THE MUNICIPAL WORLD

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The Municipal World

PUBLISHED MONTHLY

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

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ST. THOMAS MAY 1, 1903.

The councils of the townships of Sunnidale and Vespra recently passed resolutions requesting their member in the Local Legislature to use his influence in bringing about the taxation of railway property in the Province at its actual cash value.

* * *

Mr. John McDonald, clerk of the village of Bolton, has been appointed clerk of the 4th division court of the county of Peel. Mr. McDonald is also secretary of the Public School and Library Boards and foreman of the Bolton "Enterprise" printing office.

* * *

Three by-laws were carried in the town of St. Marys on the 17th April last. One was to raise $20,000 to construct permanent roadways, another to expend $6,000 in extending the water services and electric lighting system, and a third for the election of two commisssioners annually, who, with the mayor will constitute a Board of Management for the electric lighting and waterworks system.

* * *

In a newspaper report of the proceedings of a township council, we notice the following resolution : "That the reeve of this council be, and he is appointed arbitrator for this council re the county roads," and by a similar resolution of another council, the clerk was appointed to act in this capacity. These proceedings are in contravention of section 457 of the Municipal Act which provides that "No MEMBER, officer or person in the employment of any corporation which is concerned or interested in any arbitration, nor any person so interested, shall be appointed or act as an arbitrator in any case of arbitration under this Act."

Post-Offices—Taxation of.

We are so often asked whether post-offices or the lands occupied or used therewith are taxable or not that we have considered it of sufficient importance to refer again to the statute law and decisions of the courts on the subject.

Section 7 of the Assessment Act declares that all property in the province shall be liable to taxation, subject to certain exemptions mentioned, and among those exemptions are the following :

1. "All property vested in or held by Her Majesty, or vested in any public body or body corporate, officer or person in trust for Her Majesty, or for the public uses of the Province ; and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust for, or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity.

2. Where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable."

The first decision we find on the meaning or effect of the above exemption clauses is Shaw vs. Shaw, 12 U. C. C. P., p. 456. In that case certain goods were distrained for taxes and an action of replevin was brought to recover them and the owner of the goods pleaded that the land, house and premises during the years 1855, 1856, 1857 and 1858 were vested in and held by Her Majesty, and for the public uses of this Province for a term of years ending on the 1st day of April, 1859, and were occupied by James Hopkins, in his official capacity as collector of the customs for the post of Kingston, and as the custom house of the post of Kingston and for the public uses of the Province, and not occupied by the said James Hopkins or by any person otherwise than in an official capacity, or occupied or owned by any private occupant and that the said land, house and premises were exempt from taxation during those four years. Mr. Justice Morrison in delivering the judgment of the court after referring to sub-sections 1 and 2 of section 9 of the Assessment Act, and which are the same as they are now said, "and by the 5th section the word 'property' is to be taken to include both real and personal property. Is is therefore clear that the premises in question being held and vested in Her Majesty and for the public uses of the Province during the years 1856, 1857, 1858 and 1859 as set out in the plea they were not during those years liable to taxation ; but it is contended that leasehold property so held is not exempt, or rather that the reversioner and the land is liable for the taxes assessed during the period it was so vested in Her Majesty ; the statute enacts that all property (which includes leasehold) so held or used shall be exempt. If it was intended that the landlord or reversioner should be liable for the taxes, or that the taxes should be a lien as here contended on the land and collectable at the termination of the lease to the Crown, the Legislature would have expressed such its intention as it has done in the second sub-section where it declares that if such property is occupied by any person other than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable.

The next case on the subject is the Principal Secretary for War vs. the corporation of the city of Toronto, 22 U. C. Q. B., p. 551. The facts of this case were as follows, During the year 1862 certain premises situate on King street in St. George's ward, Toronto, were occupied by Her Majesty's troops, as barracks under and by virtue of a certain indenture of lease. The premises were assessed upon the assessment roll for the year 1862. In January, 1863, the collector called upon the commissariat officer in charge at Toronto, for the payment of $150 taxes on said premises for the year 1862, said officer refusing to pay said taxes on the ground that the premises were not liable to taxation. In the lease there was a covenant by the commissariat officer to pay the taxes. Hon. Justice Adam Wilson in delivering the judgment of the court says at page 554: "The first case relating to the land on King street, is concluded by the judgment of our own court of Common Pleas, in Shaw vs. Shaw, (12 C. P. 456) unless the covenant by the lessee to pay "all taxes or assessments to which the said premises shall be liable" during the lease, can make any difference ; but I think this engagement cannot be binding on the crown. The statute expressly exempts this property from liability to taxation ; probably this would have been the law if no such provision had been made. The crown cannot be prejudiced in its rights by the acts of any of its officers." The next case on the subject is Attorney General of Canada vs. the city of Montreal, 13 S. C. R., p. 352. The facts of this case were that Her Majesty, by the government of the Dominion of Canada, occupied the property for which the taxes were claimed, in virtue of certain leases of such property for the militia department, upon which the department had the right to erect all rifle ranges necessary for rifle practice, and temporary sheds and tents which might be required. This was a lower Canadian case but the section under which the owners, though the crown, claimed exemption was substantially the same as the exempting clauses in force in this Province. It is section 2, cap. 4, C. S. L. C., and reads as follows :

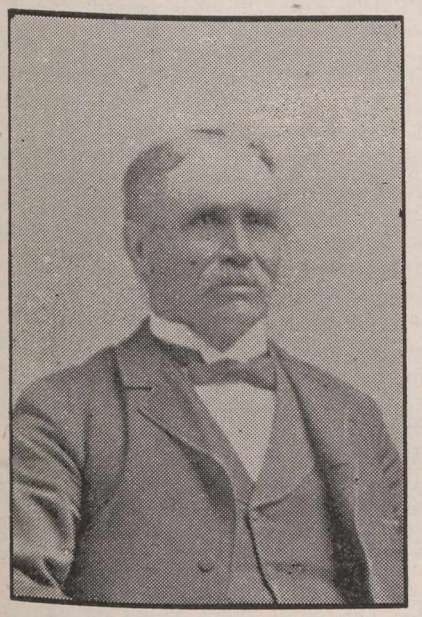
"2. All property belonging to Her Majesty, or held in trust by any officer or party for the use of Her Majesty in what ever part of this Province the same is

(Continued on page 83.)

Municipal Officers of Ontario.

Clerk, Township of Cambridge.

Mr. Sanche was born in 1843 in St. Scholastique, Province of Quebec, where he received his education. He came to the township of Cambridge in



MR. J. B. SANCHE.

1871 and engaged in farming, which pursuit he still follows. He was appointed treasurer of the township in 1873 and remained in that office until January of the the present year. He was appointed to the office of clerk in 1891, and still remains in the discharge of its duties.

Post Offices—Taxation of.

(Concluded from page 82.)

situate, shall be exempt from all local rates or taxes, statute or other labor on any highway, or commutation for the same, &c." The Court of Queen's Bench affirming the judgment of the Superior Court held that the property was not exempt from taxation but the Supreme Court of Canada, the former Chief Justice Strong dissenting, reversed the judgment, holding that the property was exempt. The former Chief Justice Strong wrote a very strong and vigorous dissenting judgment, but as the judgment of the majority of the court settled the law on the subject it is needless to give his reasons against the exemption at large. The essence of his argument is contained in the following words which he used :

"These taxes are not imp sed in respect of the leasehold, but in respect of the proprietorship of the land which is, of course absolutely in the defendants, the crown having a right to enjoy it only, under a mere personal contract in no way operating as a dismemberment of the property or conferring any real right whatever. It cannot, therefore, be said that these taxes are imposed upon property "belonging to, or held in trust" for the crown so as to bring it within the terms of the enactment quoted." It will be observed that in all of the above cases there were leases under or by virtue of which the crown was entitled to occupancy of the lands, and we think that in order to exempt property owned by a private individual it must appear that the Crown is entitled to such occupancy. Where that is shown in the case of a post-office, such post office will be exempt from taxation But there are, no doubt, many cases in small country places where there are post-offices but where there is no such right of occupancy and where that is so the assessor ought to assess the property, and where there is the right of occupancy in the Crown the assessor should assess all of the property, except what is actually used for the purposes of the Crown. We understand that some owners of buildings, only a small part of which is used for a post-office, claim exemption for the whole building. When the assessor has any doubt as to whether a particular property should be exempt he should assess it, leaving the owner to appeal.

"Time of Election."

An exchange, in a recent issue, concludes an editorial comment on our article on page 63 of our issue for last month on the meaning of the expression "time of election" used in the Municipal Act, as follows :

"The decision (in the case of ex rel Zimmerman v. Steele) from so eminent an authority as Chief Justice Falconbridge, may probably be regarded as conclusive so far as relates to a judicial interpretation of the statute. But the decision is to such an extent in conflict with a reasonable meaning of the Act that, it is reported, the particular clause may be amended at the present session of the Legislature."

This statement is misleading, as the repeal by the Legislature of section 5 of chapter 29 of the Ontario statutes, 1902, will in no way affect or interfere with the judicial interpretation placed on the phrase "time of election." It will simply prevent membership of a school board for which rates are levied operating as a ground for disqualifying candidates elected members of municipal councils. The decision in question is in accordance with all previous judicial utterances on the subject, and giving the words used in the Act their ordinary meaning, we do not see how any other conclusion could be arrived at. The legislators in framing the Municipal Act in this regard evidently intended that this construction should be placed on this particular portion of it as sub-section 3 of section 128 provides that "if more candidates are proposed (at the nomination meeting) for any particular office than are required to be elected the clerk (or other returning officer or chairman) shall ADJOURN the proceedings for filling such office, etc.," and proceedings which are closed or are not continuous or continuing could not be ADJOURNED.

An action was recently commenced against the town of Orillia for an amount over $220,000, by the Electrical Supply and Maintenance Company.

* * *

The townships of Vaughan and Uxbridge are two of the latest municipalities to adopt modern methods and pass by-laws commuting statute labor within their limits.

Clerk of the Town of Welland.

Mr. Hellems was born in the year 1835 on a farm, on a part of which the town of Welland now stands. His father was a veteran of the war of 1812 and his mother a daughter of a U. E. Loyalist. At the age of sixteen the subject of this sketch began teaching school and continued in that profession until 1876. When the then hamlet of Merrittville was erected into a village in 1858, Mr. Hellems was appointed its first clerk and remained in

MR. C. R. HELLEMS.

office until 1861 when he removed from Welland, returniug in 1867. In 1870 he was again appointed municipal clerk, and when in 1878, the village was erected into a town, his appointment was confirmed and he still continues to fill and perform the duties of the office. In 1881 he was appointed Police Magistrate (without salary) and for nearly twenty-two years has efficiently and satisfactorily officiated in that capacity.

Engineering Department

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

Roadmaking Old and New.

Among the earliest roads of which we have definite information were those built by the Romans, chiefly as military highways, leading east and west to the remote Provinces, from which arose the proverb, "all roads lead to Rome." So substantially were these roads built, of layer upon layer of stone and concrete, three and four feet in thickness, that many of them still remain, and are commonly supposed by the peasantry of Spain and other of the countries of Southern Europe, to be of supernatural origin. These roads were built at an enormous waste of money and labor, and while of the greatest durability they lack the first essential of modern construction—a properly balanced union of economy and efficiency.

For several centuries after the downfall of Rome, road-making became a forgotten art. In France during the eighteenth century, under the engineer Tresaguet, road construction was revived, but on very different principles from those followed by the Romans. The type of road built by the French engineer, was that introduced into England by Telford, and consisted of a foundation of large stones, laid on edge and carefully shaped, upon which was placed a coating of finer broken stone.

Early in the nineteenth century, McAdam advocated and constructed in England a still more economical design, in which the foundation of large stone was omitted, but greater care was given to draining the roadbed. McAdam's system is that most commonly followed to-day with a number of important alterations consequent upon the introduction of roadmaking machinery. In the time of McAdam, the best method attainable, was to break stone by hand, which was then placed loose on the roadway and left for traffic to consolidate. The process of consolidation was slow, during which a considerable amount of the stone was forced into and mixed with the earth subsoil, lessening the strength and durability of the road.

Under present methods by means of a crusher, stone is broken much more cheaply than it could be done by hand. Stone dust and chips, (screenings), are created in the process of crushing, which are used to fill the voids, instead of waiting for this to be produced by traffic, or allowing the clay or loam from beneath to be forced up among the stones. With a roller the road metal is made thoroughly compact, forming a strong, waterproof covering over a firm subsoil. The result is that more perfect work is done in a few days and at less cost than the methods of McAdam or Telford would accomplish in several months. The main features of present day roadmaking, which are of recent introduction are:

(a) The use of grading machines for forming the earth foundation and open drains.

(b) The thorough drainage of the earth subsoil.

(c) The use of a crusher to prepare the road metal.

(d) The screening of broken stone so as to grade it for application to the roads in layers according to size.

(e) The use of stone dust and fine chips (screenings) as a binder.

(f) The use of a roller to consolidate both the earth foundation and the surface covering of broken stone.

A road surface of gravel or broken stone performs various services. The ordinary dirt road of clay or loam alone ruts readily, softens quickly after a rain, and has little supporting power. A well-compacted layer of gravel or broken stone over it distributes the concentrated wheel load over a greater area of sub-soil; it does not rut readily, and affords good surface drainage; it gives a smooth, hard wearing surface; water does not easily penetrate it so as to soften and reduce the supporting power of the sub-soil.

The depth of gravel or stone to be used must vary with the quality of the material, the amount and nature of traffic on the road and the nature of the sub-soil. A dry, compact and stony sub-soil needs less metal than does a plastic clay, difficult of drainage. A definite rule cannot be laid down to accurately meet all conditions, but from six to twelve inches of well consolidated material will afford a sufficient range to accomodate most circumstances. Ordinarily ten inches of metal should accomodate the heaviest traffic to which a gravel or broken stone roadway can be economically subjected.

A very notable defect of most country roads is the flat or even concave surface. Others present the opposite extreme and are so rounded up as to be dangerously high in the centre, making it difficult for vehicles to turn out in passing. Roads must be crowned sufficiently to shed water from the centre to the open drains at the side, otherwise water will stand in the roadway, soak into it, soften and cause rapid wear, resulting in ruts and holes, but a crown higher than is necessary to properly drain the surface is also objectionable. The smoother and harder the surface of the road the less crown is needed.

The amount of crown should not be more than sufficient to provide for surface drainage. A sharp crown tends to confine traffic to the centre of the road, and also in turning out the weight of the load is thrown on one pair of wheels in such a way as to rut the side of the road. The shape of the crown is a matter on which expert road-makers differ, but with the class of material available for roads in Ontario, and the methods and plans of construction, a form as nearly circular as possible will be found serviceable, and most easily obtained.

