# The Municipal Miscellany.

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*The Municipal Miscellany, devoted to the dissemination of useful information relating to Municipal and other local Institutions, published monthly, at $1 per annum: six copies for $5. Address all communications to G. E. Neilson, publisher Municipal Miscellany, Arnprior, Ont.*

## Calendar, March, '91.

1. Separate School Supporters to notify municipal clerk.
   County clerks to furnish Minister of Education with copy of minutes relating to school assessments, etc.
   Public School Inspectors' annual report to Minister of Education.
   Auditors' Reports of school accounts due.
   Financial Statement of Teacher's Associations to Education Department due.
26. High, Public, and Separate Schools close for Easter holidays.
27. Good Friday.
31. High, Public, and Separate Schools open after Easter holidays.
   Last day for councils of cities, towns, and villages, to pass by-laws limiting number of shop licenses to be granted.

## THE ASSESSORS' WORK.

In continuation of the above subject, we will as briefly as possible explain the nature of the various kinds of property liable to assessment, and also a list of the exemptions.

Real property includes all land and buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law a part of the realty. Also all mines, minerals, quarries, fossils, growing trees, and even land covered with water. We have heard of wooden dwelling houses that were merely set upon loose blocks on the surface of the ground, having been seized and sold under a sheriff's *fi fa* against goods, the contention being that as it could be removed without injury or disturbance of the soil such building was only a chattel and no part of the realty. The assessor, however, will have no such knotty question to solve, as the Act clearly states that all buildings erected *upon* the land are to form part of the realty. Not so with machinery; it must be a fixture in order to be considered a part of the real estate. Machines spiked to the floor or securely attached in some other manner would be fixtures. If not so fixed it would be assessable as personal property.

Personal property includes all goods, chattels, interest on mortgages, dividends on bank stock, dividends on shares or stocks of other incorporated companies, money, notes, accounts and debts at their actual value, income, and all other property except real estate. In assessing personal property it is almost impossible for any assessor to feel satisfied in his own mind that he has fully complied with the law, or that strict justice has been done to taxpayers of real estate. Real estate is visible and requires only good judgment and a knowledge of values to enable the assessor to do his duty. With much of the assessable personal property it is different, and the assessor has in a great measure to be guided by the statements of the persons interested in shirking taxation. It is not to be expected that the average assessor is able to tell within a very close margin the value of a merchant's stock, nor yet how much of the stock is paid for, as the liabilities for the purchase of the goods, (if such have not been secured by a mortgage on real estate,) have to be deducted. Naturally enough, merchants interpret the deductions liberally, and liabilities other than those specifically laid down in the Act are often made to do duty. Still more difficulty is experienced in getting at the amounts received by money lenders as interest on mortgages, or of the cash on hand or in bank, or amounts received as dividends from bank stock or other like investments. Some wealthy persons think it a hardship to pay taxes on their cash or income from investments, but we see no good reason to treat their capital differently from the capital of the farmer, merchant or manufacturer. If any class should be favored it is these latter classes who are taking the risks in developing the resources and carrying on the trade of the country, whereas the money lender takes no risks, and invariably exacts his pound of flesh. A correspondent in last MISCELLANY asked the question, if it was the par value of money or the interest only that was assessable. The statute says "money," and does not in that connection refer to the produce or interest of it, and we think that the total or actual money has to be assessed. Money is only capital in the form of cash, land is only capital bought with money, and there is no more injustice in assessing the one kind of capital than the other; but there is a great deal more difficulty in getting at the true facts in the former case, so much so, indeed, that the law is almost a dead letter so far as the assessment of cash is concerned. Rentals and profits or income derived from property that is assessable is exempt. Interest derived from mortgages on real estate is assessable, but not the cash secured to be paid by such mortgages. To assess both the land and the mortgage would be tantamount to a double assessment on the land. If it were made compulsory for every person to fill up schedules or statements of his personal property liable to assessment, to be attested by affirmation, with a penalty in case of misinformation, then the assessment of personal property would be comparatively easy.

Income assessment in some municipalities is fairly well looked after, but in others very little attention has been paid to it by assessors. Incomes derived from personal earnings, such as wages, salaries, commissions, fees, and the like are assessable provided the amount exceeds $700, up to that amount is exempt. If it exceeds $700 and does not exceed $1,000, then $400 only is exempt; thus an income of $750 would be liable to be assessed for $350, and if $1,000 it would be assessed at $600. An income exceeding $1,000 has no exemption whatever, the full amount being liable. Formerly clergymen were exempt on their stipends up to $1,000, but this has been done away with, and clergymen are now to be treated, both in the matter of income and on the realty of their parsonages and grounds, the same as their parishioners.

The exemptions from taxation assessments are somewhat numerous, and are included in the following, as copied

from the sub-sections of the Assessment Act and recent amendments :—

"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."

"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."

"Every place of worship, and land used in connection therewith, churchyard or burying ground."

