a forced one made by the reeve. What is the proper step to take to not keep it?

3. Does it require a by-law to receive the assent of the electors?

4. In the event of not keeping the road machine, what would become of the money given on account before?

5. There is a ratepayer in the township living on his lot and he has no road to get out, nothing but a trail through the bush. Can he force the council to open him a road in the concession line and in the sideline? He is paying taxes every year.

1. From your account of this transaction it seems to have been a loose arrangement. We do not think the contract binding upon the municipality.

2. If your council are desirous of keeping the machine all they have to do is to pass a resolution to that effect, and pay the balance of the purchase money out of the funds on hand. If they do not wish to keep it the council should notify the vendors to that effect, and instruct them to take it away.

3. Yes. See section 389, of the Municipal Act, which requires the assent of the electors when the debt is not payable in the current year.

4. We are of opinion that the company could retain the money paid them by the corporation. It was a voluntary payment on their part and the company cannot be forced to return it.

5. No.

Collection of Taxes on Personality.

172.—J. A.—A is a merchant and is assessed for a certain stock. A short time after assessment he sells out to B. When taxes become due A pays tax on his real estate, but not on personality. B refuses to pay and claims the stock assessed was pretty well disposed of before he bought. What steps should be taken in this case, and who is liable? A still resides in the corporation.

A being the person assessed for the stock is liable to pay the taxes. The collector should proceed to realize the amount by seizure and sale of such goods and chattels of "A" as are within the municipality and not exempt from seizure under the Assessment Act. In case no or insufficient distress be found, the amount, or the balance of the amount of the taxes (as the case may be) should be collected by action at law against "A." See sec. 11 of Assessment Amendment Act, 1899.

Payment of Members of Board of Health - Payments to School Treasurer.

173.—J. R.—1. Can members of the Board of Health charge at the rate of one dollar a day for sitting? I cannot find any authority for such in the statutes.

2. Our council passed a by-law that the treasurer had power to pay to the school treasurer money coming to the school sections without coming to the council from time to time. Is that legal?

1. The Public Health Act makes no provision for the payment of members of a local Board of Health.

2. We do not find any authority for this by-law. The council should each year, by resolution, passed before the 15th December, authorize the issue of orders on the township treasurer for the several amounts levied for and payable to the school sections in the municipality. The clerk should, pursuant to such resolution, prepare orders or checks on the treasurer for the amounts payable to the secretary-treasurers of the respective school sections, and the latter should present the orders to the township treasurer for payment. When this course is followed the treasurer will have a voucher for every payment he makes.

Assessment of Personality.

174.—G. McV.—Is lumber assessable as raw material that is kept in stock for manufacturing purposes in quantities for making furniture, etc. Or is furniture assessable at the factory where made if kept in stock?

Both classes of property are assessable, (see section 28 of the Assessment Act,) for their actual cash value over and above the sum of \$100, subject to such reduction as the owner may be entitled to for the just debt owed by him on account of such property. See sub-sections 24 and 25, of section 7 of the Assessment Act.

Levy of School Taxes.

175.—W. M.—A school board makes requisition for a certain sum, and at the same time in the same paper named the rate to be struck to raise the amount, which the council did, but at the rate struck the amount of requisition was not realized, and partly on account of some uncollectable in the section. Now the school board threatens to sue the council for the deficiency.

Is the council responsible for the deficiency?

The Board of School Trustees has nothing to do with fixing the rate of taxation in any school section, necessary to be levied in order to raise the amount required by them for school purposes in any year. This is the duty of the council upon whom the requisition is made. Sec. 97, sub. sec. 1 of the Public Schools Act enacts "that the council of every municipality shall levy, etc., such sums as may be required by the trustees for school purposes, etc." The council will have to pay the trustees the amount mentioned in the requisition of the latter.

Payments by Board of Health.

176—F. X. M.—1. In 1900 the council of Sandwich East authorized the doctor to vaccinate all the children of Sandwich East at 25 cents per head, and that Sandwich East should furnish the vaccination points, and that it should be a successful vaccination. There were 50% that didn't take. At the last meeting of the Board of Health they paid these bills without the consent of the council. Have they the right to do so?