From the edge of the open drain the graded portion of the roadway should be crowned with a circular rise of one inch to the foot from side to centre. That is, a drive-way twenty-four feet wide should be one foot higher at the centre than at the side. This amount of crown may at first appear excessive, but with gravel roads, and roads metalled with the quality of stones commonly used, is not more than enough to provide for wear and settlement consistent with good surface drainage.

The elevation of the road above the level of the adjacent land, need not be greater than is sufficient to provide against the overflow of storm water, which should always be guarded against. The depth of the open drain must vary according to the amount of fall and the quantity of water to be provided for; also according to the sub-drainage needed and provided. When tile sub-drains are used, the open drain can often be very shallow, in which case the width of the graded roadway can be narrowed, there being no danger of accidents such as are caused by a deep trench at the roadside. The tile drains should be placed below severe frost, and usually a depth of three feet will answer.

Specification for Macadam Roadway.

LOCATION AND EXTENT OF WORK.

1. The location and approximate extent of macadam or broken stone roadway to be laid under these specifications are as follows:

EXCAVATION AND GRADING OF ROADWAY.

2. The space over which the roadway and curb are to be laid shall be excavated to the required depth below the elevation of the finished roadway in accordance with the plans and profiles, and schedule, on file at the office of the clerk of the town of ————, and forming part of these specifications. Perishable or objectionable material shall be removed to a further depth, to secure a firm foundation if so required by the engineer. Such excess excavation shall be filled with gravel or other material approved by the engineer, and the bottom of the subgrade thus obtained shall be then made thoroughly firm and solid by pounding and rolling. For all extra excavation or filling ordered by the engineer, the contractor shall be entitled to the sum of 20 cents per cubic yard.

REMOVAL OF EXCAVATED EARTH AND RUBBISH.

3. The earth taken from the excavation for the roadway and curb is to be used in

properly grading up the boulevards and filling in any portion of the roadbed which is beneath the grade line on the proposed improvement, and the surplus earth is to be teamed from one point of the street to another as may be required in making the said boulevards, where there is not sufficient earth, or in raising the elevation of lots adjacent to the street. All earth in excess of that required on the street, stones, posts, stumps, other obstacles or rubbish shall remain the property of the town, to be removed by the contractor to such point or points as the engineer may direct; if not hauled for a distance exceeding one-half mile from the street, such removal to be without extra charge.

LEVELS, STAKES AND BENCH MARKS.

4. The curbing, grading, draining, macadamizing and all work connected herewith shall be completed to the lines and levels given by the engineer. No stakes or bench-marks placed for this purpose by the engineer shall be moved or effaced by the contractor without the permission of the engineer so to do.

TILE DRAINAGE.

5. The contractor is to furnish the tile and construct a four-inch filled tile drain along the inside or roadside of the curb line on each side of the street, as shown upon the plan on file at the office of the clerk of the town of———. The tile are to be placed in an eight-inch trench, the bottom of the trench to be at least eighteen inches below the sub grade of the roadway; and the tile shall be uniformly and evenly laid with a fall of not less than three inches in one hundred feet to a proper outlet. Where it is found necessary by the engineer in reaching a suitable outlet, to carry the line of tile beyond the street allowance, the contractor shall receive the sum of sixty cents for each rod so laid beyond the limits of the street allowance. Tile drains for carrying surface and other water through or under the street or roadway shall be laid as indicated upon the aforesaid plans and profile. All tile used shall be of the best quality of clay, manufactured expressly for drain purposes, in lengths not less than one foot, and of uniform diameter throughout. All earth excavated in the laying of these drains shall be returned to the trench, being thoroughly rammed and pounded in layers not exceeding one foot in thickness, and rendered perfectly firm and solid, to the satisfaction of the engineer. When sewer pipe is required in place of common tile, such pipe shall be furnished to the contractor by the engineer, and shall be laid in all respects to the satisfaction of the engineer.

CONCRETE CURBS.

6. The contractor is to construct upon each side of the roadway throughout the whole length of the street a concrete curb as shown upon the plans and profiles hereinbefore mentioned, such curb to be perfectly true to the line and levels given by the engineer. At each street, lane, alley, private way, etc., the curbing shall, unless otherwise directed, be returned to the sidewalk, the returns to be placed at an angle of thirty degrees with the line of the curbing. The earth at the back of the curbing is to be thoroughly rammed so as to ensure stability of the curbing. The material and workmanship used must be in conformity with the specifications and plans for curbing hereto attached, to the satisfaction of the engineer, or other person in charge of the work.

BOULEVARDS TO BE LEVELLED AND TREES PRESERVED.

7. The boulevard between the curb line and the sidewalk is to be regularly levelled off from the grade line at the top of the sidewalk to the top of the curb. The boulevard between the sidewalk and the street limit is to be regularly and evenly graded by cutting down or filling in, as may be required, so as to conform to the grade of the sidewalk, except where otherwise directed by the engineer, in order to conform to the elevation of the lawns along the said street The boulevards are to be left smooth by raking or otherwise levelling to the satisfaction of the engineer or other person in charge of the work. The contractor, in doing the work, must excavate or fill in around trees on the said street in a careful manner so as not to bark or injure the said trees.

WATER GULLIES, MANHOLES, STANDPIPES.

8. Returns and off-sets, if necessary, must be made in the line of the curb around any of the water gullies on the street. The levelling of the top of the sewer gullies, manholes, etc., and the building up or lowering of all waterworks standpipes in such manner as the engineer may direct, to suit the grade and crown of the roadbed, will be done by the contractor.

LANE AND STREET INTERSECTIONS.

9. All intersections of private lanes are to be properly made and graded in the boulevard by the contractor at a gradual slope from the line of the street allowance to the bottom of the gutter, and all street intersections are to be graded to conform to the finished grade of the street.

BROKEN STONE SURFACE AND QUALITY OF STONE.

10. The surface of the roadway over the said roads is to be covered with crushed stone to the depth of —— inches in the centre, and —— inches at the curb, to be regularly and perfectly spread over the whole of the road bed to a depth to conform to the cross section shown on the drawings, and proportionate to that specified for the centre and curb. The crushed stone is to be furnished by the contractor and shall be durable limestone, granite or field stone, of such quality and broken to such dimensions as may be approved by the engineer, and authorized by the council of the town of ——, and shall be equal to the sample to be seen at the office of the clerk of the town of ——. All stone used must be free from clay, loam, or earthy material. Quarry strippings will not be accepted.

PLACING STONE ON THE ROADWAY.

11. The broken stone is to be placed on the roadway in the following manner:

(a) Crushed stone of a size to pass through a three-inch ring is to be placed over the whole of the surface of the sub-grade to a depth after consolidation of —— inches at the centre and —— inches at the curb. Upon this shall be spread a one inch coating of fine screenings, to be worked into the interstices of the stone, and the layer shall then be harrowed, saturated with water and thoroughly rolled.

(b) Upon this shall be spread a layer of crushed stone such as will pass through an inch and one-half ring to a depth of —— inches at the centre, and —— inches at the curb, after consolidation, this to be coated with a one-inch coating of screenings, harrowed, saturated with water, and thoroughly rolled.

(c) Upon this shall be spread a sufficient quantity of crushed stone such as will pass through a one-inch ring, to bring the roadway to the line of the finished grade, this to be coated with a one inch layer of screenings, harrowed, thoroughly saturated and rolled.

SCREENINGS TO FILL VOIDS.

12. Special care must be taken to work each coating of fine screenings down into the interstices or voids in the mass of stone beneath, by thoroughly saturating and flooding with water, and by passing a harrow over the surface of the whole mass and rolling until the engineer is satisfied that the interstices are sufficiently filled.

MANNER OF ROLLING AND WETTING ROADWAY.

13. Rolling shall be commenced at the edges or curb of the road, working towards the centre, and shall be continued until the earth sub-grade and each layer is firmly set, to the satisfaction of the engineer, and ceases to further consolidate under the weight of the roller. The final rolling must be continued until the roadbed is perfectly consolidated and unyielding, to the satisfaction of the engineer. During the whole of the rolling herein specified, a sprinkling cart is to pass immediately in front of the roller so that at all times the surface of the road will be saturated with water. The water is to be obtained from the street hydrants for which a charge of one cent per lineal foot must be paid by the contractor to the water commissioners.

STEAM ROLLER PROVIDED.

14. A steam road roller will be provided by the town of ——, together with a man to operate it, also oil and waste, for which the contractor will pay the said town of —— the sum of ten dollars for each and every day the roller is in use, the contractor to supply the necessary fuel, water, or other material necessary for its proper operation.

What Business Men Can do for Better Roads.

Good county roads are of as much value to the business man living in a town, as to the farmer who is commonly supposed to be the only one benefited. If the farmer must drive over the roads to the centres of population and to the railway station to dispose of his farm produce, it is equally necessary to the townman that the farmer should use the roads to draw the merchant's goods back to the farm. It does not follow, because the farmer personally drives over the roads, using his own vehicles, that he is the only one interested in the condition of the roads. The engineer who controls the engine is not the man who is chiefly benefited by the railway service.

Every ton of goods handled by railway or steamer has to be carried over the common roads both at the beginning and end of the train or vessel journey. Millions of dollars have been spent on our railways, waterways, and harbors, yet without the common country roads, all this expenditure would be useless. Without common country roads, steamers would lie idle in the harbors, railways would cease operation, for they could not receive the products of field, forest and mine to transport. Countries have existed and prospered—without railways and without fast lines of steamships, but they cannot prosper without good country roads.

In a period of bad roads railway receipts suddenly drop to a minimum, and for that reason, railway companies are among the most active of good roads advocates. Merchants, wholesale and retail, bankers and all professions, have felt the depression which ensues from a season of impassable roads. Because of bad roads the Christmas trade is a matter of constant uncertainty, in some years producing a handsome profit, in others a loss. Good roads would do as much for the business man of Canada, as for the farmer.

The work of country road building is a matter of considerable expense as compared with the number and wealth of those upon whom it now commonly rests.

In Ontario there are 60,000 miles of road maintained by the rural municipalities. To put these roads in fit condition will cost, including bridges, at least an average of $1,000 per mile, creating a total outlay of sixty million dollars. Under existing methods this practically rests upon the farmers, or but little more than half the population and half the assessment of the Province. A transcontinental railway involving an expenditure of $100,000,000, is regarded as a stupendous enterprise, yet it is one towards the cost and maintenance of which, half a continent and more will contribute. Why should a work of $60,000,000 be left to but half the citizens of a single Province? Wherever it is left solely to the farmers it is doubtful if the roads will ever be adequate to the complete development of the resources of an agricultural country.

The people in the towns and cities are very apt to urge that, because their pavement cost so much per foot frontage more because the farmer receives the reciprocal use of the city street in return for the city man's use of the country road, they have, therefore, discharged their obligation with regard to roads. Contrasting a 100-acre farm, however, with a 100-foot town lot, and a farm road at $1,000 with a city road at $5,280, we find the cost to the individual farmer is $166, and to the city property owner $50.

Many of the streets, it may be said, cost much more than the amonnt named. The same is true of the country roads, and if we double the cost in the one instance we must do so in the other, so that the proportions remain about constant. Then too, a 100-foot lot is a greater frontage than is occupied by the majority of town houses. A 100 acre farm is not uncommon in the country, and in levying it with one-sixth of a mile, there has not been included its proportion of flankage existing in every block.

What action then, can a business man take, who is anxious to do something for better roads? He will at once be confronted by the fact that the townspeople do not understand why they are financially interested in better roads; while many farmers will be inclined to resent any interference in a work, the economic features of which they have not studied, and which they feel quite able and willing to carry on in the future as in the past.

The situation is this: Country roads as a rule, are maintained by township councils. Each township, according to its size, wealth and population, is spending a considerable amount annually on its roads. This expenditure is made primarily under the well-known statute labor system, with the result that it is frittered away with less than half the permanent results it could produce under an efficient system and proper methods. Already under the good roads movement about 120 townships have discarded statute labor and are moving along approved lines. They are purchasing road machinery, graders, rollers and stone crushers, etc. They are doing all work under from one to six road commissioners, instead of under from fifty to one hundred and fifty pathmasters. They are building steel and concrete bridges, stone and concrete culverts, and in other ways are doing permanent, not merely temporary work on the roads.

In bringing this about, much assistance has been rendered in some cases by boards of trade. To the Board of Trade of Orillia is due the credit of taking the initiative whereby the township of Orillia adopted better methods of road management. Other townships of that district, seeing the beneficial results, are considering more favorably a change from statute labor. The Boards of Trade of Orillia and Barrie were largely instrumental in securing a county roads system for the county of Simcoe, under the recent Act of the Legislature, appropriating one million dollars for highway improvement. The Board of Trade of St. Marys has shown an active interest in country road improvement, which has undoubtedly influenced the surrounding townships. The Brantford Board of Trade was recently instrumental in securing a most successful county convention of municipal councillors for the discussion of road improvement.

This is one channel through which an organization of business men can advance the movement for better roads. By securing the adoption of a county system of roads, and taking advantage of the Provincial grant, they can provide that the towns will pay, in the county rate, a certain amount towards road construction, thereby assisting financially in the most practical way.

Apart from organized effort, through Boards of Trade, business men possess a strong influence which can do much to draw the attentiou of county and township councils, or councillors individually, to the aims of the good roads movement. Their influence can create organized effort which persistently put forth, will enable councils to take advanced steps in this important matter. The public spirited men everywhere who use the roads, know the need of and are advocates of better methods of roadmaking and road management. The principal object must be to reach and interest those who do not use the roads, who do not know their value, and those who, using the roads, are indifferent regarding them.

Public meetings and conventions called together by townships and county councils have been one of the most potent means of moulding public opinion and bringing about reform in this matter, the efforts of the Ontario Commissioner of Highways having been largely directed through this channel as well as through the circulation of a large amount of literature.

The co-operation of business men can be made exceedingly effective in advancing the cause of better roads.

Laying Tile Culverts.

To meet with success in the use of tile culverts they must be put in place properly. They should be laid with a good fall on a regular grade to a free outlet, in such a way that water will not stand in them.

The tile should be laid with the spigot end down grade, and the joints made tight with cement mortar. If the joints are open, water will work its way along the outside of the culvert, and finally make a considerable channel, which will allow the culvert to get out of line and finally result in a "cave-in." To prevent the water finding its way along the outside of the pipe, it is advisable to protect the ends with concrete, stone or brick head-walls

Care should be taken to excavate a concave bed for the pipe, with depressions for the bell of the pipe to rest in, thus securing an even bearing, without which a heavy load passing over before the culvert has properly settled into place may burst the tile. Tile cannot be used in very shallow culverts, but must have a sufficient depth of earth over them to protect them from the direct pressure of heavy loads. The depth of covering nece sary increases with the size of the pipe. At least a foot of earth over the top is advisable in every case, but for culverts of two feet in diameter or over, this should be increased to at least eighteen inches.

The earth should be well packed and rammed around the tile to secure a firm bearing, and light soils should not be used immediately over or around the culvert. A heavy clay, a firm gravel, or a compact sand or gravel will answer, but vegetable mould, water sand, and light leams are subject to wash-outs.

