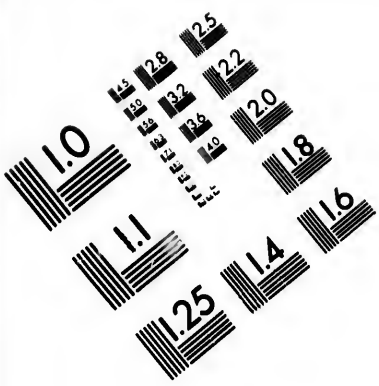

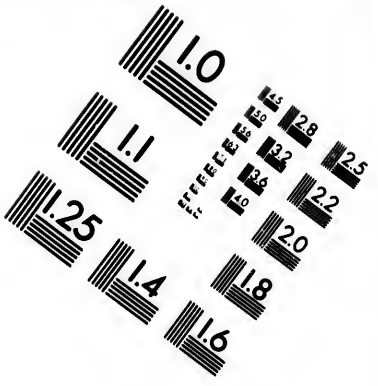

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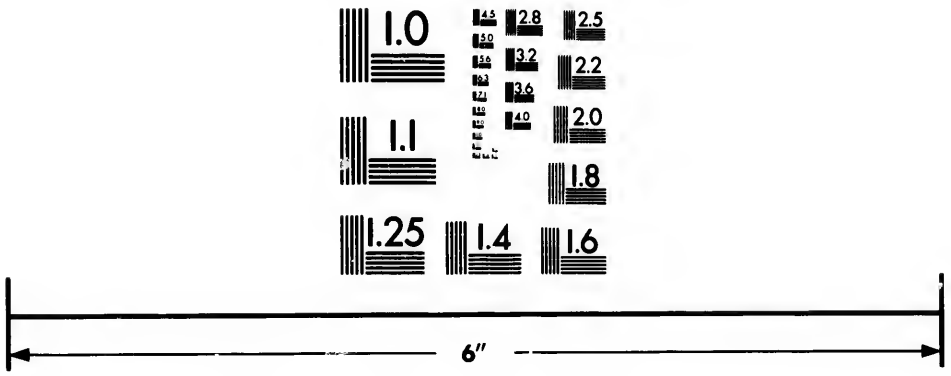

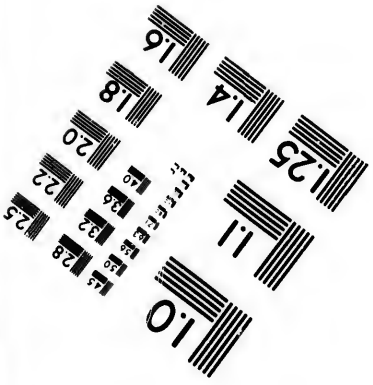

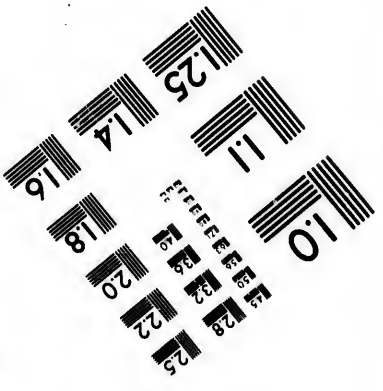

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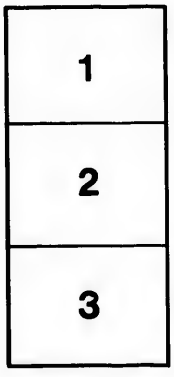

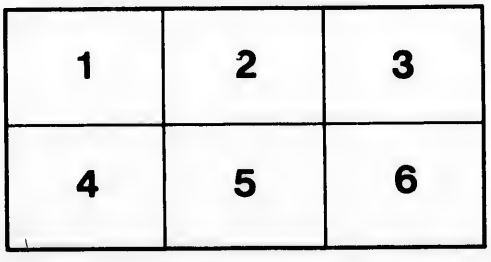

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THE

MUNICIPAL MANUAL:

CONTAINING THE

MUNICIPAL, ASSESSMENT, AND LIQUOR LICENSE ACTS,

AND

THE RULES FOR THE TRIAL OF CONTESTED MUNICIPAL ELECTIONS,

WITH NOTES OF ALL DECIDED CASES BEARING THEREON,

AND

ADDITIONAL STATUTES,

BY

THE HONOURABLE

ROBERT ALEXANDER HARRISON, D.C.L.

CHIEF JUSTICE OF THE PROVINCE OF ONTARIO.