2. Has the Board of Health the right to use what money they need without the council's consent?

1. Yes.

2. The Public Health Act gives to local Boards of Health general powers to use and expend whatever sum or sums of money they may deem necessary in effectually carrying on their work. Section 57 of the act provides that "the treasurer of the municipality shall forthwith, upon demand, pay out of any moneys of the municipality in his hands, the amount of any order given by the members of the local Board of Health, or any two of them, for services performed under their direction by virtue of the act." The Board is not required to obtain the consent of the council to any such expenditure.

Payment of Reward.

177.—L.—The council of our municipality, two or three years ago, offered a reward of a certain sum of money for information that would lead to the conviction of persons owning a certain nuisance. A person, who was entitled to the reward under this resolution, did not put in his claim for it at the time. Can he collect it now, two years having elapsed without his asking for it?

You say that the reward offered was for information that would lead to the conviction of persons owning a certain nuisance. The council had no power to offer a reward for such information. If you will look at sub-sec. 2 of sec. 592, and secs. 593-595 of the Municipal Act, you will find the cases in which the legislature has authorized the council to offer rewards, and if the reward was not authorized under one of these sections, the municipality is not liable for the amount of it, even if it was offered and earned. If, on the other hand, you have inadvertently used the word "nuisance," and the offer of the reward was authorized under any one of these sections, the mere fact that the informer delayed putting in his claim for two years would not disentitle him to it.

Deficiency in School Levy.

178.—J. D.—The school trustees levied in 1899 \$75.00. The clerk in making out the taxes made an error. The rates should have been 40 mills on the dollar, whereas he only levied 11 mills on the dollar. The township will have to make good the deficiency for current expenses of the school. Can the township levy in the year 1900, over and above what the school trustees levy, the amount that was deficient through the clerk's carelessness in 1899?

Section 62, sub-section 6, of the Public Schools Act, makes it the duty of a board of public school trustees to submit to the council of the municipality an estimate of the amount required for school purposes in any year. Section 67, sub-section 1, requires the municipal council to levy and collect the sum required by the trustees from the ratepayers of the school section. Part of the estimates of the board of trustees for 1900 would be a sum to cover the deficiency for 1899. The township council has a right to levy this as well as the other sums required by the trustees for school purposes. See also sub-section 3 of section 67 of the same Act.

Damage to Telegraph Wires

179.—P. S.—Who is responsible for telegraph wires being broken? Parties clearing timber off public highway accidentally fall a tree across telegraph wire and break it. As soon as accident happened said parties notified telegraph company about the accident. Company sends a bill for damages of four dollars. Is party clearing timber liable for damages?

The person or persons through whose negligence the telegraph wire was broken, should make good the loss.

Illegal Grant—Railway Fences and Guards—Consolidation Debt—Adjusting Collector's Roll.

180.—T. J. L.—1. Our council of 1899 made a grant to one of the ratepayers as part payment on a bridge that he and some of his neighbors had built to connect two settlements. The bridge is on private property, and the council did not authorize them to build it. They claim \$74 for it. Are the council of 1900 liable for the balance unpaid?

2. A railway company has its line across this township, but are running their trains without having proper fences and cattle-guards. As a consequence a great many cattle are killed in the summer months, and the owners have no redress, as the company will not pay for them, and are not worth suing for it, as nothing can be taken off them. What would be the proper way to compel them to fence their track? Would it make any difference if the road had not been passed by the government inspector?

3. Our council are thinking of issuing debentures to build a new school-house and pay off our indebtedness which is composed of arrears of county rate, notes, etc., amount in all to about \$1,200, and \$500 for school-house would make \$1,700. Our council of 1899 levied a rate for all purposes included, of a little over 6 cents, and yet, after all the taxes are collected, we are still in debt to the above amount. Would it be legal to issue debentures for such a purpose, provided we got the consent of Legislature, and would it be necessary to take a vote of the ratepayers on it? Would it be legal to raise the money for the school and our debt in the one amount?