At the outlet the culvert should be set nearly flush with the surface of the ground. If set higher than the surface, the fall of water will wash out a depression, and in time will undermine the end of the culvert. A too rapid grade will have the same effect, and it is well to cobble-pave an outlet where this undermining action is likely to occur.

Roadmaking Outlined.

1. Every good road has two essential features :

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

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

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

3. To accomplish this :

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

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

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

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

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

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

5. Roll the gravel or stone with a road roller until it is smooth and hard ; otherwise keep the road metal raked or scraped into the wheel or horse tracks until consolidated.

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

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

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

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

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

11. Repair old gravel roads which have a hard centre but too little crown, and which have high, square shoulders, by cutting off the shoulders, turning the material outward across the ditch if necessary, and placing new gravel or stone in the centre of the road. Do not cover the old gravel foundation with the mixture of earth, sod, and fine gravel of which the shoulders are composed. The shoulders can be most easily cut off by means of a grading machine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A $100,000 by-law was carried in Hamilton to be expended chiefly in street improvement.

* * *

The town of Welland will purchase a steam road roller, at a cost of $3,000, issuing debentures for the amount.

* * *

By-laws were carried in Sault Ste. Marie providing $35,000 for street improvement, $16,000 for a town hall and $30,000 for a high school.

* * *

In connection with its electric street railway, St. Thomas will purchase Pinafore Park, a large property to the south of the city, formerly owned by the street railway company and conducted as an attraction for summer traffic.

Before the Election.

Oh, no, we are not candidates—
We're looking around for fun ;
There's plenty of time to change our minds
If we conclude to run.

—*Cleveland Plaindealer.*

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.

Remuneration of Councillors in Towns.

279—T. C.—In your answers to former questions you say the council of counties have power to pass by-laws providing for the payment of members of the council. The way I have been led to believe for some time was that organized towns and townships in districts are counties, each one of them having the same powers conferred upon them as councils of counties have to sell lands etc. If the above is correct, please state if it changes your answers to former questions?

There is nothing in the statutes to warrant the contention that towns and townships in unorganized districts are counties, or that they can exercise generally the powers thereby c nferred upon counties. Section 53 of chapter 225, R. S. O., 1897, confers the same powers as to the sale of lands therein for taxes upon municipalities in unorganized districts as are possessed by counties. This section, we think, applies to rural municipalities (townships), for the reason that the "reeve" of the municipality is empowered to exercise, in this regard, the functions of the warden of a county, and a town has no such official as a "reeve." The law as to the sale of lands for arrears of taxes in towns in the unorganized districts as well as in towns in other parts of Ontario will be found in section 224 of the Assessment Act. Nowhere, either directly or indirectly are councils of towns empowered to provide for the payment of councillors thereof.

Drainage on Railway Lands. Status as Petitioners of Parties Assessed for "Injuring" and "Outlet" Liability.

280—G. I.—A petition for a new drain was presented to the council requesting the council to send the engineer on the area described in said petition and if necessary to lay out a drain etc. The petition was signed by a majority of the owners interested, the engineer reports in favor of a new drain to drain the area described in petition. The proposed new drain crosses the right of way of the G. T. railway. The railway company is willing to put in iron piping under their tracks at their own cost, if the several owners interested in said drain pay the cost of the iron piping which is $200, and the railway company wants the council to pay that amount to them before they start work. But section 85, clause 2, says, "No agreement shall be entered into with the railway company without the consent in writing of a majority of the owners liable for construction and maintenance of said drain." I enclose a sketch of said drain.

A, C, D, E, F, owners all signed the petition an down the lands benefited south of the new culvert. The questions are:

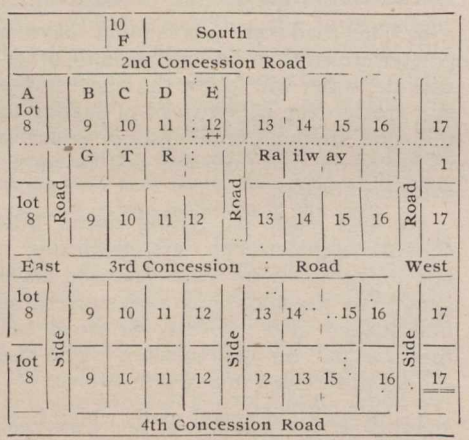
1. As A, C, D, E, F sign the petition for said drain, and know it will have to cross said railway track, does the law not also require them to sign an agreement as section 85, clause 2, requires in addition to signing the first petition?

2 D and E, the promoters of the drain, say they will sign an agreement with the council to guarantee costs until the engineer assesses all the owners benefited. They seem afraid the other owners would not sign an agreement. Would not such a course be illegal as the other owners would not know of said agreement?

3. Does said agreement require a majority of all the owners on the drain to sign it or only a majority of the owners above where said drain crosses the right of way of G. T. R.?

4. As the owners south of the proposed new culvert are not benefited by its construction, and, of course would not sign an agreement for its cost, can their lands be assessed for its construction and maintenance, the culvert on the railway I mean?

5. Does not section 3, clauses 3 and 4 exempt owners benefited under them from being counted for or against a drainage petition unless the proposed drain goes through his lands?



* Head of Drain.
Dotted line—Proposed Drain.
‡ Culvert. =Outlet.
About 200 acres south of new culvert.

1. No.

2. The statutes make no provision for entering into an agreement of this kind.

3. The agreement mentioned in subsection 2 of section 85 of the Municipal Drainage Act, in order to be effective, must be signed by a majority of all the owners liable for the construction or maintenance of the drainage work, and not merely of those who own lands above the point where the drain intersects the lands of the railway company.

4. Yes, provided the agreement has been signed in accordance with the provisions of sub-section 2 of section 85. (See sub-section 1 of this section)

5. Owners of lands or roads made liable for assessment for "injury liability" as defined by sub-section 3 of section 3 of the Act, and for "outlet liability" as defined by sub-section 4, shall count neither for nor against the petition required by sub-section 1, but not for the reason that the drainage works are not constructed through or across their lands. All owners assessed for benefit as distinguished from those assessed for outlet or injuring liability must be counted though the drain does not run through their lands.

Assessment of Farmer's Sons and Non-Residents.

281—R. A. K.—1. Has the son or sons of a man who resides in the adjoining municipality and who works his farm in this municipality, the right to be placed on the assessment roll as farmer's sons?

2. Does the law require a man who resides in the adjoining municipality and who works his farm in this municipality, to make application to be placed on the resident roll, or would the assessor be justified in placing him on the resident roll without such application having been made?

1. No. See sub-section 4 of section 13 of the Assessment Act (column 4) and clause (fourthly) of sub-section 1 of section 86 of the Municipal Act.

2. The notice required by section 3 of the Assessment Act must be given by the owner himself. The assessor has no authority to assess him as if he were a resident.

County Clerk Cannot be Arbitrator Under Act for Improvement of Highways.

282—J. C. R.—Under the act for the improvement of public highways a municipality rejects the highways designated by the county by-law, and by the provisions of said Act the matter must now be determined by arbitration. The county appoints as its arbitrator the county clerk. Is not this official disqualified by chap. 223, sec. 457 R. S. O. 1897?

Yes.

Licensing Vendors of Meat.

283—J. C. G.—We have a resident butcher in this village who pays taxes on his property the same rate as other places according to assessment, and he wants a by-law passed to prevent any outside butcher coming and selling in small quantities without paying a license at least up to the amount of his taxes. Is such a by-law legal?

Sub-section 4 of section 580 of the Municipal Act empowers councils of villages to pass by-laws "for preventing or regulating the sale BY RETAIL in the public streets or vacant lots adjacent thereto of any meat, etc., offered for sale," and sub-section 1 of section 581 of the Act authorizes such councils to pass by-laws subject to the restrictions and exceptions contained in section 579 "for granting annually, or oftener, licenses for the sale of fresh meat in quantities less than the quarter carcase, and for regulating such sale, and fixing and regulating the places where such sale shall be allowed, and for enforcing the payment of the sums fixed by the by-laws of the council of the municipality to be paid for such license, etc.," but the by-law must be in such form as to apply to all alike, making no discrimination in favor of resident butchers as against non-resident butchers.

Care of Road While Repairing Bridge.

284—M. E.—Our council have entered into an agreement for the construction of a cement bridge. The highway where the bridge is to be built is one which has a large amount of heavy traffic, as the bridge itself is within 200 yards of an important railroad station. The mail also makes two round trips daily over this road. The length of time it will take to build the bridge will be about two weeks. There is a road one mile north and also one mile south which can be used in its stead.

1. Will the council be obliged to build a temporary bridge for the use of the public while the new one is being built? One for that purpose would cost at least $100.

2. Provided the council see fit to close the road without making any such provisions, would they be liable for damages resulting from such interference?

3. If the road can be closed that length of time, for said purpose, what notification would be necessary?

1. No, but the council should complete the new bridge with as much expedition as possible, so that the road will not be kept closed an unreasonable length of time.

2. No.

3. A notice should be conspicuously placed at either end of the road on which the bridge is in course of erection warning the public that it is for the time being "no thoroughfare," and sufficient barriers should be erected on the highway at each end of the bridge, in order to prevent people from driving into the dangerous place, and at night bright lights should be placed on each of these barriers to indicate their location.

Liability of Treasurer's Sureties.

285—I. A.—I am directed by our council to write you asking for information regarding township treasurer's bonds. The council wish to know how long the treasurer's bonds will hold good after given, and wish also to know whether or not the bondsmen should be notified year by year as to their liability. Would bonds given in 1892 still hold good, the bondsmen never being notified in meantime that the same treasurer is in office, and that they are still held as his bondsmen? You might send me a printed copy of treasurer's bonds and give me any information you can regarding same.

We are of the opinion that the sureties continue liable so long as the treasurer whose sureties they are continues in office, and that no yearly or other notice need be given to them. This answer is given after having examined a copy of the bond signed by the treasurer and sureties.

Persons Entitled to Vote on School Question.

286.—CLERK.—In one of the school sections in our township they are going to build a new school house. Some of the ratepayers want to move to another site and some oppose it. I wish to know who are entitled to vote.

1. Are non-resident owners who have their property rented?

2. Are non-resident's sons who are assessed jointly with their father, said sons having all their interests in another municipality?

3. A widow and her daughters are assessed jointly and work their own farm. Should they all vote?

4. A widow and daughters are assessed jointly and have their farm rented. Are they entitled to vote?

5. Are non-resident owners who pasture their property, they living across the town line in another county?

1. Yes, if they are ratepayers whose names are on the assessment roll.

2. Yes.

3. Yes, if of full age.

4. Yes.

5. Yes, if they are assessed and are ratepayers.

Maintenance of Indigents.

287—L. W. F.—We have an old man in our municipality who has become unable to earn his living, has no property or relatives in the municipality. The council at the present time are paying for his keep. Are they compelled to do so, or is there any place for the aged poor where they could send him where he would be cared for?

The council is not bound to maintain indigents at the expense of the municipality, and if there is no house of refuge in the municipality there is no place to which he can be sent.

Time for Payment of Taxes—Refusal of Reeve to Sign By-Law.

288—X—1. Can a council pass a by-law legally declaring taxes due on 1st of November?

2. Can they force payment before the 14th of December of taxes in same year legally?

3. What per cent can a council charge legally on over due taxes per annum?

4. Can a reeve refuse to sign a by-law that is carried by three of council if he thinks said by-law not right?

1. Yes. See section 60 of the Assessment Act as enacted by section 4 of chapter 27 of the Ontario statutes, 1899.

2. Yes. Taxes can be collected by distress of the goods and chattels of the person chargeable therewith at any time after the expiration of fourteen days after notice of demand has been served or made.

3. Five per cent.

4. Yes, but the other members of the council can appoint another member chairman pro tem and he can then sign it.

Equalization of Union School Section Assessments.

289—X. Y. Z.—A township adjoining us saw fit to make changes in their school section system which took from our union sections several ratepayers which made it necessary for us to make a new equalization.

1. Is the township or the section liable for the expenses of the assessors and other officer's work in connection with it?

2. In making the general equalization every third year, who should pay expenses, etc. and if the different sections, should it be collected through the council or should the assessor, etc., apply to the secretaries of the individual sections?

We can best answer this question by quoting the contents of a letter written on the subject by the Deputy-Minister of Education to a school inspector in Chatham. They are as follows:

DEAR SIR,—I am directed by the Minister of Education to state in reply to your letter that the work of the assessors becomes that of referees or arbitrators when engaged in equalizing the union school sections' proportions, and their payment should be from the *funds of the union section.*

Your obedient servant,

JOHN MILLAR,
Deputy-Minister.

Toronto, February 20th, 1896.

See also our article on "Assessors' pay for equalizing union school section assessments," on page 160 of THE WORLD for 1901, October issue, and the report of a case involving this point, decided against the township of Douro, in the third column on page 178, November issue.

Township Not Liable.

290—C. O. D.—At our last council meeting, we had a claim put in for damages to a light wagon. The owner is a storekeeper five miles from the railroad station. He had to go to the station for goods when the roads were in a very bad state, some places the road was free of snow and other places the road was full of snow. The axle of the wagon was broken in a snow bank. Should the council have had the road shovelled out as the roads were breaking up at the time the wagon was broken? If the owner of the wagon had waited two days the roads would have been in a better state for travel. Should we pay the claim?

We do not think the council is liable for this claim for damages, under the circumstances mentioned.

Payment of Costs of Local Improvements in Unincorporated Village.

291—ALPHA.—1. We have a village in our municipality which was set apart by by-law about six years ago for the purpose of commuting their statute labor and expending their commutation tax on the streets and sidewalks. The sidewalks are in a dangerous condition, and ratepayers in village are anxious to have cement sidewalks. We propose to have the village set apart as a police village. If this is done, could the council issue debentures on this village for this purpose? I can find that such can be done for fire engine, park or garden, but no word about sidewalks. I am doutful about it. If such can be done, please quote section?

2. If this cannot be done, the next best thing will be to set said village apart for local improvements. If we get the required number of petitioners for submission to council, will it require to be voted on by electors in the village?

3. Have township councils power to issue debentures upon a police village to raise money to build cement sidewalks?

4. If a village is set apart by by-law for local improvements, will it require the assent of the electors before debentures could be issued to raise money to build cement sidewalks? Please give sections in both cases.

1 and 3. A township municipality cannot legally issue debentures for the purpose of raising money to construct cement sidewalks in a police village therein, and levy a rate indiscriminately upon all the taxable property within the limits of the police village to meet the payment of these debentures as they mature.

2 and 4. The council upon the receipt of the petition mentioned in sub-section 1 of section 37 of the Municipal Act may set apart this area as a hamlet for the purposes of sections 664 to 687 (both inclusive) of the Municipal Act (one of which is the construction of sidewalks.)