During the session of the Ontario Legislature of 1890, the following clause was made law : "Land on which a place of worship is erected, and land used in connection with a place of worship, shall be liable to be assessed in the same way and to the same extent as other land, for local improvements hereafter made or to be made." We would understand from the above that the value of the improvements on the land, such as the church itself, was not intended to be taken into account in the assessment for local improvements. Had the words "real estate" been used, it would have been clear that everything was meant to be included. The word "land" in the interpretation clause of the Assessment Act, defines that it shall include buildings, but that would probably not change the effect of the words "land on which a place of worship is erected," which looks as if a contrary meaning was intended.

"The buildings and grounds of and attached to every University, College, High School, or other incorporated seminary of learning, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise occupied." By a change made last session any of the foregoing properties, (except such as receive Government aid or school tax,) are made liable to be assessed for local improvements.

"Every Public School house, town or city or township hall, court house, gaol, house of correction, lock-up house, and public hospital, with the land attached thereto, and the personal property belonging to each of them."

Village halls are not included in the above exemptions, but as all county and local municipality property are exempted in a section quoted below, it was unnecessary to particularize any of the municipal halls.

"Every public road and way or public square."

"The property belonging to any county or local municipality, whether occupied for the purposes thereof or unoccupied ; but not when occupied by any person as tenant or lessee, or otherwise than as a servant or officer of the corporation for the purposes thereof."

"The Provincial Penitentiary, the Central Prison and the Provincial Reformatory, and the land attached thereto."

"Every industrial farm, poor house, alms house, orphan asylum, house of industry and lunatic asylum, and every house belonging to a company for the reformation of offenders, and the real and personal property belonging to or connected with the same."

"The property of every public library, mechanics' institute, and other public literary or scientific institution, and of every agricultural or horticultural society, if actually occupied by such society, and all the lands and buildings of every company formed under the provisions of '*The Act respecting Joint Stock Companies for the erection of Exhibition Buildings*,' where the council of the corporation in which such lands and buildings are situated consents to such exemption."

"The personal property and official income of the Governor-General of the Dominion of Canada, and the official income of the Lieut.-Governor of this Province."

"The houses and premises of any officers, non-commissioned officers, and privates of Her Majesty's regular Army or Navy in actual service, while occupied by them, and not exceeding $2,000 in value, and the full or half pay of any one in either of such services ; and any pension, salary, gratuity or stipend derived by any person from Her Majesty's Imperial Treasury, and the personal property of any person in such naval or military services, on full pay, or otherwise in actual service."

"All pensions of $200 a year and under, payable out of the public moneys of the Dominion of Canada or of this Province."

"All grain, cereals, flour, live or dead stock, the produce of the farm or field, in store or warehouse, and at any time owned or held by or in the possession of any person in any municipality, such person not being the producer thereof, and being so held, owned or possessed solely for the *bona fide* purpose of being conveyed by water or railway for shipment or sale at some other place."

"All horses, cattle, sheep, and swine, which are owned and held by any owner or tenant of any farm, and when such owner or tenant is carrying on the business of farming or grazing."

This last clause is a late enactment and has had the effect of reducing the total assessment roll of township municipalities. It has not lessened the actual taxation for township purposes, but may have shifted a portion of the burden from large breeders and stock owners to their neighbors. The effect may have lessened somewhat the county rate payable by some townships, but not materially, as county councils would most likely have added sufficient percentage to the total township rolls to bring them up to their former standard for county purposes. The exemption appears to have for its aim the encouragement of stock farming, as any farmer may invest as much money as he wishes in that line without adding to his taxation.

"The income of a farmer derived from his farm, and the income of merchants, mechanics or other persons derived from capital liable to assessment." The income here means the crops and profits from sales during the year. It would not include, we think, money or profits made in former years.

"So much of the personal property of any person as is invested in mortgage upon land or is due to him on account of the sale of land, the fee or freehold of which is vested in him, or is invested in the debentures of the Dominion of Canada or of this Province, or of any municipal corporation thereof, and such debentures."

"The shares held by any person in the capital stock of any incorporated or chartered bank, doing business in this Province ; but any interest, dividends or income derived from any such shares held by any person resident in this Province shall be deemed to come within and to be liable to assessment under section 31 of this Act."

"The stock held by any person in any incorporated company, whose personal estate is liable to assessment in this Province."

"The stock held by any person in any railroad company, the shares in building societies, and so much of the personal property of the 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 shares in such building societies, or

from investments in such companies as aforesaid, shall be liable to be assessed."

"All personal property which is owned out of this Province, except as hereinafter provided."

"So much of the personal property of any person as is equal to the just debts owed by him on account of such property, except such debts as are secured by mortgage upon his real estate, or are unpaid on account of the purchase money therefor."

"The net personal property of any person; provided the same is under $100 in value."

"The annual income of any person derived from his personal earnings; provided the same does not exceed $700."