Fourth Edition,

BY

F. J. JOSEPH, Esq.,

OF OSGOODE HALL, BARRISTER-AT-LAW

TORONTO:

ROWSELL & HUTCHISON.

1878.

TO

THE HONOURABLE

OLIVER MOWAT, Q.C.,

ATTORNEY-GENERAL

FOR

THE PROVINCE OF ONTARIO,

THIS NEW EDITION

OF

THE MUNICIPAL MANUAL

IS

WITH HIS PERMISSION

INSCRIBED

BY

THE EDITOR.

PREFACE TO THE FOURTH EDITION.

It was at the request of the Chief Justice of Ontario, shortly after his appointment to the Bench that I undertook to issue a new Edition of THE MUNICIPAL MANUAL, which was rendered necessary not only from the fact that the last edition had been out of print for some years, but that the several Acts contained therein had been recast in the new Revised Statutes of Ontario.

No pains have been spared to make this Edition not only as accurate and complete as possible, but worthy of the reputation the work has hitherto enjoyed. It contains all the recent decisions of our own Courts and a few additional English and United States cases which it is hoped may be found useful in the elucidation of the several Acts annotated. It must, however, be borne in mind that many of these foreign cases have been decided upon the construction of local legislative enactments, and in applying them, care must be taken to see that they accord with the Statute law of this Province.

In addition to "The Municipal Act" and "The Assessment Act," I have annotated "The Liquor License Act," and purposed also to give the cases decided under the several Temperance Acts of the Dominion and this Province, but finding that the work had considerably exceeded the size of the volume represented to my publishers, and fearing that subsequent legislation would render much of my labour useless, the Statutes bearing on that subject have been omitted.

A Session of the Legislature having passed with but slight amendments to the Municipal and Assessment Acts, it may now be hoped that the law upon these subjects is settled, and that

further legislative experiments will in the future be desisted from, these Acts being, as the learned Chief Justice has observed, "the most complete and most perfect codes of the kind of which he has any knowledge."

I make no claim to whatever merit may be attributed to this Edition of THE MANUAL. The annotations to the Third Edition have been retained with but trivial alterations, and the new matter has been compiled almost entirely from notes handed to me by the Chief Justice. Having had the further advantage of his invaluable suggestions and careful supervision—every page of the work having passed under his eye—it is now submitted to the favourable consideration of the Legal Profession, Municipal Corporations, their Officers, and the Public.

To Trevelyan Ridout, Esq., Barrister-at-law, I am indebted for the Calendar and carefully compiled Index. He has spared no labour in making the latter as exhaustive and complete as possible. I have further to thank Mr. H. Dallas Helmcken, Student-at-law, for his kind and valuable assistance in the passing of the work through the press.

F. J. J.

OSGOODE HALL,
Toronto, 20th October, 1878.

P. S.—Since the above was written the country has had to lament the loss of the able and gifted Chief Justice of this Province—the original editor of this work. As a sound lawyer, an able advocate and upright Judge, his memory will be long revered and his place will with difficulty be filled. I can only repeat that all that may be found valuable in this volume is due entirely to him, and the interest he took in my efforts was evidenced by suggestions relating to its concluding pages, during the last days of his illness. His kind and generous disposition, will be often recalled by many. His loss, few can deplore more than myself—it severed a strong, and uninterrupted friendship extending over a period of twenty years.

PREFACE TO THE THIRD EDITION.

The passing of the Consolidated Municipal Institutions Act by the Legislature of the Province of Ontario last year, rendered it necessary for the Editor to issue a New Edition of the Municipal Manual.

He devoted his vacation of last year to the preparation of the Edition which is now submitted to the Profession and the Public.

He has done his best to make the notes of decided cases full and complete. A comparison of this with the former Editions of the Manual will show that most of the notes have been re-written. The best use possible has been made of all decided cases bearing on the construction of the sections annotated. Two hundred decided cases were noted in the First Edition, published in 1859. Six hundred cases were noted in the Second Edition, published in 1867. And no less than three thousand seven hundred cases have been noted in this the Third Edition.

One feature of the present Edition of the Manual which distinguishes it from the preceding Editions is the copious reference to the decisions of the Courts of the several States of the United States of America. For this the Editor is mainly indebted to the able Treatise on the Law of Municipal Corporations published by Hon. John F. Dillon, LL.D., the Circuit Judge of the United States for the Eighth Judicial Circuit. This Treatise opened up to the Editor such a mine of Municipal wealth that he has not hesitated, with the full permission of Judge Dillon, to avail himself of such of the United States' decisions as appeared to be of interest in this Province. The Editor has given to Judge Dillon a similar privilege so far as the Canadian decisions annotated in this Edition of the Manual are concerned.