See clause (b) of sub-section 3 of section 37 of the Municipal Act. If such petition cannot be obtained, section 664 of the Act empowers township councils to pass by-laws for the construction of cement sidewalks in any part thereof, for the issuing of debentures to provide for the cost of constructing such sidewalks, and for levying the amount necessary to meet the payment of these debentures upon the real property benefited by the building of the sidewalks. The Act provides for three methods of undertaking this work, namely, by petition, as mentioned in sub-section 1 of section 668 on sanitary grounds, as mentioned in sub-section 4, and by the voluntary act of the council as set forth in section 669. There is no provision made for the submission of a by-law of this kind to the vote of the electors. Even if the village is set apart as a hamlet, the council must comply with section 664 and following sections.

Fenceviewers Cannot Settle Disputed Line—Keeping Open of Snow Roads - Right to Pass Over Adjoining Lands When Road Obstructed.

292—W. D. M.—1. The fenceviewers were called on to settle a dispute between two parties A and B, as to the amount and kind of fence that was maintained between their lands which are the east and west halves of a township lot. The award was made and stated the kind of fence and quality to be built by each party, but the questian of the correct line was not taken up. Afterwords B took down his fence and built a portion of it over on A's property, at least so A thought, as he has employed a surveyor and had the line run. This survey does not suit B and he refuses to remove the part of fence already built to the line as given by the surveyor. What course should A take to compel him? Can he bring action under the old award or must he bring the fenceviewers on again?

2. In the absence of a by-law by the municipality for the opening of snow roads, is a pathmaster authorized to call out the ratepayers in his division, when required to shovel snow and if so, can he give them a certificate for the performance of so much statute labor? If not, who is responsible, and how are the funds to be provided?

4. If a traveller is storm bound, can he legally open fence into farm lands for the purpose of getting through, and if so, how long can this be done before the owner can shut up the road and can he claim any damages for breaking of fences?

1. If the award of the fenceviewers, so far as it goes, is satisfactory to the parties concerned, or owing to the lapse of the time for appeal it has become binding upon them, the party desiring to enforce the award should have the line between the lands of the parties located by a competent surveyor, and proceed as provided in section 9 of the Line Fences Act. (R. S. O., 1897, chapter 284). If the other party is not satisfied with the line as thus located, he can bring an action for trespass, and leave it to the courts to say whether the fence has been built in the proper place or not.

2. A pathmaster has no such authority unless the council of the municipality has passed a by-law under the authority of sub-section 3 of section 537 of the Municipal Act.

3. The corporation is responsible for keeping the roads open and in a reasonable condition of safety during the winter, as at other times during the year, at the general expense of the municipality. Sub-section 8 of section 561 of the Act empowers councils of townships to pass by-laws for providing for the making and keeping open of township roads during the season of sleighing each year, and sub-section 8 authorizes such councils to pass by-laws for providing for the application of so much of the commutation of the statute labor fund as may be necessary for keeping open such roads.

4. When a road is obstructed by snow or otherwise, persons driving along it may legally lay down fences and pass over the lands of adjoining proprietors, doing as little damage to such lands as possible, and returning as soon as possible to the travelled highway. See our answer to question No. 167 in our issue for March, 1903, and the article entitled "Right to Use Adjoining Land When Highway Impassable" on page 62 of our issue for April 1903.

No Fee For Issue of Burial Permit by Nearest Division Registrar.

293—J. C. G.—I notice in your answer to question No 222 in the last WORLD "The nearest division registrar is required to issue burial permits when deaths occur in a township, and forward particulars to the proper registrar." Is there any reason why said nearest registrar issuing such permits should not be paid for doing so? Or does it mean he is to do it gratis?

The statute makes no provisien for payment of a fee to the nearest division registrar for performing a service of this kind. The only fee to which division registrars are entitled for services performed under the Act, are provided for in section 26.

Collection of Taxes by Action at Law.

294—J. H.—Can the municipal council of a village legally sue or garnish to recover taxes on property where there are no chattels that can be seized?

Section 142 of the Assessment Act provides that "if the taxes payable by any person cannot be recovered in any SPECIAL manner provided by this Act, they may be recovered with interest and costs as a debt due to the local municipality." This remedy cannot be resorted to until all the other methods provided for realizing the amount of the taxes, viz., distress of the goods and chattels of the party liable, sale of the lands, etc., have been exhausted.

Recovering of Price of Lumber Cut on Road Allowance.

295—R. A. B.—1. Recently it was discovered by our road surveyor that timber had been cut on road allowances by several ratepayers (not lately but within the last four years). Also that the same number of years ago, two brothers took job to cut cedar on lots in our township held by a certain company, and during operations cut timber on road allowances. Our clerk wrote each of the ratepayers some time ago, notifying them of their several trespasses and requesting them to come and settle, and he also wrote in the same terms to the company above named, but up to the present has had no reply from any of them. What steps should now be taken to enable our council to obtain payment for timber cut on road allowances as above set forth, and did our clerk do right in notifying the company or should he have written the jobbers?

The council can recover by ordinary action at law the price or value of all trees cut upon and removed from any road allowance in the township without its authority. This price or value can be recovered from the parties who actually cut and removed the trees, or under whose direction and authority they were cut and removed. The council will have to identify the parties liable, prove the value of the trees cut and removed, and that when so cut and removed they were on a road allowance belonging to the municipality.

Repair of Approach to Farm.

296—R. A. W.—The township council some years ago dug a ditch in front of my residence and covered it with cedar logs. The logs have rotted and fallen in so as to stop the water running through. The pathmaster ordered me to dig out the logs and clean out the ditch, and allowed me my statute labor for doing it. The ditch is open. Can I compel the council to put in tile and cover it again?

The council can be compelled to give compensation for any injury done to this property by the building of the ditch. Since the amount of this compensation would probably be the sum necessary to enable the owner to erect a sufficient approach over the ditch to his land, the council's best course will be to construct the approach for him.

Custody of Vouchers of Treasurer.

297—EX-COUNCILLOR—Some difference of opinion exists as to who is the proper custodian of vouchers of treasurer after being passed and reported upon by the auditors, or to whom should they hand them over. Some claim that they should be in the vault of the clerk as they might be repeated otherwise.

These vouchers are municipal records pertaining to the office of the treasurer, and after they have been audited should be filed away, and kept by him for all time to come. It is hard to say when any of them may be required as evidence of some transaction in which the municipality is concerned, or to prove the correctness of some entry or item in the books of the treasurer.

Salary "Personal Earnings" Within Meaning of Assessment Act.

298—S. N. G.—Is salary "personal earnings" within the meaning of sub-section 26, section 7 of the Assessment Act so as to make it exempt from taxation up to $700, or is it only exempt up to $400?

Salary is "personal earnings" within the meaning of the sub-section quoted, and is absolutely exempt from assessment and taxation to the amount of $700.

Payment of School Moneys by Defaulting Treasurer—Prosecution of—Examination of Books of by Ratepayer.

299—J. B.—The Provincial municipal auditor having examined the accounts of the

treasurer of our Public School Board, found that for the last six or seven years he had been receiving moneys for which he gave no account, the total shortage amounting to $1467.05. Said treasurer has property and says he will pay that amount.

1. To whom should the money be paid, to the council or the School Board, and should he not be made pay interest on that money, which would amount to six or seven hundred dollars more?

1. If the said money is paid over, is the said treasurer still liable to be prosecuted for embezzlement? If so, who should prosecute?

3. Is the treasurer of the Public School Board obliged to allow a ratepayer of the section to examine his accounts at any reasonable time. If so, please quote the authority?

1. This money should be paid to the Board of School Trustees, of which the defaulter was the treasurer, and the defaulter should pay interest on the amount he was found to be in default from the time of its misappropriation to the date of payment.

2. The defaulter will be liable to prosecution, notwithstanding the payment over by him to the School Board of the amount of his misappropriations. The School Board, or any member of it, or any ratepayer may institute criminal proceedings against the defaulter.

3. The Public Schools Act does not contain any provision entitling a ratepayer to an examination of the treasurer's books.

Salaries of Township Councillors Cannot be Fixed by Resolution.

300—G. I.—By resolution of township council each councillor was to have $75 per year for salary as councillor and for work on committees, and the reeve was to have $100 for his services. One member of the council was absent at the time of the passing of the resolution. Was this resolution legal or not?

We are of opinion that a RESOLUTION of the council is not sufficient to accomplish the purpose intended. A BY-LAW should be passed pursuant to the authority of sub-section 1 of section 538 of the Municipal Act. This by-law should not provide for the payment of a lump sum to the reeve and councillors annually, as remuneration for their services, but of a per DIEM allowance at a rate not exceeding $3 per day for their attendance at council meetings, and on committee of the council, and five cents per mile necessarily travelled (to and from) for such attendance. If a lump sum were fixed by the by-law by way of salary to the reeve and councillors, it could not be ascertained whether the council was transgressing the provisions of the statute in this regard, by allowing a larger sum than it warranted, until the end of the year, when the salaries, or the greater part of them, would have been paid and could not be recovered from the respective recipients, if it should then be ascertained that they had received more than the law authorized.

Tenure of Office of Pathmasters.

301—W. M. B.—In your opinion are pathmasters who are appointed for the current year still in office until their successors are appointed or does their term of office expire when they return their road lists in the autumn? My interpretation is that they hold office until their successors are appointed, others, here, take the above view.

Unless the term of office of the pathmasters is limited by the by-law appointing them to some definite time, they remain in office until their successors are appointed. If the by-law appointing them limits the duration of their term of office, they cease to be in office at the expiration of the time mentioned in the by-law.

Tenant Assessed Not Liable for Poll Tax.

302—A. R.—Is a household tenant working for a farmer and living on the farm liable for poll tax?

Assuming that this tenant is assessed on the assessment roll of the municipality as tenant of the house he occupies, he is not liable to the one day's statute labor mentioned in section 100 of the Assessment Act, and usually termed poll-tax.

Rights of Telephone Companies.—Assessment of Property of—

303—J. R.—1 Has the Bell Telephone Company, (or any telephone company), the right to erect poles, etc., on the public highways and streets of a municipality without securing the consent of the council by by-law to do so?

2 What is the proper method of valuing telephone and telegraph plants?

3. What new legislation, if any, has been recently enacted touching the powers of any municipality to assess telephone and telegraph plants?

1. The Bell Telephone Company obtained its original charter under the Federal Act, 43 Vic., chapter 67. Section 92, subsection 10, of the British North America Act, 1867, exempts from provincial jurisdiction, and places within the exclusive legislative authority of the parliament of Canada, "telegraphs, etc., connecting the province with any other or others of the provinces, or extending beyond the limits of the province, and such works as though wholly situate within the province are declared by the parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces." It was held in the case of Regina vs. Mohr (7 Q. L. R., 183, 1881), that under its original charter, the Bell Telephone Company, although authorized to establish telephone lines in the several provinces of the Dominion, had no power to connect two or more provinces by such lines, and (the undertaking not having [then] been declared to be for the general advantage of Canada) that section 4 of the Act, conferring power upon the company to extend its lines across or under highways, etc., was invalid. This company accordingly obtained, in 1882, a further Act (45 Vic., chapter 95), by section 4 of which its works were declared to be for the general advantage of Canada. See also chapter 71, Ontario Statutes, 1882. In a case stated between the city of Toronto and the Bell Telephone Company (reported on pages 95 and 96 of the WORLD for 1902) Mr. Justice Street some time ago handed out a decision to the effect that the Bell Telephone Company had no power or authority to erect their poles or string their wires on and along the highways of a municipality unless the consent of the council had first been obtained to its so doing. This judgment has, we understand, been appealed from. Since no judgment in the appeal has yet been handed out, the question is still in doubt. All other telephone companies, unless they have obtained special legislation providing otherwise, must obtain the consent of the council of the municipality before they can erect their poles or string their wires on and along its highways.

2. Sub-section 3 of section 18 of the Assessment Act (as enacted by section 1 of chapter 31 of the Ontario statutes, 1902,) provides that "the rails, ties, poles, wires, etc., substructures and superstructures upon the streets, roads, highways, lanes and other public places of the municipality belonging to such companies (that is telephone and telegraph and other companies mentioned in sub-section 2) shall be "land" within the meaning of the Assessment Act, and shall when and so long as in actual use be assessed at their *actual cash value* as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises in and from the municipality, and subject to similar conditions and burdens, regard being had to all the circumstances adversely affecting their value, including the non-user of any of such property, etc." Sub-section 4 provides that "save as aforesaid rolling stock, plant and appliances of companies mentioned in sub-section 2 hereof shall not be 'land' within the meaning of the Assessment Act, and shall not be assessable." A board of county judges composed of the late Judge McDougall, of Toronto, Judge McGibbon, of Brampton, and Judge McCrimmon, of Whitby, has recently held, on an appeal by the Bell Telephone and other companies against their respective assessments in the city of Toronto, that the above legislation had the effect of doing away with what was formerly known as the "scrap-iron" method of assessment. This decision is given on page 188 of the WORLD for 1902.

3. The only new legislation on this subject is fully referred to in our answer to the preceding question.

Alteration of the Boundaries of School Sections.

304—A. O.—I wrote you in reference to questions asked and answered by you, No. 230. I think that I have not made the circumstances sufficiently plain therefore write again. We have no county organization if that makes any difference. During last year our council, by by-law formed a school section of that part of the township which had no school organization previously. Therefore they did not interfere with any preexisting section. Now some of the ratepayers in the other sections wish the council to transfer them from their section to the new formed section. Can it be legally done? To do so would I think, require the passing of by-laws adding to the newly formed section.

We gathered from your previous statement of the matter that the new school section had been formed out of sections that already existed in the municipality. Your further explanation of the case will make a material difference in our reply. The fact that there is no county organization in the district in which the municipality is located does not affect the question. Under the circumstances stated there is no legal objection to the passing of by-laws by the council of the township detaching these lands from the sections to which to which they now respectively belong, and attaching them to the section newly formed pursuant to the provisions of sub-section 2 of section 41 of the Public Schools Act, 1901. Sub-section 3 of this section requires by-laws of this kind to be passed prior to the 1st day of June in any year, and provides that they shall not take effect until the 25th day of December next thereafter.

Removal of Fences Causing Accumulation of Snow.

305—In our township we have 40 rods of hedge fence that causes a very bad blockade with snow on the road every winter. By compensating the owners of the hedge, can the council compel the owners of the hedge to cut it down and keep it cut down?

Yes. Section 1 of chapter 240, R. S. O., 1897, provides that "the council of every township, etc., shall have power to require owners or occupiers of lands bordering upon any public highway to take down, alter or remove any fence found to cause an accumulation of snow or drift so as to impede or obstruct the travel on the public highway, or any part thereof, and where such power is exercised they shall make such compensation to the owners or occupants for the taking down, alteration or removal of such fence, and for the construction of some other description of fence approved of by the council, in lieu of the one so required to be taken down, altered, or removed. as may be mutually agreed upon, and if the council and owners and occupants cannot agree in respect to the compensation to be paid by the council, then the same shall be settled by arbitration in the manner provided by the Municipal Act, and the award so made shall be binding upon all parties."