"The annual income of any person to the amount of $400; provided the same does not exceed $1,000." We notice that Harrison's notes in the *Municipal Manual* take a different view of the two preceding clauses from the manner explained by us in a former portion of this article. The real meaning is not altogether free from doubt, and it might be more prudent and satisfactory to follow the *Manual*, although we cannot see that the last section quoted above necessarily means *not to include* personal earnings. The *Manual's* view is that personal earnings up to $700 are exempt, but if more, none of the personal earnings are exempt. That income *from other sources than personal earnings* up to $400 is exempt, but if such income exceeds $1,000, none is exempt. Thus a person whose salary was $800 and who had an income from some other source, liable to taxation, of $1,100, would have no exemptions whatever. On the other hand, if his income from each such source were $100 less, he would be exempt the $700 in one case and $400 in the other, being a total exemption of $1,100 out of a total income of $1,700. The easiest way for the assessor is to prescribe the medicine to the capacity and comfort of the patient. Any who wish have power to waive their right to exemption on personal income.

"Rental or other income derived from real estate, except interest on mortgages."

"Household effects of whatever kind, books and wearing apparel."

"Vessel property of the following description, namely: Steamboats, sailing vessels, tow barges and tugs; but the income earned by or derived through or from any such property shall be liable to be assessed."

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We unwittingly erred in the last sentence of the article on Justices of the Peace in last Miscellany, where we stated that Police Magistrates had no jurisdiction outside the limits of the town or locality for which they had been appointed. This holds good in a certain sense, as the authority of Justices of the Peace appointed by commission from the Crown is limited to the locality therein specified, but we should have noticed that by section 18 of the Police Magistrate Act, every such officer is *ex officio* a Justice of the Peace for the whole County or Union of Counties or District, for which, *or part of which*, he has been appointed, A Police Magistrate has therefore special powers given him by law in the locality where appointed, and in the remaining portion of the county he exercises all the powers of an ordinary Justice of the Peace.

## COUNTY EQUALIZATION OF ASSESSMENT ROLLS.

The principal business transacted by a majority of county councils at their June sessions is the equalization of the various township, town and village assessment rolls, so as to ensure a just proportion of county rates being paid by all the local municipalities. Were all assessors equally careful to assess property at its actual value, or even at a uniform reduction from the actual value, there would be no need for the county to interfere. This, however, is notoriously not the case, as very great differences are found in the percentage of undervaluation by different assessors. Each municipality is seemingly striving to escape as lightly as possible in its share of county burdens, and this no doubt influences assessors to some extent. If no after revision of the various rolls took place, this state of matters would go from bad to worse. The law therefore provides for the revision by the county council. Different councils adopt different methods, as no hard and fast rules have been laid down for their guidance. The usual method is by the appointment of a committee composed of members who are supposed to have a good general knowledge of property in different localities. This committee look over the various rolls and select such properties as they think to be similar, and where assessor's valuations are found to differ, the differences are equalized by adding such a percentage to the rolls of those found lowest in value to bring them up to a common standard. It does not always follow that correct results are thus obtained, and frequently local municipalities have reason to complain, as such a revision at the best is but a partial one. Nor does it follow that a farm though equal in all other respects is of the same value in two adjoining municipalities, basing the value on its selling price. Real estate agents know well that it often happens that a property in one municipality will bring one third more at a sale than a similar property, situated it may be in a neighboring municipality. The wealth and general excellence of the settlement, roads, schools, markets, and even the character of the inhabitants, are all important factors in determining the value of any particular property, and it is not to be expected that any committee, in the limited time at their disposal and by a cursory glance over a number of assessment rolls, can always strike the happy medium, let their intentions be ever so impartial. Again some county councils adopt in township revisions an acreage system — grouping certain townships in classes according to their situation and general excellence, the total acreage being, say for the highest group $6 or more an acre, the second group $5, and so on down to the lowest for poor townships remotely situated. Towns and villages being equalized at a rate on their population at so much per head as taken from the voters' list. It has been found that the system of acreage has resulted in "land slides" in many townships, as the years pass by the quantity of land returned on the rolls becoming beautifully less.

The Municipal Act also provides for the appointment by the county council of valuators to assess the whole real property of the county for county purposes on similar lines

to the local assessors. Singularly enough that Act does not include personal property in the county valuator's work, although the Assessment Act, section 81, appears to contemplate both. This system is expensive, and it does not do away with the necessity of the usual revision by the council, nor is it likely to give more general satisfaction.

We will again take up the question in our next issue, as we think a better scheme than any now in practice is possible without adding unduly, if at all, to the present cost of revision. Those having experience in such matters will then have an opportunity of forming an opinion on our suggestions as to their feasibility or otherwise.