4. Some of our ratepayers were charged on their tax-bills for 1899 with arrears of taxes when they had paid them in full for 1898, and held receipts from collector. To make it right on the collector's roll of 1899, we issued orders on the treasurer in favor of collector for the

amount of arrears. Were we right in doing so, and was the township out any by the transaction? Is there any other way of doing it without issuing orders?

1. No. The council had no legal authority to make a grant for the purpose mentioned.

2. Sub-section 1, of section 194, of the Dominion Railway Act, makes it the duty of the railway, after a municipal corporation has been organized, to erect fences and cattle-guards, and sub-section 3 of the same section provides: "If the company omits to erect and complete, as aforesaid, any fence or cattle-guard; or if, after it is completed, the company neglects to maintain the same as aforesaid, and if, in consequence of such omission or neglect any animal gets upon the railway from an adjoining place where under the circumstances it might properly be, then the company shall be liable to the owner of every such animal for all damage, in respect of it caused by any of the company's trains or engines, etc." The remedy provided by this section appears to be the only one presented in a case of this kind.

3. Your municipality should obtain legislative authority to raise the amount required, (\$1,700,) by the issue of debentures to that amount. It is not necessary that a vote of the electors should be taken. In levying a rate of six cents did you not exceed the statutory limit? See section 402 of the Municipal Act.

4. We see nothing wrong in the course your council pursued to adjust the errors mentioned. The same result might have been obtained by the passing of a resolution by the council, instructing the collector not to collect the sums erroneously charged on the roll.

Clerk Disqualified as County Councillor.

181.—X. Y. Z.—1. Are municipal clerks debarred by the office they hold as clerk from being eligible for the office of county councillor for the division in which they are clerk of one of the municipalities?

2. Are you cognizant of any municipal clerk who is also a county councillor? Give his name and residence.

3. If he is eligible and an election held, can he act as returning officer for his own municipality, and will he be allowed to add up the votes then the same as if he was not a councillor?

1. Yes.

2. No.

3. In view of our answer to question 1 it is unnecessary to answer this question.

Collection of Dog-Tax.

182.—B. M.—A township passed a by-law to stop collecting dog-tax. Sheep are killed, owner of dog not known, and no dog-tax being levied there is no money to pay owner of sheep for his loss. Can council levy dog-tax in 1900 to pay for sheep killed in 1899 and previous years since the dog-tax was repealed?

No.

Collectors' Seizure—Percentage Added.

183.—W. H. B.—If by order of the council 5% is added to the taxes after the 15th day of December when can a collector seize?

At any time after the expiration of the demand made or notice given pursuant to section 135 of the Assessment Act, sub-

section 1. We may, however, say that an order of the council is not sufficient to warrant the imposition of the additional 5%. A by-law is necessary. See section 4 of the Assessment Amendment Act, 1899. Under the special circumstances stated in sub-section 4 of section 135, a collector may distrain for taxes without waiting until the expiring of 14 days from the demand or notice.

School Account of Deceased Treasurer.

184.—F. F. G.—The treasurer of our municipality has died and the book in which he kept all his school accounts died with him, or at least is gone. The auditors sent to each and every section and got a statement from the secretary treasurer of each except section No. 4, of which section the township treasurer was treasurer also. In that section the book showed that they had received \$368 and the requisition called for \$478. Books were audited with that account. Afterwards a receipt-book comes to hand of school moneys for 1898. In that book receipts are forthcoming to moneys paid that section to the extent of \$268 and another stub marked thus:

Received from John Bremner \$200 for S. section No. 4 as School T. taxes for 1898.

He being treasurer of both township and section will that stub count as a receipt? On the outside of receipt-book is written "receipts for school moneys for 1898." What is the value of that stub as a receipt, and does it clear the township?