Asesessment of Machinery of Cement Company.

306—ASSESSOR—A cement company had its marl deposits in one municipality while its factory is situated in another municipality. Should the machinery for lifting the marl be assessed in the municipality where the deposits of marl are or where the factory is situated?

The lifting machinery mentioned, whether a fixture and assessable as realty, or portable or detachable from the land or buildings, and thus assessable as personalty, if located in the municipality in which are the deposits of marl, should be assessed in that municipality. (See section 18 of the Assessment Act as enacted by section 1 of chapter 31 of the Ontario statutes, 1902.)

Weigh Scale Regulations.

307—REX—Our council for many years have been letting the weigh scales at the public market place to the highest bidder and desire to protect him to the utmost limit that the law will permit from the practice of some vendors having their stuff weighed at some one of the private weigh scales of the town free. Has a town the legal power to compel the vendors of articles enumerated in sub-section 8 of section 579 of the Municipal Act respecting public markets to have the said articles weighed whether they are sold or not provided they are exposed for sale on the public market or upon certain allotted portions of the public streets?

2. If the town has the power, who is compelled to pay the fees for weighing or measuring as the case may be, the vendor or the purchaser?

3. Do you know of any town that has a by-law dealing with and regulating a public market, weighing and measuring, etc., that has been passed upon by the courts? If so, please cite case.

1. The town council has power, under the authority of sub-section 5 of section 580 of the Municipal Act, and sub-section 9 of section 579 to pass by-laws requiring every person to weigh everything mentioned in the former sub-section and in sub-section 8 of section 579 on the public scales, and to impose penalties upon every person who weighs any of these things anywhere else in the town.

2. The vendor should pay the fee for weighing the article, and in fixing the price to the purchaser, it is optional with him as to whether he makes him pay the weighing fee in addition to the price of the article or not.

3. Toronto—(Farquhar v. City of Toronto, 10 C. P. 379; re Kelly and City of Toronto, 23 U. C. R., 425). London—(Peters v. Board of Police of London, 2 U. C. R., 343). Guelph—(Re Fennell and Town of Guelph, 24 U. C. R., 238). Belleville—(Re Snell and Town of Belleville, 30 U. C. R., 81.)

Construction and Maintenance of Bridges on County Boundary Lines.

308—COUNTY COUNCILLOR.—Have any decisions by the court been given in Ontario which places the liability for construction and maintenance of *all* bridges on township lines between counties or county lines, upon the county councils? What are the responsibilities of counties in this matter?

The liability of county councils in cases of this kind is regulated by sub-section 1 of section 617 of the Municipal Act, which amongst other things provides that bridges over rivers, streams, ponds or lakes forming or CROSSING a boundary line between two or more counties, shall be erected and maintained by the councils of the counties. If the councils fail to agree as to the respective portions of the expense to be borne by the municipalities interested, it shall be the duty of each to appoint arbitrators as provided by the Act.

Duties of Collector.

309—COLLECTOR.—1. The collector has on his roll as owner, a person living outside the township but within the county, who has not had any chattels on the property assessed, and the tenant has not had any. Can the collector go outside his township and seize property of owner, or does he return the property as "non-resident"?

2. The owner living in a remote part of the county, outside the township, notifies the clerk of his post office which is outside the county, and that he desires to be assessed as owner. The collector does not know whether he has any chattels to make collection from or not. Does he return the property in such a case as "non-resident" without going to the expense himself of finding if he can make the tax this way?

3. As to the duty of collector in making his return, is the owner outside the township who notifies the clerk, in the same position as the owner who is assessed through hearsay merely, that is, has the collector in both cases to go outside his township to hunt up owners property, if he has any, before he can make his return as "non-resident"?

1. The collector cannot legally return any taxes as uncollectible either by reason of the non-residence of the party or parties liable or otherwise, until he has ascertained beyond question that the person or persons assessed has or have no goods and chattels out of which the amount of the taxes can be made anywhere "within the county in which the local municipality lies." (See clause (1) of sub-section 1 of section 135 of the Assessment Act.)

2. Under these circumstances it is the duty of the collector to ascertain whether the person assessed has sufficient goods and chattels to realize the amount of the taxes before he can legally return them as uncollectible.

3. Yes, the collector must satisfy himself that the person or persons liable for the taxes has or have no goods or chattels anywhere within the county out of which the taxes can be realized before he can comply with the provisions of sections 147 and 148 of the Act.

Liability to Build Farm Crossings.

310—CLERK—Opposite several private lanes and gateways in our township parties making crossings to the travelled road, put in very insufficient culverts, or fill the ditch, thus obstructing the waterway in the ditch, as a conveyance at spring floods or heavy showers the roads are damaged.

1 Can the council by their servants remove these obstructions or can owner of land or gateway be compelled to do so?

2. At whose cost, if it is necessary to have a culvert, shall the culvert be put in?

3. If it is the duty of the owner of the land or gateway to make a crossing (for himself) which will allow the free run of the water at flood time, and he fills up the ditch and refuses to remove the obstructions, how should the council proceed?

1, 2 and 3. If this is a ditch dug by the council along the side of the roadway to provide for its drainage, as appears to be the case, and adjoining owners are thus prevented from entering or leaving their premises until a bridge or culvert is constructed, they are entitled to compensation for the injury thus occasioned their respective properties. As the amount of this compensation would probably be the cost of constructing the requisite bridge or culvert, the best and wisest course for the council to pursue is to perform the work or cause it to be done. The claim for

compensation must, however, be made within the time limited by section 438 of the Municipal Act.

Closing of Culvert on Drain—Council's Proceedings on Application for Construction of Drain.

311—C. A. J.—Some years ago a drain was constructed uuder the Municipal Drainage Act, running west across the centre of the lots to an outlet. A few years ago another drain was constructed under the same Act, running southward along a sideroad crossing the former drain. In the engineer's specifications, he recommended that the culvert on the sideroad of the former drain be closed, which was done. Now the party owning the land east of the culvert closed, claims the water is backed up and damages him, and that he did not know of the council closing the culvert. Could the culvert be legally closed? Should it have been stated in the engineer's report which was published instead of in the specifications which were not published?

2. About two years ago a majority of those interested petitioned the council to construct a drain under the Municipal Drainage Act. The council sent on the engineer and received his report, paid the expenses out of the township funds and went no further. One or two interested in the drain were members of the council at the time. Last year there was a move made and the engineer brought on and an award made under the Ditches and Watercourses Act. The engineer's award was appealed against to the judge. The judge quashed the award and taxed the costs to the party, bringing on the engineer in the last case, except the costs of the award which were paid by the council out of the township funds. Now one of the parties interested has served notice on the council to proceed with the drain under the petition. What can or should be done? Is the township liable by the acts of the council?

1. This culvert should not have been and could not legally be closed if it formed part of the drainage work and the closing of it caused injury to the owner or owners of any lands in the vicinity. If the owner of the land east of the culvert can establish his claim to damages, and he has not lost his remedy, owing to lapse of time, he is entitled to recover the amount from the municipality. The engineer's recommendation that this culvert should be closed should have been inserted in his report to the council on the drainage works, embodied in the by-law, and published therewith as the statute requires.

2. We do not see that the council or the municipality is in any way liable for anything that has been done hitherto in this matter. It was not bound to adopt the engineer's report when filed and presented and proceed with the construction of the drainage works, and was quite within its powers in refusing to proceed any further in the matter. If this case is one that is within the purview of the Ditches and Watercourses Act, proceedings should be again taken under that Act to have the drain constructed, and if the provisions of the statute are observed that ought to settle the matter.

Insufficient Drain Under the Ditches and Watercoures' Act.

312—E. D. K.—Four or five years ago a ditch was dug under the Ditches and Watercourses' Act, the outlet being a spring creek. The water from this ditch has carried the sand from the ditch down the creek filling it nearly full, so that the water spreads over the land instead of running off, as it did before the ditch was dug.

1. Who is responsible for damage done?

2. What can be done by the parties whose lands are flooded to get the creek opened up so that the water will run off?

1. We do not think that any one is responsible for the damage alleged to be done by the construction of these drainage works.

2. These parties should have a petition prepared and signed by a sufficient number and present it to the council in accordance with the provisions of subsection 1 of section 3 of the Municipal Drainage Act (R. S. O., 1897, chapter 226), or any owner, party to the original award, may take proceedings under the authority of section 36 of the Ditches and Watercourses Act (R. S. O., 1897, chapter 285), for the reconsideration of the award, with a view to continuing the drain along the course of the creek, until such a fall is obtained as will prevent the future accumulation of sand therein.

Moving Fence Along Highway.

313—SUBSCRIBER—Can a land owner along a public highway move his fence out to a straight line, causing the municipal council to cut through a small natural obstruction, not unusual. Said road way has been in its present position ever since it was opened some twenty or thirty years ago. Statute labor has been done on said piece of road.

Before we can answer this question we must know whether the road is an original road allowance or not, and if not, how it come to be used as a public highway whether by gift or grant, dedication direct or implied, or otherwise. We should also know the nature of the obstruction the council is compelled to cut through, and its object in doing so.

Liability for Accident.—Contents of Notice of—Illegal Letting of Contraots and Payment of Township Moneys to Reeve.

314—K. C.—In a sparsely travelled road a horse plunges one foot through the earth near a small culvert, which, before this mishap, looked all right, and until the said mishap, council knew nothing of its alleged defect. Owner of horse now asks damages.

1 In such a case would council be held responsible for neglect, etc.?

2 Owner of horse notifies council in writing but fails to say where the accident happened, but simply says "one of the culverts of the municipality." Commissioners learned by conversation where it is claimed accident took place. Would you consider such a notice in accordance with the requirements of the law?

3 Reeve in 1901 lets township portion of award drain wihout authority of council. In such a case would you consider present council liable for work done or partly done by the contractor in that year?

4 Reeve, to satisfy parties, pays for their portion of award drain out of township funds. How should council deal with such a case?

1. Whether the corporation is liable or not depends upon whether the defect ought to have been discovered by reasonable diligence on the part of the pathmasters of the municipality having the oversight of this particular part of the road where the accident happened. It is incumbent upon the person injured to prove either express notice of the defect or what is called constructive notice. Where a bridge, sidewalk or culvert is old it is presumed that the officers of the corporation know that timber will decay and timely repairs must be made. This is not a case of that kind and it will be more difficult for the injured party to prove neglect on the part of the corporation.

2. We do not think the notice sufficient. In the case of McQuillan vs. St. Marys 31 O. R., 401, Mr. Justice McMahon at page 403 says: "It is not necessary under the statute to mention the exact locality. What is required is that the notice should state the cause of the accident, that is whether caused by a hole in the walk, by a defective plank, by a fall occasioned by accumulation of ice on the walk, etc., which together with the name of the street and the particular side of the street and reasonable information as to locality so as to enable the corporation to investigate, is all that can be called for."

3. No, because we do not think the reeve has any power to bind the council in a matter of this kind.

4. We do not see how this could happen if the council and its officers discharged their duties in accordance with the legal requirements. The reeve did wrong in issuing an order on the treasurer for the payment of these amounts and the treasurer has no legal authority to honor a township order or cheque presented to him to be cashed out of the municipal funds, unless it has been issued pursuant to a lawful by-law or resolution of the council. Perhaps this is a case where the reeve is unwisely allowed by the council to carry the township cheque or order book around in his pocket and issue the orders on the treasurer indiscriminately, and of his own motion. If so, the practice should be stopped. We do not see that anything can now be done in the matter. The moneys have been paid, and cannot be recovered from the recipients, and the reeve and treasurer are not liable to any punishment, especially if in making these payments they were acting within the limits of the general authority conferred upon them by the council.

Assessment of Supplies of Lumber Companies.

315—J. L. M.—Four lumber companies have their offices and warehouses in this municipality. Their lumbering operations are conducted on limits outside of the municipality. Their warehouses are used for storing supplies after being unloaded from cars and until they are hauled away to the camps, and a full stock of such supplies are kept on hand during the year. Of course the stock is renewed from time to time. These companies claim that the contents of their warehouses are not liable to assessment. That the goods are merely in transit to their camps Is our assessor correct in assessing these companies for the contents of their warehouses?

Since the offices of these companies are located in this municipality, we must infer that their "usual places of business" are there. It is not stated whether these lumber companies are incorporated or not. However, if they are, it is provided by sub-section 1 of section 39 of the Assessment Act that their personalty shall be assessable in the same manner as that of partnerships or unincorporated companies. Sub-section 1 of section 40 provides that the personal property of a partnership shall be assessed against the firm *at the usual place of business* of the partnership. We therefore think your assessor is quite right in assessing these companies for the goods in their ware houses at their actual cash value, subject, of course to the provisions of sub-sections 24 and 25 of section 7 of the Act.

Corporation Liable for This Accident.

316—C. A. B.—In this incorporated village a certain driveway over a plank sidewalk at the entrance to a hotel yard had a broken plank in it leaving, for two weeks after the ice and snow had thawed off, a hole about one foot wide, two feet long and six inches deep. Two farmers driving over this crossing on a milk wagon with an old box for a seat struck the hole with front wheel with force enough to upset the said box seat, throwing both men off against a stone wall, leaving a bad cut on the head of the driver who was also owner of the rig. He claims that the box seat had a bolt down through the bottom of the wagon without a nut on it and would keep the seat from sliding off, but not from tipping up. The injured party offers to take ten dollars cash and payment of doctor's bill or a total of about twenty dollars.

1 Is the corporation liable for the above damages?

2 If not, would you advise settling with the party rather than have a law suit over it?

1. The corporation was guilty of negligence in allowing this sidewalk to remain in such a dangerous condition for such a long time after it became visible and was known, viz., two weeks. If the story of the driver of the milk wagon is true, and he can prove it by sufficient evidence, it would appear that the accident would not have happened, had it not been for the unsafe condition of the sidewalk. We are therefore of the opinion that the corporation is liable to the party injured for such damages as he has sustained.

2. We think the corporation is liable and should settle with this party, if the amount he claims is reasonable under the circumstances.

Taxation of Income From Shares in Loan Company.

317—Y. R H.—A Loan Company pays tax under provisions of Supplementary Revenue Act to Provincial Government, and on income derived from local investments to municipality in which head office is situated. The president of the company has income of $600 from shares in this company. Can we assess him on any part of this? His total income being far in excess of exemption.