## MUNICIPAL CLERKS.

There are many municipal clerks in the province who have uninterruptedly occupied their positions for a quarter of a century or over. They have seen many changes in their time in the laws regulating municipalities. Not only have these officers attended faithfully to the heavy clerical work appertaining to their offices, but have necessarily devoted much time to study the various laws, as amended from time to time, with which they have had to do. Some of these laws are complicated, and a mere cursory glance over them would not suffice. By the knowledge obtained by close study the clerk has enabled the municipal ship to steer clear of breakers on many occasions no doubt, and has thus saved ratepayers much expense in litigation. As councillors are so frequently changed, it is not to be expected that they can be familiar with the laws governing their actions, at least without some considerable experience in the office. If it was a necessity for councillors before being elected, to qualify by a municipal law examination, the ratepayers would be somewhat limited in their choice of candidates for the council board, as few have had any legal training for the office before election. Nor is it absolutely necessary, although it certainly would be no disadvantage, for councillors to be minutely informed on the laws, as much of their work is of a comparatively routine character, requiring only good common sense to enable them to make good efficient councillors. They depend on the clerk, as a rule, to look after the legal difficulties where they exist, unless it happens to be something out of the usual order, when they are justified and should obtain the assistance of a legal adviser. The clerk's contract with the council does not stipulate for legal advice. This is gratuitous on his part, and evidences a desire for the welfare of the municipality. Thus it will be seen that as the clerk has enabled the municipality to save many a good dollar for law advice and assistance in preparing by-laws, etc., over and above his legitimate duties, and usually his remuneration has been comparativ y meagre, the municipality is under a deep obligation to him when after many years' faithful service he finds the infirmities of old age coming on and has to retire from active service. The Legislature, as knowing something of the valuable services rendered the country and particularly to his municipality by such officials, has provided a means by which some ackowledgement may be made them. It is not so very generous, it is true, as to tempt any to superannuate while at all able to do their work, but it is at least some token of gratitude for services performed, and no municipality should be so heedless or heartless as to forget such services. There are treasurers, and perhaps other officials besides clerks, who deserve well of their employers, and should not be forgotten. It is but a mite from each ratepayer, but is a right contemplated by law, and therefore an old and faithful servant can accept it without scruple or diffidence, knowing that he had justly earned it. The provision in the Municipal Act to which we refer is contained in Sec. 280, authorizing councils to "grant to any officer of the municipality who has been in the service of the municipality for twenty years, and who has while in such service, 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 services, as a gratuity upon his removal or resignation."

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THE county councils of Lanark and Oxford have decided to establish houses of industry. The county council of Leeds and Grenville will petition the Legislature to compel all counties to provide such houses.

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WE are pleased to know that many of the local councils have decided to order a sufficient number of copies of THE MUNICIPAL MISCELLANY to supply each councillor and the clerk. They consider such a paper a useful adjunct in carrying on the work of the corporation. We supply six copies to be sent either to one address or separately for $5 a year. Any persons not already subscribers, to whom this number of the paper is sent, will oblige by notifying us by postal card or otherwise if they wish it continued or not. We would like THE MISCELLANY to be taken in every municipality, but we do not wish to press it upon any who may not desire it. Our best thanks are due those who so willingly assisted in furthering the circulation of the paper. When warranted in doing so, improvements in size and otherwise will be made.

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AN amendment to the Public and Separate Schools Act, passed last session, requires municipal clerks where separate schools exist to enter the names in alphabetical order in an index book, to be kept for the purpose, of all separate school supporters who already have, or may in future give notice to the clerk that they are separate school supporters, and the assessor is to be guided by this list in ascertaining who has given such notice. It does not appear, however, to do away with the former provisions of either the Assessment or School Acts requiring the assessor to take the authorized statement of any person who claims to be a supporter of the separate school, or of entering any as such supporters who may in the knowledge of the assessor be a Roman Catholic. This last amendment only adds to the confusion heretofore existing. If the word "assessor" was changed to the word "clerk" in the third line of section 3 of the new amendment, it might be more intelligible as a direction to the clerk as to the proper persons to be placed on the collectors' roll for separate school taxes.

## QUESTION DRAWER.

On page 7 of the first number of the MUNICIPAL MISCELLANY, a question is asked about the adding of notices of sitting of Division Courts, etc. My construction of that rule is that, when the time for the first two notices runs out the bailiff is to return the summons to the clerk to add the dates of the next two sittings, and continue the same practice from time to time until served, for at least a reasonable length of time, as circumstances may require or warrant, unless the plaintiff sees fit to stay proceedings or withdraw. Suppose a plaintiff has a promissory note that is near outlawed ; to keep it good he enters it in court, and if my construction of the law or practice is not correct, then if the defendant can manage to evade the service for four courts, he can snap his fingers at the plaintiff and bid him defiance. Was such the intention of the Legislature or the framers of the rules? I think not. W. M. D.