Although you do not say so, we assume it is the school moneys belonging to S. S. No. 4, for 1898, you desire to have accounted for. The receipt you refer to would not be evidence of the making of the payment therein mentioned. Could not the trustees for the section for 1898, by a review of their expenditure for school purposes during that year, keeping in view the balance on hand (if any) at the beginning of the year, ascertain, with a fair degree of accuracy, the condition of the account between them and the late treasurer at the time of his decease? If the school trustees will not admit that they received all the moneys levied upon the property of the section, and insist upon the council of the municipality paying the deficiency, the council must pay over such deficiency, unless it can prove by proper evidence that all of the money was paid.

Unauthorized By Law.

185.—W. B.—We had an election here on the 12th inst., of the property owners on a by-law to loan a proposed furniture company ten thousand dollars. The vote stood 304 for the by-law, 58 against it, with two spoiled ballots; majority for the by-law 246, but there is on the assessment roll 603 property owners. Does it require two-thirds vote of all property owners, or a majority of the votes polled, and one-third of the total number of votes on the assessment roll?

A village council has no power to pass such a by-law, and therefore no majority of the votes of the electors can give it any validity. The authority to pass such a by-law as this was taken away in 1892. See section 21 of the Municipal Amendment Act, 1892, cap. 43.

Assessment of Telegraph Wires.

186.—J. M.—We have a telegraph line in

our township. Is it the duty of the assessor to assess the poles and wires?

Yes. The poles and wires should, however, be assessed, and valued as so much dead material, and not as part of a going concern. See Question No. 135 in our March issue.

Tax Sale.

187.—M. B.—As answer No. 2 and 3 seem to conflict I presume you did not understand the facts as they are. The clerk gave a copy of list of arrears to the assessor of 1896, the assessor returned the list to clerk and marked the lot as "not occupied." The clerk sent forth with a copy of said list to county treasurer as per section 153, but afterwards said lot was placed on resident roll by Court of Revision and clerk placed arrears on collector's roll same year, but did not notify county treasurer of the fact. Would he have been justified in placing arrears on roll by notifying county treasurer? If yes, by what section?

The council has offered the purchaser of lot the amount paid and interest at 10% and reasonable outlays he has been put to in connection with the lot. He would not accept and has issued an injunction to stop A from cutting timber. What should the council do in this matter. Who will be liable for costs of injunction?

Your explanation makes this matter clearer, but you do not say when the county treasurer sold the land for the arrears of taxes. We, however, assume that it was in the fall of 1896. We do not think the clerk was authorized to place the arrears opposite the lands on the roll for 1896, notwithstanding the act of the Court of Revision. The only arrears that the clerk is empowered to place on the collector's roll are those mentioned in the list referred to in sub-section 2 of section 153 of the Assessment Act. The arrears should have been paid to the county treasurer by "A," and the lands would then have been withdrawn from sale. If the lands were properly advertised, and the sale proceedings were regular, and no attempt to redeem the lands was made within one year from the date of the sale, we are of the opinion that the purchaser can retain the property. The council seems to have done all that could be done to arrange this matter. As we understood the facts at first we intended to have said 1899 instead of 1896 in answer to question 2, but the answer to question 3 shows what we meant, and it seems to resolve itself into a question between "A" and the purchaser at the tax sale. "A" was unwise in not seeing that the arrears were marked paid in the county treasurer's books when he repossessed himself of the lands, if he knew that such arrears existed and were unpaid.

Drainage Injury.

188.—A SUBSCRIBER.—In your March number, in answer to question No. 153, you say:—If the bringing down of extra water by the two drains into the drain of the owner of the west half of lot 4, con. 5, caused injury to his lands the parties responsible for the construction would be liable.

But there is no extra water, unless you would call it extra water because it comes somewhat quicker on account of the drains. But not much, as there is a heavy fall, and

there is no other course for the water to go. There is no water collected, not even surface water, and discharged into this pond in larger quantities than would naturally flow into it, only, as I said before, a little sooner.

Under the circumstances could the owner of the west-half lot 4, con. 5, claim damages?