The president of the company is properly assessable for all his income over and above the exemption mentioned in sub-section 26 of section 7 of the Assessment Act, including his income of $600 derived from his shares in the company of which he is president. Section 8 of chapter 8 of the Ontario statutes, 1899, provides that "where a loan company pays a tax by this Act imposed, no assessment shall be made or tax levied by or on behalf of the municipality in which the head office is situated upon such company in respect of so much of the income of the company as is derived from moneys invested in municipalities or places other than the municipality in which the head office is situated, but nothing in this section contained shall prevent the individual assessment or taxation of share or stockholders resident in such last mentioned municipality or of share or stockholders resident in other municipalities by such last named municipalities as by law they were assessable and taxable on the 1st day of February, A. D. 1899." Subsection 21 of section 7 of the Assessment Act (which was in force on the 1st day of February, 1899,) exempts from assessment and taxation "so much of the personal property of any person as is invested in any company incorporated for the purpose of lending money on the security of real estate, but the INTEREST and DIVIDENDS derived from investments in such companies as aforesaid shall be liable to be assessed."

Rights of Deputies, Poll-Clerks and Scrutineers at Provincial Elections—Protection of Dangerous Place on Highway—Proceedings to Obtain Drainage Outlet.

318—SUBSCRIBER.—1. At a Provincial election is a deputy returning officer compelled by law to shew the scrutineers how the ballots are marked without being asked, or are the scrutineers supposed to ask to see them?

2. Has the D. R. O. power by law to refuse to let a scrutineer see and examine the names on the poll-book at a Provincial election?

3. After the poll is closed has the poll clerk any right to handle the ballots in any shape or form whatsoever, or is the D. R. O. the only person who has any authority to handle the ballots?

4. When there is a bridge being built on a public highway in a township, could the law compel the council or contractor to hang a lighted lantern on said bridge at nights when there is an obstruction a short piece on each side of the bridge?

5. A neighbor has dug a drain through his property to the line fence. Can he compel his neighbor on the other side of the line fence to give him an outlet?

6. Some time ago the water used to run along the side road and through a culvert crossing the concession, but two years ago the council dug a culvert across the side road and let the water run down the concession, and as there was a deep ditch on the concession, the council put in six or eight inch tile and filled it up, but in the spring and fall the tile cannot take all the water away and backs up on a ratepayer's property, and he claims his land sours and he cannot get on it to work it until late in the spring. Can he compel the council to take the water off his farm, as the council changed the course of the water in the first place?

1. Section 112 of the Ontario Election Act (R. S. O., 1897, chapter 9,) contains the duties of the deputy returning officer in this regard. He is not bound, of his own motion, to show each and every ballot to the scrutineers, whether he is requested to do so or not. But if the scrutineers, or any scrutineer, desires to see how any ballot is marked, it is the duty of the deputy returning officer to allow him to do so.

2. No.

3. Section 88 of the Act provides that "every poll clerk shall, at the polling place for which he is appointed, aid and assist in the performance of the duties of his office, the deputy returning officer appointed to open and keep the poll in conformity with this Act, and *shall obey the orders of the deputy returning officer.*" It is therefore optional with the deputy returning officer as to whether he allows his poll clerk to handle and count the ballots or not.

4. When a dangerous place exists on a highway, by reason of building a bridge or making repairs thereon or otherwise, the council should see that bright lights are placed at nights at both ends of the dangerous place, otherwise if any one drove into it and sustained injury, the corporation would probably be held liable in damages by reason of its neglect to sufficiently warn the travelling public of the existence of the dangerous place.

5. Yes, if he takes the proceedings provided by the Ditches and Watercourses Act (R. S. O., 1897, chapter 285.)

6. The land owner cannot compel the council to construct a drain to take the water off his land, but if the council by the construction of drains have caused water to flow upon his lands which would not otherwise flow there he can take proceedings to restrain them from so doing. He should take the proceedings prescribed by the Ditches and Watercourses Act, when the rights of all parties interested can be properly adjusted.

Ownership of and Right to Move Fence, When New Road Established Along Line.

319—J. S. K.—A petitioned the council of this township to open up a new road along line between A and B's farm, which the council did after A agreed to give all the land for said road on his side of the line between A and B free gratis, said road being a great benefit to A, but absolutely no benefit to B. The engineer in surveying the road placed the line between A and B on B's land by several feet, which now leaves the whole of the old line fence on the new road. Said old line fence was built from forty to fifty years ago.

1 Is B compelled to move the fence back from the old or first line to the new line on B's land, council having assumed the new road?

2 Can A claim any of the old line fence and remove it, and if so, how much?

1. A council is not required to build fences along highways under its jurisdiction, so if B desires to enclose his premises, he must do so either by moving the old fence, or a portion thereof to the new line, or by erecting a new fence.

2. The council having taken part of B's land with the fence on it are bound to compensate him for the value of the land taken from him, including sufficient to cover the value of his interest in the original line fence, and also A's share,

because he will now have to maintain the share which A formerly had to keep up. A is also entitled to compensation from the council for his share of the fence, unless he has by his arrangement with the council disentitled himself to it.

Borrowing Powers of Separate School Trustees.

320—P. F. S.—Section 61, Chapter 294, R. S. O., 1897, Separate Schools Act, (Catholic I mean), describes the borrowing powers of school trustees of such schools. Now what I wish to ask you is this, in sub-section (5) of section 61 of the Separate Schools Act it is stated that the by-law shall name a day in the financial year in which the same is passed. Does this mean that such by-law is passed by the vote of the ratepayers, or is it necessary to call any meeting at all, or take any vote on by-law, or just publish such by-law and act upon it as stated in sub-secs. 5 and 6? They, our section, or some of the trustees anticipate building a new school house, and the way I understand this section is that they need not call a meeting at all, but issue and publish said by-law according to sub-sections 4, 5 and 6, and if no effort to quash same in mentioned time then such by law would be valid. Would you kindly reply and say if I am right or if a meeting must be called and voted upon by-law or as the case may be?

It is not necessary under the statute to submit a by-law of this kind to the vote of the electors before it is passed. Nor is it necessary to call a meeting of the ratepayers or separate school supporters to obtain their assent to its passing or the borrowing of the money required. We are therefore of opinion that your construction of this section of the Act is correct.

Owners of Road Making Machinery.

321—Mc—Give names and addresses of persons or firms who have roadmaking machinery (stone crusher, steam roller, etc.,) who go from place to place and take contracts for road making.

We do not know of any persons or firms owning an outfit of roadmaking machinery who go from place to place taking contracts. Most towns and cities undertaking street improvement, own the machinery and arrange with contractors for using it. In the case of a steam roller, the contractor pays from $7 to $10 per day; and with the stone crusher various plans are employed, but broken stone is usually furnished the contractor at a rate per cord. In a few cases towns not owning a roller or crusher have rented these from another municipality. In the eastern part of the Province there are a few people owning stone crushers who go around breaking stone by contract.

Salaries and Allowance of Reeve. Clerk and Assessor.—Contents of Treasurer's Bond—Powers of Court of Revision.

322—J. G.—What salary is a reeve and assessor entitled to for selecting jurors? Is a clerk entitled to extra pay for the same?

2 Should a treasurer's bond have the name of the township on it, and should it be dated? Would it be illegal if those were not on it?

3 Is it legal for a councillor to work operating a grader by the day for the township for pay?

4 Is a clerk entitled to any extra pay for township court of revision?

5 Has a council power to have names put on the roll at the township court of revision without giving notice before hand to clerk or assessor?

1. Section 159 of the Jurors' Act (R. S. O., 1897, chapter 61,) provides that "the selectors of jurors under section 17 of this Act shall, for every selection and distribution of jurors, and the report thereof made by them, be entitled to such sum of money as is authorized to be awarded them by the councils of the municipalities of which they are respectively officers."

2. The name of the municipality whose officer the treasurer is should be inserted in his bond, and it should be dated. The absence of the date is not material, however, but the absence of the name of the township is important, and may render the bond of little use, but without the bond or a copy of it we cannot express an opinion upon it.

3. No.

4. This depends upon the terms upon which the clerk was hired by the council. He is entitled to no extra allowance for his attendance at the township Court of Revision, unless the council has agreed to give it to him.

5. No. The latter part of sub-section 4 of section 71 of the Assessment Act provides that no alteration shall be made in an assessment roll unless under a complaint formally made, according to the provisions of the Act.

Councillor Should Not be Employed by His Council.—Private Parties Should Make These Repairs.

323—H.—In this town the council employed one of their members as an electric light commissioner, paying him $4.00 per month the year round. The amount is certainly not large but some have taken the position that the appointment is not legal The work of said commissioner consists in putting in blown out fuses, repairing any little thing that may go wrong inside of buildings, but has nothing to do with supervising outside work.

1 The electric lights being installed by and at the expense of the private customers, has the council authority to pay a man to keep in repair what does not belong to the town?

2 The municipality contracts to supply electric current to the fuse block inside the buildings. Should it not be the customer's place to keep his own wires in repair?

3 If the power is vested in the council to pay a man for such work, is it legal to appoint and pay one of themselves?

1. Since the electric light fittings inside the buildings are put in by and belong to the owners of the buildings if the municipality has not agreed as part return for the cost of the lights or otherwise to keep these fittings in repair, the owners should do the work, or cause it to be done themselves.

2. Yes, in the absence of any agreemant on the part of the municipality to do the work for him.

3. Even if the council had the legal right to pay these accounts, a councillor could not legally take the contract for doing the work from the council, of which he is a member. (See sections 80, 83 and 208 of the Municipal Act.)

Grant of Retiring Allowance to Municipal Officer.

324—G. E. H.—May a municipal council make a grant to a municipal clerk or collector on retiring after twenty-six year's service? If so, where it can be found?

Section 322 of the Municipal Act provides that any municipal council, other than a provisional council, may grant to ANY officer, who has been in the service of the municipality for at least TWENTY years, and who, while in such service, has become incapable through old age, of efficiently discharging the duties of his office, a sum not exceeding his aggregate salary or other remuneration for the last three years of his service, as a gratuity upon his removal or resignation.

A General Appeal Cannot be Filed Against an Assessment Roll.

325—A. T.—A ratepayer here has appealed against the assessment of every one in the township, being too low except his own. Have I got to serve every assessed ratepayer in the whole township under an appeal of that kind with the usual notice to attend the Court of Revision or not? Would it do for me to advertise his appeal in the newspaper when giving notice of the time of the Court of Revision?

The statutes make no provision for a general appeal against the assessment roll of a municipalisy, and if this appeal is filed in a general way, neither the clerk nor Court of Revision can take any action in the matter. If, however, the appellant has, in his appeal, mentioned the name of each ratepayer in the municipality appealed against, described the property in respect of which the appeal is made, and in each case given the reasons for the appeal, the proceedings to be taken and followed are those laid down in section 71 of the Assessment Act.

Commutation of Statute Labor in Part of a Township.

326—J. H. S.—As the county of S has adopted the good roads system and has taken over the different roads in each municipality designated as county roads by by-law on April 2nd 1903, and as the municipality of N has yet the statute labor system, would it be legal to abolish statute labor on county roads and not on the township roads in said municipality, or could the council compel the ratepayers on county roads to do their statute labor on township roads?

Section 103 of the Assessment Act provides that "the council of any township may, by by-law, direct that a sum not exceeding $1 a day shall be paid as commutation of statute labor for the whole or ANY PART of such township, etc." And the latter part of sub-section 2 of section 109 of the Act provides that "every resident shall have the right to perform his whole statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council." It follows therefore that a person liable to perform statute labor may be required to perform it on other roads in his division.

Meaning of "Water's Edge."—Removal of Gravel From Beach.

327—J. E. K.—A owns land bordering on Lake Erie and says his deed gives him the land to the water's edge.

1 What is meant by "water's edge?"

2 Can the municipality get gravel any where on the beach or are they limited to four rods from water's edge.

1. "Water's edge" means the extreme limit of the water in the lake wherever it may be for the time being, and no matter how it fluctuates. In the case of Doe d. McDonald v. The Cobourg Harbor Co. (M. T., 7 Vic.,) it was held that, where land was granted by the Crown bordering on Lake Ontario, and described in the grant as extending to the water's edge, the water's edge must be the boundary wherever it might be, and therefore that land which was gradually and imperceptibly formed by the receding of the water would belong to the grantee, the boundary of the lake being fluctuating and the grantee not being restricted to the land extending to where the water's edge was at the time of the grant.

2. Sub-section 1 of section 3 of chapter 270, R. S. O., 1897, provides that "no person shall take or carry away in any vessel, boat, scow, raft or other craft, or otherwise transport by water any sand, gravel, or stones from the beach, shore or waters of Lakes Erie, Ontario, or Huron, so far as they are within the legislative jurisdiction of this province, or from any bar or flat (within such jurisdiction) adjoining any channel or entrance to such lakes unless such sand, gravel, or stone is taken from a locality distant THREE rods or more beyond low water mark, or in case the same is taken within that distance, unless such person has the written consent in that behalf of the owner of the beach, shore, bar or flat, or in case the said beach, shore, bar or flat belongs to the Province, unless such person has the consent of either the Lieut.-Governor in Council, or the owner of the land to which such beach, shore, bar or flat so belonging to the Province is adjacent." Since the land down to the water's edge, wherever it may be, is the property of the private individual, no person or corporation has the right to remove gravel from the beach or shore, above the water line, without his consent.

Illegal Drain Along the Highway.

328—S. K.—1 A had diverted water from its natural course and carried it along the highway for some distance where it crosses the road and runs on private property. In order to carry the water off the roadside, he has dug a very deep ditch which is becoming dangerous. This has been going on for a number of years. The pathmasters have not objected and the private owner, who is now a widow, has permitted it so far. Can the council now compel A to take the water across his own land?

2 And can the widow resist his turning more water on her land? It is doing her very serious damage.

3 Does the time limit affect such matters?

1. A had no legal right or authority to dig this ditch along the roadside for the purpose of draining his land, and if it is dangerous the council should fill it up, so as to relieve the municipality from any responsibility for injuries sustained by reason of its unsafe condition. A has his remedy under the Ditches and Watercourses Act, and if he takes proceedings under that Act, the rights and interests of all parties concerned can be properly adjusted.

2. Yes. She can apply to the courts for an injunction restraining him from further offending in this way, and for damages for the injuries she has sustained.

3. Yes, but it is unlikely that it applies in this case.

Dismissal of Constable and Appointment of Successor—Fowl Trespassing—Furnishing of Statement by Bank to Municipality.

329—T. W. S.—According to terms of agreement our village constable may be dismissed at any time. Our council has asked him to send in his resignation on or before the 23rd inst, to take effect on the 30th inst and in the meantime have, through the local paper, asked for applications for the position.

1. If he does not tender his resignation, is it still necessary for the council to dismiss him by resolution before engaging another to take his place?

2. If it is necessary to further consider his dismissal by resolution, would it be necessary to dismiss by by-law?

3. What is the law governing the use of paris green in gardens, when your neighbor's fowls enter said gardens, devour the poison and become dead?

4. What times in the year are chartered banks supposed to notify the heads of municipalities of their financial standing in said banks in which they have their corporation accounts?

1 and 2. Section 493 of the Municipal Act empowers the council of a village to appoint one chief constable and one or more constables for the municipality, and the persons so appointed shall hold office during the pleasure of the council. We would advise the council to pass a by-law dismissing the constable in question and appointing some other person as constable in his place. This is all that need be done.