We entirely agree with the opinion of W. M. D. in his concluding sentences, that it was not the intention of the framers of the rules that suitors should lose their remedy for want of proper machinery to enforce payment. The fact however remains, that the rules only provide for adding the dates of four sittings of court on Special Summons, and could easily be amended so as to simplify and leave no doubt about the further course to be pursued. Rule 127 provides for the continuance of action so as to prevent the operation of the Statute of Limitations, that it "shall only be necessary to issue the first process or summons ; and that it shall not be necessary to serve, or attempt to serve the same, or to issue an *alias* or *pluries* summons, or otherwise to do any act for the continuance of the action other than serving the defendant with the process ; and the process when served shall be a continuance of the action on and from the day on which the first summons or process issued. Provided that no process shall issue after twelve months from the issue of the first process without the order of the judge." This appears to contemplate the issue of a separate process from the first one issued. We know of a case where two parties to a note were sued, one of whom was served with special summons, but the other party could not be found or his whereabouts ascertained, and therefore could not be served. The defendant who was served did not defend, but the plaintiff objected to take judgment against him alone, so that the matter had to remain in abeyance for about a year until the other defendant returned, and thereupon the clerk added new dates of court and had defendant served, and he did not defend. The time allowed the clerk to enter judgment having elapsed, under Rule 22 the suit was placed on the judge's list for hearing. The judge refused to enter judgment for the plaintiff on the ground that the time had elapsed for entering new dates of court on the special summons, and held that the plaintiff should have sued out an *alias* ordinary summons under Rule 31, which is as follows : "In case judgment be not entered by default, on a special summons, within one month after the return of the summons, the clerk cannot enter it afterwards ; but the suit shall not thereby abate or be considered as discontinued, but the plaintiff may continue and revive the same at his own expense by sueing out an *alias* summons in the ordinary form of summons to appear (Form 22), with the same particulars attached or endorsed as were attached to or endorsed on the 'Special Summons,' which shall be duly served upon the defendant in the usual way, and the suit may then proceed as in ordinary cases."

Is it compulsory that a council should appoint a medical health officer in connection with the local board of health in the municipality? J. H. R.

The council may appoint a medical health officer, but it is not compulsory unless where from the presence of any formidable contagious disease in the locality that the Provincial Board of Health at Toronto considers such an appointment necessary, and makes a request to the Council to make the appointment. If after five days from such request the council neglects to make the appointment, then the Lieutenant-Governor may do so on the application of the Provincial Board. In the latter case, the medical health officer's appointment holds good until the 1st of February following, unless the council dismiss him for good cause, but if the appointment is made by the council he only holds office during the pleasure of the council. The council in either case should fix the compensation or salary to be paid to the medical health officer, but if not so fixed he would be entitled to reasonable compensation for services actually rendered.

Does the law which applies to line fences between owners or occupiers of adjoining lands apply to the line fences between owners and the Municipal Road Allowance? J. H. M.

We think not. Invariably throughout the Statutes the word "land" refers to other land than such as is used for a public road. Streets, roads and road allowances are always specially referred to under these names. The whole tenor of the above Act goes to show that it never was contemplated that the municipality should be one of the parties to a dispute about erecting or maintaining line fences between the owners and occupiers of adjoining lands.

If cattle, horses, hogs, etc., are forbidden by Statute and township by-law from running at large, and a land owner in the municipality removes his fence from the front of his premises and cattle, horses or hogs come in and destroy his premises or his crops, who is responsible for the damage, or is any one? J. H. M

The owner of the horses and cattle running at large contrary to a by-law would be liable for the trespass. If there is no by-law requiring a person to erect and maintain a fence along the road in front of his premises, he would not require to do so.

Can you inform me how the poles, lamps, wires, etc., on the public street, but belonging to a private electric light company, can be assessed? M.

We cannot inform you. So far as we can understand the Assessment Act there is no provision for assessing such property. The poles being sunk into the ground form part of the realty, and public streets are not assessable. If the wires and lamps can be considered as a portion of the dynamo or plant to which they are attached in the building of the company—and certainly they are useless without such plant—then they might possibly be valued with the machinery. The poles, on the other hand, are not indispensibly necessary, as the wires might be attached to buildings or otherwise secured. On the whole, we are of opinion that it will require additional enactments to bring any of the property on the streets within the reach of

taxation. Chap. 165 gives power to municipalities to arrange by by law with electric light companies for the use of the streets, and an annual payment in lieu of taxation might have been arranged for in the agreement with the company.

I have received and read with interest the first number of your new journal, I was especially glad to find in it an article on auditors, being at present in doubt as to the practice to be followed in filling a vacancy in that office. On reading the article, however, I was much disappointed to find that, as in *Harrison's Municipal Manual*, the point had not been touched upon. The question is this: In the case of a village, can the reeve fill a vacancy in the office of auditor caused by one of the auditors (not his own nominee), refusing to act? The provision of Section 258 of the Municipal Act, empowering the head of a council to do so, seems, by the wording of that section (I venture to think, unintentionally), to be restricted to the case of a county, and no provision, so far as I can see, is made for minor municipalities. I think there is no doubt that under Section 8, Sub-section 26, of the Interpretation Act (R.S.O. 1887, C. 1), the council as a body having the appointing power have also the power of filling the vacancy. But is there any good reason why the council of a minor municipality, any more than that of a county, should have to be called together for this purpose? If not, I venture to suggest that the law should be at once amended.