If the construction of the new drains emptying into the drain of the owner of the west-half of lot 4, concession 5, has not the effect of causing injury to such owner, he has sustained no damage, and therefore cannot look for any compensation. We think, however, that the construction of the new drains would naturally have the effect of collecting on such owner's property a larger quantity of water in a shorter time. Nearly all natural water-courses are more or less obstructed, until artificially improved, and absorption and evaporation exhaust a certain quantity of the water, while gradually working its way to the outlet. This should be taken into consideration in the case you submit. If it is shown that the increased velocity of the water caused by the construction of the drains occasion damage, the persons who constructed the drains are liable. This doctrine is laid down by Ferguson J., in the case of Marlatt vs. Mersea, 9 O. R., 611, where that judge, at page 613, says: "I am of opinion that the plaintiff is entitled to an order for an injunction restraining the defendant from permitting more water to flow down the Dale drain into the ravine, and hence into Two Creeks than flowed into the same drain before the extension and deepening aforesaid, and from permitting the water to flow into Two Creeks with any greater velocity than that with which it flowed before the said extension and deepening."

Location of Government Road.

189.—W. M., Parry Sound.—1. A located land in this district, and before he got his patent for it the government built a government colonization road on the 2nd concession and along the front of A's lots. The road allowance was considered impracticable to build and the commissioner overseeing the work made a deviation on to A's lots. Now A wanted last year the council of the township to let him have the road allowance abandoned by the commissioner in lieu of the road appropriated by the commissioner during the time, or until such time as the council saw fit to put the road in the concession road allowance. The council agreed to let him have the original road allowance as he requested, and passed a resolution to that effect. So long as the council used the deviation A was to use the original allowance. Now A wants to back out and wants the council to remit him his statute labor and taxes instead, and if the council refuses he will enter action to recover pay for land appropriated by commissioner on government account. Now, can A collect compensation further than the use of original road allowance as he requested and council granted?

2. Can he claim anything as the government took possession of the deviation of road before the township was organized and before A had his deed?

3. Can the council grant salary to members of the local Board of Health for their services? 1 and 2. The government having built the road throughout A's lot before he obtained a patent for it, we must assume that he purchased the land with a knowledge of the existence of the road, and

cannot now object to it, or claim anything from the council by way of compensation.

2: The Public Health Act makes no provision for the payment of the members of the local Board of Health.

Opening of Government Road.

190.—TRESPASS.—Supposing a road is opened about twenty-two years ago by government officers, the money to pay for this work being granted by the Provincial Government, for opening of colonization roads on Manitoulin Island, can the municipality hold this road, it being a trespass road, crossing private property on account of the concession being in a river bed? The owners of road have never been paid for their land, and said road is not deeded to municipality. There has been statute labor performed on the road each year, and has been used as a real highway. The owners of the land now ask us to build a fence and allow them a price for this roadway. We supposed in this case we could hold as much land as the government officials opened in the first place without having to pay for it, as proprietors of this land never asked for a fence or price of land until a year ago. Can they now compel us to pay and build a fence, or do we own as much land as was opened without extending?

Your question is, in some particulars hard to understand. We do not see why, from your statement of the facts, you call this a "trespass" road. The road appears to have been located, laid out, and built by the government officials, with government funds. Statute labor has been performed upon it, and it has been in all respects used as a public highway. We do not think the township can now be compelled to fence the road or pay compensation to any person or persons for the land taken therefor. Section 595 of the Municipal Act, which defined highways, declares, among other things, that any roads wherever the public money has been expended for opening the same shall be deemed common public highways.

Payment of Corporation Accounts.

191.—A. G. B.—In question 133 the question is asked, where you get authority for reply, in which you say, "Orders or checks passed by council should be signed by the clerk and reeve." I would also ask where you find authority for such a statement. Kindly give chapter and section where to be found. Why necessary for so much red tape when accounts, etc., are authorized to be paid by resolution of council?