3. The owner of fowl should take care of them, and keep them in his own enclosure, or on his own land. If they escape, and while trespassing on a neighbor's premises, they eat something, or meet with some accident which causes their death, the neighbor is in no way responsible for any injury which may happen them.

4. This depends on the arrangement made by the council with the bank, when the account between it and the corporation was opened. The statutes do not make it a duty of the bank with which the account is kept to make a report of this kind. Of course the council has a right to know, and can find out at any time the amount that is in the bank to the credit of the municipality. Section 292 of the Municipal Act provides that "every treasurer shall also prepare and submit to the council, HALF-YEARLY, a correct statement of the moneys at the credit of the corporation whose officer he is."

Liability for Cost of Suppressing Small-Pox Outbreak.

330—SUBSCRIBER.—1. An epidemic of small-pox broke out in our municipality among the Indians on the reservation. The Provincial Board of Health took active measures to suppress the outbreak. There are a number of white tenants on the reserve who pay taxes to the municipal council. Is the municipality liable for any part of the expense for treating or suppressing the outbreak when only the Indians were affected with the disease?

2. The Provincial Board of Health ordered the municipal council to issue a general vaccination proclamation which was done, no other request being made for assistance from the municipality. Now the inspector of Indian agencies is making a demand that the municipality bear part of the expense incurred. Has the Indian department the power to force payment from the municipality?

1 and 2. Notwithstanding the fact that this outbreak of small-pox was amongst and eventually confined to the Indians in this municipality, still in the interests of the ratepayers of the municipality and public generally, it was the duty of the Local Board of Health to take such active measures as are authorized and prescribed by the Public Health Act to suppress the outbreak, and the municipality is liable to pay any expenses incurred by its authority, and if the Local Board of Health neglected or refused to take these measures, and, after having been requested by the Provincial Board of Health to do so, persisted in such neglect or refusal, the Provincial Board of Health was authorized by section 9 of the Act to take these measures AT THE EXPENSE OF THE MUNICIPALITY. If the Provincial Board took the initiative in the matter without giving the Local Board an opportunity of doing so, we are of opinion that the municipality cannot be held responsible for the expenses or any portion of them because there must first be a request with the approval of the Minister of the Department under which the Board is for the time being acting, from the Provincial Board of Health to the Local Board of Health, and a refusal or neglect on the part of the Local Board to take measures to control and stamp out the disease, before the municipality can be fixed with liability. See section 9 of the Public Health.

By-Law Providing for Exemption From Taxation.

331—W. M. B.—This municipality in the year 1898 passed by-law which I enclose copy of, to exempt certain lands and mill site for one J. C. for a seven year term, and further that any manufacturing industry on the said stream or water power would have an exemption for 10 years from date of building, that is for everything only the school rates which are not exempt, the municipal rates only to be exempt. Now they did not have any election on that exemption any more than they advertised all over the municipality for a ratepayer's meeting to deal with the same and give their assent in writing on agreement or copy of agreement and the proposed by-law, and I believe their was no opposition to the granting from any ratepayer. Now in your opinion, is this by-law legal, or should that council board have had an election and got the required majority of votes to carry

and then proceed to pass the by-law exempting the saw mill and lands described and tributary to the K river? Some objections are now being taken to exempting certain industries that are about being erected under this by-law. Whatwe want to know is, is there any danger of municipality assuming any liability in this matter, or could they repeal the by-law or quash it if not legal, and would they be liable to J. C. or any protective company for the ten years exemption as set forth in by-law?

At the time this by-law was passed the law governing the matter was contained in section 411 of the Municipal Act (chapter 223 R. S. O. 1897). This section enabled a municipal council by a TWO THIRDS vote of its members to exempt any MANUFACTURING establishment from taxation in whole or in part, except as to school taxes, "for any period not longer than ten years etc." Under this section, it was not necessary to obtain the assent of the duly qualified electors before the passing of a by-law of this kind. This section was repealed and a new section substituted by section 25 of chapter 26 of the Ontario statutes 1899. Clause (g) of the last mentioned section provided that any agreement or arrangement with a view to exemption from taxation not completed on or before the 1st September 1899, required the submission of a by-law for the purpose of carrying out such agreement or arrangement to the electors before it could be finally passed. This section remained in force until the 30th April, 1900, when sections 8, 9, 10 and 11 of chapter 33 of the Ontario statutes 1900 became, and still remain the law on the subject. Therefore at the time this by-law was passed, it was unnecessary to obtain the assent of the electors as to its passing, but we are of opinion that no exemption from taxation can be granted thereunder the agreement or arrangement for which was not completed prior to the 1st September, 1899. In these cases by-laws will have to be submitted to the electors as provided by sections 8, 9 and 10 of chapter 33 of the Ontario statutes, 1900 before they can be finally passed. (See clause (g) of section 25 of chapter 26 of the Ontario statutes 1899, and section 11 of chapter 33 of the Ontario statutes, 1900.) The by-law submitted to us is open to several objections. It is very informally drawn and the first clause enacts practically nothing. It also purports to exempt from taxation a tract of land which is perhaps for more than is required for the business and that is unauthorized by the section pursuant to which it was passed, and it does not except SCHOOL taxes from the exemption porporting to be granted.

Proceedings for the Construction of Drain:

332—T. W. W.—A drain has been constructed pursuant to an agreement under the Ditches and Watercourses Act. Two years ago one interested party wanted a better outlet. A petition was presented to the council; the engineer was sent on, made out a report and plans which were adopted. (Taking the water another way.) No further proceeding in this way was taken. An owner gave notice under Ditches and Watercourses Act, the engineer made an award, taking the water into the old agreement drain, only more on some to construct it. This was appealed against, the judge quashed the award, claiming that the agreement was good. The council received notice in April, 1903, to proceed with the engineer's report under the Drainage Act, which was made in 1901.

1. Has the council power to proceed under this notice?

2. Can they amend the report by referring it to the engineer?

3. Since the council, an owner has given notice to the interested parties to appear under the Ditches and Watercourses Act to take the water in a natural watercourse. What is your opinion of the beat way to proceed?

1 and 2. The council cannot legally act on this notice and pass a by-law pursuant to the prayer of the old petition, embodying the report of the engineer made in 1901. The petition leading up to the passing of a by-law of this kind is required by sub section 1, of section 3 of the Municipal Drainage Act, (chapter 226, R. S. O., 1897), to be signed by a majority in number of the resident and non-resident persons, (exclusive of farmer's sons, not actual owners), as shown by the *last revised* assessment roll to be owners of the lands to be benefited in any described area, etc., and there have probably been a number of changes in the ownership of lands in this area since the old petition was signed. If the intention is to now construct a drain pursuant to the provisions of the Municipal Drainage Act in this area, a new petition should be prepared, signed, by the necessary number of parties, and filed and the engineer required to file a new report.

3. If the drain is to follow the course of that constructed under the old agreement, proceedings should be taken under section 36 of the Ditches and Watercourses Act, for the reconsideration of the agreement, if any change is required. If the drain is a new one, and it comes within the purview of the Ditches and Watercourses Act. (See sections 5 and 6), the municipality can initiate and carry on to completion, the proceedings prescribed by the Act. (See the definition of "owner" in section 3 of the Act), and we think this the easier and cheaper course unless the extent and dimensions of the drain are such that the proceedings for its construction will have to be taken under the Municipal Drainage Act.

Assessment of Lands in School Section in Unorganized Township.

333—A. B. C.—The G. N. W. telegraph plant was inside of S. S. No. 3 F. and was liable for taxation. But not so with concession A as per minutes of Revision Court, which I enclose also a rough detail of concession A., which belongs to F—but never was in S. S. No. 3 before. Now I want you to understand that those said lots were not put on roll at first court of revision nor were they assessed by assessor of S. S. No. 3 F—, but were put on roll by acting Secretary P— on the 20th November, 1902. Of course the parties so assessed were notified immediately after sitting of second court. Also notice that said lots were to be assessed for $2 per acre. Now each lot was assessed at $200 per lot and I am well aware that some of said lots do not contain 60 acres as quite a number of them are cut off by lakes and the zigzaging of B— road on front of Con. A, all lands beyond being in the next S. S. Now those taxes so assessed were demanded on the 27th November, but all refused paying the G. N. W. Telegraph Co. being the first. So the school board did not distrain, not knowing whether it would be legal to do so.

1. Were the taxes imposed legal or could they be legally collected in 1902, the school house being on the verge of lots 11 and 10, concession 10?

2 Is three miles the outside limit from school house, within which taxes can be collected, and if so, is it three miles in a straight line, or as the road runs?

6	5	4	3	2	1	29 | 28	CONCESSION A.
6	5	4	3	2	1	27 | 26	
6	5	4	3	2	1	25 | 24	
6	5	4	3	2	1	23 | 22	
6	5	4	3	2	1	21 | 20	
6	5	4	3	2	1	19 | 18	

1. We gather from your statement of the case, that these lands were not placed on the original assessment roll for the year 1902, prepared by the assessor appointed for the purpose, pursuant to section 27 of the Public Schools Act, 1901, but that they were placed on the roll by the court of revision for the school section on the 20th November, 1902. Sub-section 4 of section 27, provides that all appeals (to the court of revision), shall be made in the same manner, and after the same notice as nearly as may be, as appeals are made to a court of revision in the case of ordinary municipal assessments etc. Section 71 of the Assessment Act provides that appeals against an assessment roll must be made in writing and filed within fourteen days after the return of the roll. Sub-section 3 requires the posting up of a list of the complaints made against the roll in some public and conspicuous place and by sub-section 8 a list of the complaints is to be furnished to the assessor. By sub-section 9 the notice therein set forth is to be served upon each person with respect to whom a complaint has been made, and sub-section 12 requires all these notices to be completed at least six days before the sittings of the court of revision. In the case submitted none of these provisions appear to have been complied with, but on the contrary the court of revision assessed the lots first and gave the owners notice of their having done so afterwards. We are therefore of the opinion that these lands were not legally placed upon the assessment roll o

(Continued on page 100.)

Legal Department

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

Pherrill v. Township of Scarboro'.

This was an appeal from judgment of Junior Judge of county of York in action for damages for injuries sustained by plaintiff on 18th February, 1901, at a point on the Kingston road west of the Half-way House, and just east of Auburn's Hill and opposite the old Methodist Church. The plaintiff's sleigh was upset in going over a snowdrift, and he was thrown out and injured. The Judge below was satisfied upon evidence that the drift was such an obstruction to the road as to be an element of danger to the travelling public, and constituted a want of repair; that while it is not to be expected that in township municipalities the authorities will be able to keep free from snow obstructions and in a perfect travellable condition all their roads, yet upon a prominent highway, such as the Kingston road, extensively travelled and a leading thoroughfare into Toronto, it was their duty after each snowstorm and after the storm which took place a few days before the accident to have taken means to have removed snow obstructions and place the road in a condition of safety. He also found upon the evidence that the defendants had notice of the obstruction, one of the councillors lived a short distance from the spot, and apart from the fact the obstruction had existed a sufficient length of time, six inches of snow had fallen on the 9th February, to impute notice owing to the importance of the thoroughfare. Appeal dismissed with costs.

Bibby v. Davis

Judgment in action tried with a jury at Owen Sound brought to recover amount for medical services for attendance by plaintiff, a physician, upon a smallpox patient, at the alleged request of defendants, who are the Medical Health Officer, D. and members of the Board of Health for the Township of Euphrasia. and for damages for wrongful dismissal before the expiration of the 56 days, the period of the alleged hiring, and for a mandamus. Upon the answers and evidence judgment directed to be entered for plaintiff against defendants, except D., for $181.90, being $7 a day for the 25 days found by the jury as a reasonable time to be allowed for, being 10 days actual service and 15 days quarantine, and $6.90 for property destroyed. Mandamus directed to defendants to give an order upon the Treasurer for the amount: Ward v. Loundes, 28 L. J. Q. B. 265, Worthington v. Hulton, L. R. 1 Q. B. 63, and as in Derby v. Plantagenet, 19 O. R. 51. Cost on High Court scale. Action dismissed without costs as against D.

Summers vs. County of York.

Judgment on appeal by defendants from judgment of County Court of York in action for damages for injuries. The plaintiff was driving a team of horses, attached to a waggon. As he was crossing the bridge on Yonge street at York Mills an electric car approached, and plaintiff jumped out and held the head of the horse nearest the car, and alleges that he would have been able to control both horses; but they were further terrified by the rumbling sound of the car as it entered on the bridge, and they dragged him in a southwesterly direction across the railway tracks to the top of a bank six feet high, when he had to let go, and the waggon and horses went over into the ditch. The Judge below held that plaintiff was not guilty of negligence; that the neglect of duty, if any, of the railway company, would not excuse defendants for not properly guarding the highway: Hill vs. New River Co, 9 B. & S. 303; and that the highway was out of repair by reason of their not being a guard rail along the bank, thus bringing this case within Toms vs. Whitby, 35 U. C. R., 195. Held, that this case was covered by Foley vs. E. Flamborough, 26 O. R. 43, approving Toms vs. Whitby, 36 U. C. R. 195. Appeal dismissed with costs.

Sutton v. Village of Port Carling.

Judgment in action tried at Bracebridge, brought to have declared that certain assessments under law No. 48 of defendants is illegal and void, should be quashed and that defendant should be enjoined from collecting the several amounts levied against plaintiffs under the by-law. The by-law authorizes the levying of $290.77 to defray the costs of a Government survey of and planting durable monuments on certain lands of the Bailey estate to settle the boundaries. The survey was ordered by the Lieutenant-Governor in Council at the request of defendants. The defendant Martin is defendant's tax collector. Held, that the counsel of defendants had not complied with the provisions of R. S. O. (1881), ch. 152, sec. 39, by stating that it is desirable to have a re-survey and of consequence to place monuments, etc., at the angles of any particular lots in any range or block or parts of a range or block in the village. They have left that question at large, and the Commissioner of Crown Lands has authorized a re-survey of the whole of the Bailey estate survey, which was not necessary. Judgment quashing by-law with costs on high court scale and making injunction perpetual. Action dismissed without costs.

Belling v. City of Hamilton.