W. A. D. L.

The provisions of Section 258 of the Municipal Act provides that in the event of an auditor appointed by the council to audit the accounts of the county refusing or being unable to act, then the warden shall "nominate" another person to act in his stead. That section does not apparently empower the head of a village council, or for that matter the council itself, to appoint an auditor in room of one not able to act. However, the law referred to by our correspondent, Chap. 1. Sect. 8, Sub-Sect. 26, provides that the body empowered to appoint shall also have power to dismiss, and also to make a new appointment, but it must be done in the same manner and by the same authority as the first appointment, consequently where, as in the case of village councils, no special authority has been delegated to the reeve to make such an appointment, it must receive the sanction of the council in the usual manner. This is the more apparent when we look at Section 262 of the Municipal Act, which especially gives city councils power by by-law to fill such a vacancy. We cannot understand why that section did not also include town, village and township councils, if it was thought necessary to legistrate specially to give such powers. The word "nominate" in Section 258 is hardly such a term as would be quite clear, as it does not always follow that to "nominate" means to "appoint." Any doubts, however, regarding the meaning of the word "nominate" as here employed, is removed by the amendment to Section 258 passed last session, which adds, that the person "so to be appointed by the head of the council shall not be a person in his employment."

Has a township council power to pass a by-law for the purpose of raising money for one year, or a term of years, for the purpose of purchasing a site and the building of a town hall, without submitting the by-law to the vote of the electors? F. I.

The consent of the ratepayers must be obtained before passing a by-law to raise the money necessary to buy a site and build a town hall, as that is not by any means an ordinary expenditure, and not payable within the same year. It is the opinion of some authorities that even if the money was payable out of the current year's taxes, so long as it was not for ordinary expenditure, that on the general principle of the municipal law, the assent of the ratepayers would have to be obtained. If such is the case, even stronger reasons might be shown to prevent borrowing money for *ordinary* expenditure repayable in a future year, without such consent. The spirit of the municipal law is largely in the direction of protection of ratepayers from any undue extravagance on the part of councils, for it prevents borrowing against the future without the assent of the ratepayers, except in some specific cases, and on the other hand the annual taxation is limited to a rate of two cents on the dollar over and above school rates.

Can an assessed farmer's son (not an assessed ratepayer) vote at a meeting for the election of school trustees? E.

Yes. It is expressly stated in the interpretation clause of the Public School Act, sub-section 7 of section 1, that the word "ratepayer" in that Act shall mean and include any person entered on the assessment roll as a farmer's son.

Should the clerk and treasurer be appointed each year by the council, same as assessor, collector and auditor? Or would the by-law passed for their appointment be good for years, until they resigned or were dismissed? In the case of assessors, collectors and auditors a specific time for their appointment is given, but there is no particular time for clerks or treasurers. F.

The law does not require nor contemplate an annual appointment of either clerk or treasurer, whereas in the case of assessors, collectors and auditors the law expressly states that they must be annually appointed. The provision made, and referred to elsewhere in this issue, by which councils are empowered to grant a retiring allowance to officials in service over twenty years, and also in the case of treasurers' bonds, where councils are under obligation—see section 249 Municipal Act—to enquire annually into the sufficiency of the security given by that officer and to report thereon, both go to show that the tenor and spirit of the law favor the continuance of these officials. Frequent changes of these officers, or, in fact, of any faithful officer, once he gets to understand his work, are not in the best interest of the ratepayer. No business man would for a moment think of discharging a trained assistant or workman and take an apprentice in his place, other things being equal. The weakest plank to our mind in the United States system, is the necessary frequent change of all its township and county officials. An officer has hardly learned his business before he expects to have to step down and out. There is no incentive to become proficient in his official duties by such a system, but rather to become proficient in "making hay while the sun shines."

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AT North Bay, Nipissing, lately erected into a town, the candidates for municipal honors published their addresses in the local press. That prettily situated northern town don't do anything by halves.

A DEPUTATION from the county councils of Leeds and Lanark waited on the Minister of Public Works at Ottawa, asking aid for the construction of a bridge over the Rideau at Olivers Ferry to connect the two counties.

## GOOD WISHES.

We are much gratified that our little MUNICIPAL MISCELLANY has been so generally acceptable to municipal officers, who like ourselves have felt that something of the kind was required, and would prove useful in directing attention to various matters that are occasionally coming up for consideration. There are many of our laws that would bear simplifying, or at all events of being made more exact and clear in their wording, and it is only by close scrutiny of them that such defects are discovered and may be amended. Dan. O'Connell, the gifted Irish orator, pithily expressed this fact when he said he could "drive a coach and four through any Act of Parliament." Our warmest thanks are due those throughout the province who have become subscribers, many of whom have added words of commendation similar to those below:

"Thanks for your sample copy of the MUNICIPAL MISCELLANY. I am well pleased with it, and think it will supply a want long felt by municipal officers, and should have a large circulation and be well supported. I shall have great pleasure in introducing it to the notice of all interested in municipal matters in our town, and do my best to promote its circulation. Please place my name, also that of our Mayor, H. A. W., on your list of subscribers." C. H. R., Walkerville, Co. Essex.

"Saw a copy of MUNICIPAL MISCELLANY at G. M. S., Bothwell, to-day. Kindly mail one to my address." G. A. A., Sutherland Corners, Co. Middlesex.