The method of paying accounts by municipal councils and their officers, given in our answer to question No. 33, is, in our opinion, safe, legal and business-like, and wholly lacking of "red-tape." A failure to observe and adhere to ordinary business rules—which our correspondent is pleased to call "red-tape"—is the frequent occasion of landing councils and their officers in difficult situations and heavy expenditure. There is no section or statute which in terms lays down the procedure under consideration, but the exigencies and necessities of the case, and the fact that a corporation must act through its officers, renders the course we suggested necessary. The clerk and treasurer are seldom the same person—often have their offices some distance apart. Thus the treasurer could not tell whether the council had authorized

payment to a party applying to him for his money, unless the latter also produced a certified copy of the resolution. If he did not the treasurer would have no authority to pay, or if he did pay, no voucher for the payment.

Assessment of Banks—Of Property of Married Women.

192.—T. H.—Are chartered banks liable to be assessed in each municipality where they have branch offices? or should they be assessed only at the head office?

2. Where property is owned by the wife, and occupied by husband and wife, which should appear on the assessment roll?

1. Chartered banks are not liable to be assessed in each municipality in which a branch office is situated. Sub-section 2 of section 39, of the Assessment Act, provides that "the personal property of a bank, etc., shall, as hitherto, be exempt from assessment, etc."

2. Section 19 of the Assessment Act, provides that "land occupied by the owner shall be assessed in his name, but where a married woman is assessed as owner, the name of the husband shall also be entered upon the assessment roll as an occupant."

Seizure for Arrears of Taxes—Collectors' Responsibility.

193.—I. J.—The collector of taxes for this township for 1896 returned the taxes against a certain lot, stating that he was unable to collect them. The same thing occurred again for the year 1897. The amounts were sent to the county treasurer in due course. In 1899 the county treasurer included this land in his list of lands liable to be sold for taxes. The assessor for 1899 reports the lot occupied and the arrears for 1896 and 1897, with interest to date, is charged on the collector's roll for 1899. The tenant on the lot paid the taxes for 1899, but refuses to pay the arrears, as he had no interest in the lot in '96 or '97, and holds that he is not liable for the taxes of those years. The tenant has property on the farm sufficient to pay the arrears, but the collector for 1899 contends that it is neither his duty nor has he the power to seize or sell the tenant's property for the arrears. The owner of the land refuses to pay the arrears on the ground that he says he can prove that the occupant of the land in '96 and '97 had sufficient personal property on the farm to pay the taxes during the whole time that the roll was in the collector's hands for both years.

1. Has the collector power to seize the tenant's property which he finds on the farm for the said arrears?

2. Is it his duty to do so?

3. Can he be held responsible for said arrears if he neglects or refuses to seize when there is sufficient property on the farm?

4. If the owner can prove that there was sufficient personal property on the farm during the whole time that the rolls were in the collector's hands for '96 and '97, can the arrears for those years be collected at all?

5. If the township can prove that there was no property on the farm that could be seized for taxes in either years at the dates when the collector returned his rolls, although there might have been during a part of the time while the rolls were in the collector's hands, has the township in these circumstances the power to collect the said arrears either by seizure of the tenant's property or by allowing the land to be sold?

1. No.

2. No.

3. No.

4. No.

5. Yes. If the collector used a reasonable degree of diligence in endeavoring to

realize the amount of taxes in each of the years you mention. A collector cannot be in every part of the municipality at all times so as to be in a position to seize, therefore, so long as it cannot be shown that he was negligent in not discovering property, out of which to realize the taxes, such taxes can be returned against the land.

A Municipal Question.