Judgment on appeal by defendants from judgment for plaintiff for $150 in an action for damages for non-repair of a highway, brought in the County Court of Wentworth and tried by the Judge of that court. The plaintiff, a married woman, on December 9, 1900, at 9.45 in the evening, while crossing the market square, in the City of Hamilton, diagonally, put her foot into a depression in the asphalt pavement and slipped and fell, her fall causing severe injuries, for which she sued. Held, Falconbridge, C. J., dissenting, this was a case in which the appellate court should review the finding of fact of a Judge with less hesitation than that of a jury, such a finding carrying as it does here the liability of corporations many degrees further than it has ever been carried before, and seeking to impose upon them a standard of perfection in regard to their highways far beyond the reasonable state of repair which is the measure of their duty under the statute. A municipality is not obliged to keep carriageways up to the same standard of repair as ways for foot passengers. The degree of repair in which each is to be kept is to be measured by the use for which it is intended. Boss v. Litton, 5 Car & Payne 407 explained. The finding below is that the "roadway was not sufficiently out of repair to be at all dangerous to horse and vehicles," and therefore plaintiff, though having a right to use it, had not the right to expect it to be in a better state than required by law, as above indicated. Held, also, that the defendants had not been guilty of negligence. The condition of the roadway was not such that a reasonable man could foresee the remotest chance of danger to any person on foot or otherwise from the defect in question: Ewing v. Toronto, 29 O R 197, Burroughs v. Milwaukee. 86 N. W. Rep. 159. Per Falconbridge, C. J., legislation has given to municipalities the right to trial without a jury and a finding of fact in such a case ought not to be reviewed with less respect than that of a jury. The appeal should be dismissed.

Rex ex Rel., Mallon v. Ingle.

Judgment on applicaton by relator for order setting aside election of respondents as Mayor and Aldermen of Town of Lindsay, on grond that they unlawfully diverted $960.80 of "Collegiate Institute Sinking Fund," and applied same, or the larger portion thereof towards paying the current or other expenditures of the municipality in the year 1901, and that the respondents voted for such illegal diversion, and thereby became disqualified from holding office under sub-sections 2 and 3, section 418, Municipal Act. Motion dismissed but, as the proceedings of the Council are held to have been very irregular, and to have given room for investigation, each party must bear their own costs.

Re Pelot and Township of Dover.

Judgment on motion by Emily Pelot, a ratepayer of the township and an owner of land affected by by-law No. 21, of 1901 for a summary order quashing that by-law which is intituled a by-law to divert part of the Gibbon Road in the township, which by-law was passed on the 21st October, 1901, and was confirmed by a by-law of the county council of Kent, passed on the 7th June, 1902, as required by section 660 of the Municipal Act. The road is used for the purpose of an exit to Big Point Road. The by-law provides for the closing up of a piece of the road and the opening up of a piece in substitution for it. The applicant contended that the by-law was not passed in the interest of the public at large, but at the instance and for the benefit of Poissant and Gore, two land-owners, and also that the by-law was bad because the notices required by statute were not duly given. After a good deal of consideration and with some hesitation the learned judge comes to the conclusion that this by-law was not passed in the public interest, but in the interest of Gore and Poissant, and therefore, improperly passed, and cannot stand. It violates the rule, now so well established, that corporate powers must not be exercised for the benefit of one or two individuals at the cost of others, not necessarily at the pecuniary cost, but must not be so exercised as to put many to unnecessary inconvenience for the manifest advantage of one or two; Pells v. Boswell, S. O. R., 680; Peck v. Galt, 46 U. C. R. 211; Moton v. St. Thomas, 6 A. R. 323; Hewison v. Pembroke, 6 O. R. 170; Vashon v. East Hawkesbury, 30 C. P. 194; Romney v. Mersea, 11 A. R. 712. The by-law is partial and unjust in its operation as between those of the township interested in the road. In the view taken, it is not necessary to consider the question of notice and advertisement of the by-law. The evidence establishes that there was a formal adjournment of the consideration of the by-law from the 30th September to the next meeting of the council which was held on 21st October, 1901. Order made quashing clauses 1 and 2 of the by-law as asked, with costs against the township corporation.

Canada Atlantic R. W. Co. v. City of Ottawa.

This was an appeal by defendants from judgment of Boyd. C. (2 O. L. R. 336), in favor of plaintiffs in an action for an injunction to restrain the defendants from interfering with the construction and operation of the portion of the plaintiffs' railway crossing Bridge street, in the city. Counsel for the plaintiffs opposed the appeal, and relied on the recent judgment of this court in Montreal and Ottawa R. W. Co. v. City of Ottawa, 1 O. W. R. 349 Appeal dismissed with costs, following the case cited.

Luton v. Township of Yarmouth.

Judgment on appeal by defendants, from judgment for $1,750 of Robertson, J, in action for damages for injuries sustained owing to alleged non-repair of a highway. The plaintiff was driving a team of horses, attached to a waggon filled with wood, northward on the road leading north from the village of New Sarum, and when descending Luton Hill, which is a short distance north from Edgeware Road his horses took fright at the noise made by some wood which fell off the waggon and ran over the embankment close to the bridge, which spans the west branch of Catfish Creek. The road becomes narrow as it approaches the bridge, and is rutty, and without railings. Plaintiff's ankles were both broken in the fall and he will be permanently lame from the effects of the mishap. The trial judge found that the roadbed at the top of the hill near the bridge was really 10 feet 5 inches wide, the east portion of the remaining 6½ of its width, consisting of a rut or washout, one foot deep and three feet wide, running 150 feet down the hill, that the road so sloped from the east that almost invariably a loaded wagon going down would slide into the washout; that there was about six feet from the washout a large stone embedded in the road, against which the right wheels of the wagon struck, causing the wagon to slide into the washout, and the sudden drop into it of the left wheels made the wood fall out, and the noise frightened the horses, which ran away, and that the condition of the road was known by defendants. He held that this case was clearly distinguishable from Atkinson v. Chatham, 29 O. R. 518 sub nom. Bell Telephone Co. v. Chatham, 31 S. C. R. 61. Here the causa causans of the accident was not the running away of the horses, but the sliding into the washout of the wagon, owing to the bad and inefficient state of the road. Hill v. New River Co., 9 B. and S. 303, is in point; that the plaintiff's success did not depend on his showing that his horses were not vicious, and that the judgment of the Supreme Court in Bell Telephone Co. v. Chatham, supra, in no way displaced the law declared in Sherwood v. Hamilton, 37 U. C. R 410, and Toms v. Whitby, 35 U. C. R. 194. Held, that the questions presented in this case are purely questions of fact. The weight of evidence involves the degree of credibility to be attached to the statements of the different witnesses, and when such statements are conflicting, much reliance must be placed upon the conclusion at which the trial Judge has arrived in respect to them, and as he has had an opportunity, which this court cannot have, of hearing and seeing the witnesses, and being as it were in the atmosphere of the case at the trial, his conclusion should not be set aside unless it plainly appears to be wrong. There is nothing in the evidence which should justify any interference with the findings of the Judge, and as he believed the evidence for the plaintiff, as to the nature and extent of his injury, that evidence amply warrants the damages awarded. Refer, in addition to the cases cited below, to Lucas v. Moore, 33 U. C. R. 334, 3 A. R. 602. Appeal dismissed with costs.

Re Voters' Lists Act and Township of Hungerford.

Stated case, under section 38 of the Voters' Lists act, submitted by the county judge of the county of Hastings, asking the opinion of the court upon the question whether no ices of complaint were sufficiently served and should be acted upon. A bundle containing the notices in question was, between 9 and 10 o'clock of the evening of the last day for effecting service, placed upon the door-knob of the western outer door of the house of the township clerk, the screen door being shut upon them. The messenger had knocked but none of the inmates had answered. The western door was not used by the family to the same extent as the eastern, and the notices were not found until noon on the day following, when one of the members of the clerk's family carried them to him. W. B. Northrup K. C, objected to the sufficiency of the service. No one in support of it. Held, that the service was legally insufficient. R. S. O. ch. 7 sec. 7 (1) required that to effect service the notice should be left with the clerk himself, or at his residence or place of business at such a place and under such circumstances as to raise a reasonable presumption that it reached his hands within the time. The notices in question did not in fact reach him within the time, and that they should not have done so might reasonably be expected to happen under such circumstances.

Swayne vs. Montague.

Judgment in action tried at Perth assizes before chancellor Boyd. The action was brought for damages to the plaintiff's land and crops by flooding, alleged by him to have been caused by the defendant making a junction of two drains, known as the Carroll and Guthrie drains. Held, that there was in fact no junction. The only act of the defendants which could have given the plaintiff a right to recover against them was the putting in of a new culvert at a place where there had previously been a means of escape for water, and one was necessary. The water found its way from the Carroll drain into a swamp and thence into the Guthrie drain, and the only effect of the culvert was that, by increasing the rapidity, though not the volume of the flow, the amount of water in the swamp was increased for a few days. As to the damage resulting from this increased rapidity of flow there was no evidence. For any damage caused by the Guthrie drain the defendants were not liable. Action dismissed with costs.

Hefferman v. Town of Walkerton.

Counsel for plaintiff moved to continue injunction granted by local Judge at Walkerton restraining the defendants from paying $125 to the Mayor for his services to the town as Mayor. The parties agreed that the motion should be turned into a motion for judgment. The by-law was first introduced in June, 1902, but was not finally passed until December 13. It was objected (1) that there was not the necessary majority in favor of the by-law under section 85 of the procedure by-law of the town, which required that in the case of money by-laws there should be a vote in its favor of two thirds of the members present at the meeting; (2) that the by-law was not referred to the committee of the whole, as required in the case of money by-laws passed after the adoption of the estimates, and (3) that the by-law was not sealed when acted upon. There had been seven members present at the meeting, among them the Mayor, who did not vote. The by-law had been carried by four to two, the Mayor not voting, presumably under another section of the procedure by-law. The check had been written out by 9 a. m. on the morning of December 14; the by-law was not sealed at 11 a. m. Held, that the money appeared to have been paid to the Mayor for his costs of a law suit, and to have been included in the estimate. On the question of the reference to the committee of the whole it appeared that it was a mere matter of procedure, which this court would not interfere with, when it had been considered by the whole council. On the point of the majority the procedure by-law made it clear that the Mayor need not vote if he did not desire to, the by-law distinguishing the Mayor from the members. His ruling as to the majority was final and it seems that the vote was a two-thirds vote. The objection therefore failed. The objection as to the sealing of the by-law was a technical one, and the by-law having been sealed on the same day as the transaction was carried out, the day would not be divided into parts, but the transaction would be considered to have been sufficiently authorized. Action dismissed with costs.

Wilmot School Trustees (13) v. Zimmer.

Judgment (oral) in action tried without a jury at Berlin. Action for damages for trespass and for an injunction. The defendant was employed by plaintiffs as a teacher, but the plaintiffs, as they allege, dismissed him, after which he attempted to keep his place as teacher, and they were obliged to bring this action. Counterclaim for $250 for salary and for a declaration that one Shantz was not legally a trustee, and that all acts performed by him were void. Judgment for plaintiffs for $5 damages and perpetual injunction, with full costs. Counterclaim dismissed without costs

Holmes vs. Town of Goderich.

Judgment on appeal from judgment of Robertson. J., at trial dismissing the action. This was brought by plaintiff, on behalf of himself and all ratepayers of the Town of Goderich, to restrain the defendant corporation, its mayor, and treasurer, and the Bank of Montreal from discounting, or in any way dealing with a note or the proceeds thereof, made to the Bank of Montreal to provide funds to pay into the Supreme Court of Canada $2,000 security on an appeal taken by the town from a judgment of the court of appeal in another action, in which the present plaintiff was plaintiff, and the town defendants. During the course of the present action the money was paid into the Supreme Court, which heard the appeal, and allowed it with costs, whereupon the $2,000 security was taken out and repaid to the Bank of Montreal. The only question in this appeal was, therefore, one of costs. Held, that the court was bound to hear and decide the merits of the appeal (Fleming vs. city of Toronto, 19 A. R. 318), and that the plaintiff's personal interest was no bar to his bringing the action. Held, on the merits, that the town had no power to procure the loan, for two reasons: First, because, looking at sub-section 4 of section 435 of the Municipal Act (R. S. O. ch. 223), it was clear that, in order to ascertain the amount which a municipality may borrow for current expenses under that section, the amount of taxes collected for school purposes in the previous year must be deducted from the whole sum collected, and 80 p. c. of the difference only borrowed. Since the town had, in 1900, only collected $21,774, deducting school rates, they could in 1901 only borrow for current expenses $17, 419; and since, before this loan was made, they had already borrowed $17,000, this loan caused the legal limit to be exceeded. Secondly, because the borrowing power, under section 435 (3) is limited to what is required for the ordinary expenses of the municipality, and an outlay which had not been contemplated when the estimates were prepared, and for which no provision, ei her special or as a possible contingency, had been made in the estimates, could not possibly be deemed part of the "ordinary expenditure" for the year. Appeal allowed, costs of action and appeal against defendants, other than the Bank of Montreal.

Rex v. Alford.

This was a motion for an order nisi to quash a conviction of defendant under a by-law of the City of Stratford for refusing to pay $10 for damages done to a vehicle hired by him from C. Brothers, keeper of licensed livery stable. The consolidated by-law provides, sec. 343, that "no person hiring any horse or horses and vehicle from any person licensed under this by-law shall . . . refuse to pay . . . for . . . any damage done which any such horse or vehicle shall have sustained while in his use or possession," and a penalty clause provided for a fine of not more than $50 for an infraction of any section of the by-law. It was contended (1) that the conviction did not disclose any offence. and (2) that the by-law was ultra vires of the Municipal Council. Order made quashing conviction on second ground with costs.

QUESTION DRAWER.

(Concluded from page 97.)

the school section for 1902, nor is the taxation thereof legal for that year.

2. By sub-section 3 of section 25 of the Public Schools Act, 1901, any person in a school section in an unorganized district whose place of residence is more than three miles in a direct line (that is "as the crow flies" and not by the usually travelled road) from the site of the school house of the section, shall be exempt from all rates for school purposes, unless a child of such ratepayer attends such school."

Moving and Improving Public Hall in Village—Vote Necessary to Carry Resolution.

334—H. W. E.—1. In our village is a public square with a number of roads leading to it. A number of years ago the council erected a town hall on one of these roads. They now propose to enlarge the hall. It being on the road allowance can any ratepayer object to their enlarging it, or can the property holder opposite the hall object to having it opposite his property?

2. The council at its last meeting also decided in case of objection, to move it on the square and expend about $1,000 repairing it. Can they do so withot a voice of the people?

3. At this meeting three of the council decided to move it and enlarge it, and two objected. Would this motion be legal?

1. If this Hall is erected and standing on a road allowance, which has been regularly established and dedicated to the public for use as a public highway as we infer to be the case, the council has no authority to keep it or build additions to it there, and it is a nuisance for which an indictment will lie.

2. Sub-section 1 of section 534 of the Municipal Act empowers the councils of villages to pass by-laws "for erecting, improving and maintaining a hall" therein, and it is not necessary to submit a by-law of this kind to the vote of the electors of the municipality before its final passing. If however, the $1,000 proposed to be expended in making the improvements to the public hall in this case, is not to be repaid within the municipal year in which it is expended, a by-law providing for raising it must be submitted to the vote of the electors pursuant to sub-section 1 of section 389 of the Municipal Act.

A by-law to grant a loan of $25,000 to R. J. Disney, of Hanover, to assist him in establishing a furniture factory in the town of Collingwood, was defeated, owing to the fact that the requisite number of votes was not cast in favor of the by law.