"A useful paper. I believe I can send you more subscribers." L. S. B., St. Catharines.

"Copy of MUNICIPAL MISCELLANY received, and I am much pleased with it. Send sample copies to (giving the names and addresses of the reeves and councillors, which have been forwarded as requested)." D. C., Hanover, Co. Grey.

"I have received and read with interest the first number of your new journal. I was especially glad to find in it an article on auditors." W. A. D. L., Ottawa East.

"I have received a copy of your MUNICIPAL MISCELLANY and was much pleased in looking through its pages, as I am sure it will in a great measure help to fill a long-felt want." W. H. C., East Toronto.

"Wishing you success in your enterprise. It is a journal that ought to be of interest to all municipal officers, and should be encouraged, as it fills a long-felt want. You have in connection with it a question drawer, which will be of great benefit." F. J., Metcalfe, Co. Russell.

"I enclose one dollar, being one year's subscription for the MUNICIPAL MISCELLANY, as I consider it is a publication that is much needed, and I hope you will succeed in your undertaking." R. A., Cornwall Centre, Co. Stormont.

"Send me your MUNICIPAL MISCELLANY. I think our municipal officers should all have something of this kind." J. M., Mayor of Essex.

"Find enclosed one dollar for MUNICIPAL MISCELLANY for one year. Trust that your new venture will be a success. An organ of that sort is a felt want in the class for which it is intended." J. G. S., Fletcher, Co. Kent.

"I received your sample copy in regard to municipal government. I will become a subscriber to your journal, and will submit some questions in municipal school law for you to expound." D.A.M.D., Wallaceburg, Co. Bothwell.

"I think your paper is just what is wanted." R. E. H., Grand Valley, Co. Wellington.

"I like your paper very much so far, and will try to induce our council to send for some copies, as we should be furnished with all the information and help we can get reasonably." J. G. F., Moira, Co. Hastings.

"Having received a number of the MUNICIPAL MISCELLANY which you are publishing, I am very much pleased with its appearance; consider it is much wanted, and sincerely hope the enterprise will succeed. J. McQ., Fergus, Co. Wellington.

"I am pleased with it and hope the MISCELLANY will be a complete success. J. C., Londesborough, Co. Huron.

"I think from appearance of sample copy received it will be a very useful publication for all interested in township affairs. W. C., Low Banks, Co. Haldimand.

"Received sample copy of your MUNICIPAL MISCELLANY, and am highly pleased to know that such a long required work has been published. I have handed it to as many as I have had the opportunity, including reeve and councillors. Our council meets on the last of February, and I feel sure that they will order it. I will take it myself." A. R., Kagawong, Algoma.

"Your sample copy of the MUNICIPAL MISCELLANY received, and like it well. Think that if you can send me some copies to give around to the members of the council board that I can get you some subscribers." J. H., Centreville, Co. Addington.

"I thank you most respectfully for the copy of your paper received. I have been in the municipal business for thirty years in succession in the same municipality, I was of the opinion that I was the oldest servant in the County of Carleton, but I observe in your paper that there is one older than me. It might be that he has not served thirty-three years in succession. If he has, then I am second. I wish you success in your undertaking." Thomas Wiggins, Marlborough, County Carleton.

[Mr. Taylor has been township clerk continuously of the Township of Fitzroy, County of Carleton, for the time mentioned, thirty-three years. Mr. Brooke, of Perth, has been town clerk of that town continuously for thirty-four years. During much of the time he also was township clerk of four or five adjoining townships, but has recently resigned these latter offices owing to declining years.—ED.]

Want of space in this issue prevents making further extracts from the numerous letters enclosing subscriptions, and the same reason prevents acknowledgment of the many commendatory notices of newspapers to which sample copies had been sent. Suffice it to say that any doubts we had as to the success of such a publication as the MISCELLANY has been dispelled, and we are encouraged to do our utmost to make it a useful medium of information, and only hope that municipal officials generally will assist, as we assure all that the venture was not undertaken as a money speculation, nor yet from any egotistical notion that we know more of municipal laws than others engaged in the same work, but simply because we often felt the want of information from others of more experience, and believed our case was not a singular one, and that it was only by means of a journal of this kind that our object could readily be attained. While we endeavor to give some information, we hope to receive as much in return, and we are pleased to see our Question Drawer is being taken advantage of.

A number of Questions and other matter is unavoidably held over until next issue.