The advice received from the Attorney General's department at Toronto, respecting the right of a property owner to vote on money by laws in every ward in which he has property, would indicate that such right was not abrogated when the ward system of elections was abolished. The opinion of Mr. J. R. Cartwright, who replied to the town solicitor's enquiry, is not, however, so conclusive as to carry conviction to the minds of the critical. It seems an anomaly that with the wards abolished and the one-man-one-vote principle applied to the election of aldermen, that the voting strength of the municipality in the disposition of money by laws should be ruled by special circumstances, without regard to the aggregate value of the properties in the possession of the individual. For instance, the real estate holdings of A., valued at \$50,000, may all be located in one ward, giving him but one vote; while B., by reason of the fact that he owns several small buildings scattered throughout the five wards of the municipality, is entitled to five votes. The fairness of this arrangement is not apparent. It cannot be justified on grounds of equity, nor on the plea that the rights of municipalities are conserved under it. The system is altogether faulty and should be reformed by the legislature.—*Galt Reporter.*

The Bonus Evil.

John Stuart Mill, in his work on Political Economy, says, that a new industry struggling for existence may, with advantage to the community, be protected. Bonusing may, perhaps, be considered protection in a somewhat exaggerated form. The Ontario government has evidently looked at the matter in that light, for it has authorized the giving of bonuses by municipalities to promote the establishment of smelting works and elevators.

Under these circumstances, bonusing is allowable. It is an entirely different thing where the industry has been long established, and is in a fairly prosperous condition. To ask for a bonus under such conditions is a matter that will bear discussion. But, when a manufacturing industry goes from one place to another and puts up its business at auction, as it were, offering to locate it in the place that will bid highest, it is pursuing a course which is, to say the least, not very commendable.

The government should take action to prevent the possibility of such trucking of industries. It is an evil that will grow unless checked by legislative enactment.

Want Collectors Abolished.

From an exchange we learn, that at the December sitting of the county council of Oxford, a prominent municipal man of that part of the country urged upon that body the advisability of memorializing the Ontario Legislature to abolish the office of tax-collector, on the ground that such an official is a needless expense to rural municipalities. This may be the view of a limited number of ratepayers, but we are quite sure a vast majority of those who have township taxes to pay would rather be called upon at their homes by the collector, notwithstanding the trifling additional cost, than be compelled to trudge personally to the treasurer's office to pay their tax bills. It is possibly quite true that considerable numbers might be able to use the post-office to convey their taxes to the treasurer; but by the time the township paid the postage on the tax-slips to the taxpayer, and then the return postage was paid with the additional charge for registration or postal note, especially where the rates require the odd units of a dollar to make up change, the total cost would pay the average salary to collectors—to say nothing of the inconvenience and trouble it would give to people without conveyances in all unincorporated villages to be found in most of our township municipalities, and also to persons with limited education and limited means. The more the subject is examined the more we are convinced that the people generally would prefer the present system in rural districts to the one proposed by an Oxford reeve, and we are inclined to the notion that the Legislature will also so regard it, and think twice before making the proposed change. The fact is, that for some years past, we have had too much tinkering with our municipal legislation; too many people appear to want a change for the mere sake of making a change. It is about time to call a halt along this line.

Long Hauls of Gravel.

There are some indications that we in Ontario will have to face a gravel famine before many years. That the supply is not very great is evident in the fact that the Grand Trunk has to go as far north as Morden for its supply, and the long trains of flat cars that pass through Galt daily, southward bound, carry the gravel away to the other side of Hamilton, and as far as Niagara Falls. Those that have gone through recently were for west Brantford, where the road was washed out by the flood of last spring, and is now being built up. The main line of the Grand Trunk from the Falls west is being nearly all newly gravelled. A number of pits have been opened, and for a time turned out well, but the strata has soon become exhausted, as was the case at Hespeler. The officials say that it is very hard to get real good gravel along the line of the railway, and the supply is becoming scarcer.

A Provincial Board of Municipal Public Works.

An article in a recent number of "Municipal Engineering," discusses to some extent the question of "Private vs. Municipal Ownership," concluding with a suggestion which, in view of the work of the Provincial Board of Health, appears to be quite feasible. The writer says:

"A state board of municipal public works, which a city would be bound to consult before letting a contract or granting a franchise, even if its functions were merely advisory, would prevent many serious mistakes. Assuming that such an administrative board would be both efficient and incorruptible, the legislature could safely make its approval of a municipal franchise final, so far as the terms under which a private company binds itself to supply service are concerned. Upon this programme the advocates of private and municipal ownership alike should unite. Only thus can the private company be properly protected, while municipal ownership, without such supervision, is shown by experience to be in many instances a very hazardous experiment. We do not advocate this reform as a new remedy, nor as a panacea for municipal ills, but only because experience has shown that it is the only method that has been successful in uniformly assuring to cities an honest and efficient management of those public service industries demanded by the modern municipality."

Municipal Financial Year.

Mr. Mutrie, of South Wellington, has a bill on the stocks to change the date of ending the financial year of municipalities from Dec. 31 to Nov. 20, or one month earlier. Mr. Mutrie sent his draft bill to Toronto Council, asking for the co-operation of this city towards gaining the object in view. What effect it had upon the officials and aldermen appeared at yesterday's meeting of the committee on legislation. The committee reported against it.—*Toronto World*.

We doubt if a majority of the people throughout the Province will follow the Toronto city council in this matter. The change would enable treasurers to complete their accounts and have them audited for the twelve months to Nov. 30th in time for the municipal elections. Under the present system there is considerable difficulty in getting an exact knowledge of the year's financial transactions at the nominations and during the brief campaign. Possibly treasurers may, in some instances, object to the change because of the alteration it would involve in their bookkeeping. Some councillors, too, may be expected to do the same thing, for whom it is just as convenient not to have an authoritative statement of the finances made during the elections. But the people as a whole are likely to welcome the proposal as one which will conduce to a clearer and better understanding of the year's transactions before they mark their ballots for the new council.

The matter came before the Guelph aldermanic board at its last meeting, and was referred to the finance committee, who now have it under consideration. In our opinion this proposal is well worth the best attention which the committee and council can give it. About the only objection to it which occurs to us is that each succeeding council would have to father a month's financing of their predecessors.—Ex.

Municipal Publications Announced.

The Municipal and Assessment Guide, by J. J. Kehoe. Published by D. J. Scott, 520, Ossington Avenue, Toronto. Price, \$2.00. This work is similar to *The Municipal Councillors' Hand-Book*, by the same author, published in 1884. It contains 171 pages, with index, and is a summary of the Municipal and Assessment Acts.

The Municipal Manual, (Part I), by C. R. W. Biggar, Q. C. The Carswell Company, publishers, Toronto. Price, \$12.50. To be ready for delivery on or about the 1st of June, 1900. The last edition of the Manual, issued eleven years ago, contained all of the Municipal Acts, whether annotated or not. The volume recently announced as Part I will contain only *The Municipal Act*, with amendments to date, and

(2). Full *Notes of Municipal Cases* reported to April 1st, 1900, in Canada, England and the United States;

(3). *Forms of By-law, Debentures, Rules of Order*, etc.

(4). An *Historical Sketch* of the development of Municipal Institutions in this Province from 1788 to 1900.

(5). A *Comparative Table*—showing (in parallel columns) such sections of the *Code Municipal* of the Province of Quebec, the Municipal Acts of Manitoba and British Columbia, and the Municipal Ordinances of the North West Territories as correspond to those of the (Ontario) Municipal Act or relate to the same subjects.

(6). A brief *Tabular Guide to the counting of Ballots* at Municipal and Provincial Elections, with references to all the reported decisions applicable thereto.

(7). A Synopsis of the law relating to the payment by Counties of their share of the *Expenses of the Administration of Justice*,—(especially useful to County Judges and other members of the County Boards of Audit.)

(8). A List of the Municipalities of Ontario, with references showing the Statutes or Proclamations relating to each municipality.

(9). A List showing what local Municipalities or portions thereof compose the County Council Divisions of the Province, as established under "*The County Councils Act, 1896*."

(10). An *Index of the Cases Cited* (over 5,000 in number) with a reference to the Volume in which each is reported,—and

(11). A complete *Subject Index* (200 pp.) prepared by Allan M. Dymond, Esq., Law Clerk of the Legislative Assembly of Ontario.

PAGES

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