## REPORT OF COMMISSION ON MUNICIPAL INSTITUTIONS.

*(EXTRACTS CONTINUED.)*

"The seigniors were also authorized to try in their domainial courts all felonies and high and petty misdemeanors." Bouchette states that one of the obligations of the tenanciers or holders of land *en roture* was to repair the highways and by-roads passing through their lands, and to make new ones which, when opened, must be surveyed and approved by the Grand Voyer of the district, and established by Proces Verbal." The Commissioners appointed by Lord Durham in 1838 to enquire into the Municipal Institutions of Lower Canada, in their report say: "The road officers of the Province are the Grand Voyer, and his deputy in each district .... a surveyor of roads in each parish or township, and an overseer of highways in each subdivision of every parish and township never exceeding nine. The Grand Voyer .... is appointed by the Governor during pleasure; the deputy Grand Voyer and the surveyor of roads are nominated by the Grand Voyer, and the overseers of highways are elected by the people. The Grand Voyer is paid by salary and fees, and pays his deputy according to private arrangement. The surveyors and overseers are gratuitous servants of the public .... The duty of the Grand Voyer is to open new roads and to see that the established roads are kept in good repair; this duty as regards the opening of new roads he is bound to discharge on the requisition of any one interested person; the requisitionists being liable for the Grand Voyer's claim for fees and travelling expenses .... whether he grant or reject the prayer of the petition." At that time "the Court of Quarter Sessions could take cognizance of the form and technical accuracy of the *proces verbal* prepared by the Grand Voyer, but could not enquire into the merits of the case. The Grand Voyer was also bound "after public notice was duly given, to make annual visits through the highways, leading from point to point within his district, and to examine and enquire whether the surveyors and overseers duly execute their several offices, and in default thereof to prosecute them or either of them for neglect."

How far this system was an enlargement or development of the system originally established it would be difficult to ascertain.

On the front roads, which are those which run between two ranges of concessions, each proprietor made the road in front of his own farm and kept it in repair. The frontage was generally 180 yards French measure in length. But there were numerous exceptions to this rule. Hills, bridges, marshes, and all portions of more than average difficulty were "worked by joint labor." The Grand Voyer designated all who ought to contribute a share. Through all unconceded land also, and all uncultivated land in possession of the original Crown grantee, the highways were made and repaired by joint labor of the parties to whom the road was useful. The by-roads or cross roads were altogether made and repaired by joint labor.

In the earlier days of the colony few public roads were necessary, as the people who engaged in agriculture settled along the banks of the St. Lawrence and its tributaries, and used these as their highways in summer and winter. Such road work as was then thought necessary was done by order of the Grand Voyer under the direction of the Captain of the Militia, who was an important functionary.

In each of the towns of Quebec, Three Rivers and Montreal, an officer called a Syndic was elected. It is difficult to ascertain exactly how he was elected, or what were his powers, or when the office was first created. Parkman says that the Syndic was an officer elected by the inhabitants of the community to which he belonged, to manage its affairs. According to other writers, the Syndic's chief duty was to represent the wants and wishes of the people to the Governor of the district, or the Governor General. When the Company of a Hundred Partners, or its successors, withdrew from the government of the Province, the Council was re-organized, and then consisted of the Governor, the Superior of the Jesuits, and three of the principal inhabitants. These last were to be chosen every three years by the Council itself, in conjunction with the Syndics of Quebec, Montreal and Three Rivers.

There seems to be little reason to doubt that if the people had been left free to act they would notwithstanding the enormous difficulties to be overcome, have developed a system of self-government. In August, 1621, Champlain called a meeting of the inhabitants of Quebec to consider the propriety of petitioning the King for assistance, and meetings were held frequently under the direction of members of the Sovereign Council, to discuss such matters as the supply and price of bread and firewood, but even these were afterwards disallowed.

"When the sovereignty of Canada was resumed by the King," the system of government was materially changed. The royal ordinance of April, 1663, decreed the establishment of a royal administration, and the erection of a supreme tribunal named the Sovereign Council of Quebec, constituted like the Parliament of Paris. The chief government of all the affairs of the colony, both administrative and judicial, was vested in the Sovereign Council .... This Council was at first composed of the Governor-General, the bishop, five councillors and an attorney-general. It had the right of trying all cases, civil and criminal, with power of determining in the last resort in conformity with the decisions and forms obtaining in the French Supreme Courts." The office of Intendant was created at the same time. The Sovereign Council, afterwards increased to twelve, met as a law court every Monday; the Governor presided, the bishop at his right, and the Intendant on his left. In its administrative capacity the Council had the disposal of the revenue of the Province, and the supervision of the interior trade. The Intendant appears to have had special charge of the preparation of ordinances, and control of civil and financial affairs. He was even in these matters subordinate to the governor, but the quarrels and disputes of the two functionaries form no small part of the subsequent history of French Canada. "The Sovereign Council was empowered to establish at Montreal, Three Rivers, and in all other places in which such should be wanted, tribunals of the first resort for the summary disposal of cases of inferior importance." About the same time commissaires for judging petty causes, and officers known as "deacons of habitations" were created. The commissaires were the five councillors—the members of the Sovereign Council named by the Governor and bishop conjointly,—and their duty as commissaires was to see that the decrees of the Sovereign Council were carried into effect, and to take preliminary cognizance of any affair brought under their purview by the deacons of habitations. These deacons were, Garneau says, "A kind of municipal officers appointed by election to note any infraction of public rights and be careful of the common weal in urban communities; the office was not new. The regulations of 1647 .... show that the inhabitants of Quebec, Montreal and Three Rivers had one such officer in each of these places, but it appears that the office had ceased to exist towards 1661."

*To be Continued.*

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