In the preparation of this and the former Editions of the Municipal Manual the Editor has acquired considerable experience in Municipal law. This, added to the knowledge acquired in Municipal cases in

which he has been engaged in the Courts, qualifies him to some extent to form an opinion as to the value of our Consolidated Municipal and Assessment Acts in comparison with similar Acts in force in other countries. And he hesitates not to say that the Municipal and Assessment Acts of this Province are at present the most complete and most perfect codes of the kind of which he has any knowledge.

If the Legislature of Ontario could be induced for a few Sessions to refrain from mangling the Acts, so that their provisions would become more generally and better understood, it would be to the public advantage.

Last year the Editor indulged the hope that the book would have been in the hands of subscribers before the end of the year. This hope, owing to causes unnecessary to be detailed, but for which personally he is free from blame, has not been realized. In the meantime, the Legislature of Ontario at its last Session passed important Acts amending both the Assessment and Municipal Acts. The consequence has been that the Editor was obliged to reprint several sheets of the Manual. The amendments made last Session have been noticed, as far as possible, either in the text of the work or the notes. The amending Acts will be found at the end of the Municipal and Assessment Acts respectively. The publication of the amending Acts will afford a check upon the corrections of the Editor. Other Acts of a similar character are at the end of the volume.

The Editor, in the preparation of this Edition, has had the assistance of F. J. Joseph, Esq., and H. C. W. Wethey, Esq., Barristers-at-law. The former relieved the Editor from the labour of verifying the references, correcting the proofs, and passing the work through the press. The latter prepared the very full Index of Cases and Index of Subjects which accompanies the work. Had it not been for the valuable aid received from these two gentlemen, the issue of the New Edition of the Manual would have been much longer delayed than it has been.

TORONTO, ENGLEFIELD,
5th September, 1874.

PREFACE TO THE SECOND EDITION.

Nine years have elapsed since the publication of the First Edition of this work. During that period the First Edition, which was a very large one, has been exhausted, and during the same period many alterations have been made in the Municipal and Assessment laws of Upper Canada, and many cases decided on the construction of the Acts. Besides, the Municipal and Assessment Acts, as from time to time altered, were, during last Session of Parliament, amended and consolidated.

Some of the alterations and amendments are undoubtedly for good The office of Councilman for Cities has been abolished, and the number of Aldermen for each Ward increased from two to three, and these, instead of being yearly elected as heretofore, will retire from office annually by rotation. There are two Councillors allowed for each Ward of an Incorporated Village having five Wards, one of whom also retires annually in rotation. Mayors of Cities are no longer chosen by the electors, but by members of the Council from among themselves. On the other hand, Reeves and Deputy Reeves are no longer chosen by Councillors from among themselves, but elected by the people. There may be several Deputy Reeves, in proportion to the number of voters, there being an additional Deputy Reeve allowed for every five hundred additional voters beyond the number required for Reeve and Deputy Reeve. The property qualification of candidates and voters in Cities, Towns, and Villages, has been greatly increased. Candidates or voters who have not paid their taxes are disqualified. Provision is made for nomination to offices in Cities, Towns, Incorporated Villages, Police Villages, and Townships. Only one day is allowed for polling votes, and in Towns and Cities voters may vote in each Ward in which they are rated for the necessary property qualification. Annual value, in Cities,

Towns, and Incorporated Villages, has been abolished, and actual value, as in Townships, made the rule of assessment. No Council is allowed, exclusive of School rates, to assess in any one year more than an aggregate of two cents in the dollar on actual value. If, however, in any Municipality, the aggregate amount of the rates necessary for the payment of current annual expenses, and the principal and interest of the debts contracted on or before the 15th August, 1866, on that day exceed the aggregate rate of two cents in the dollar on actual value, the Council may levy such further rates as may be necessary to discharge obligations already incurred, but shall contract no further debts until the annual rates required to be levied within the Municipality are reduced within the aggregate rate of two cents. County Treasurers, and not Sheriffs, are now made the proper officers to sell lands for arrears of taxes. The onus of keeping County roads in repair may, under certain circumstances, be thrown upon adjacent Local Municipalities. Besides, Township Municipalities may purchase wild lands from Government, drain, and afterwards sell them. Other changes, of less consequence, unnecessary to be here mentioned, will be found noticed in the proper places throughout the volume.

The value of this Edition of the Manual, as compared with the former one, will be found greatly increased, owing to the number of decided cases to which the Editor, while annotating the Municipal and Assessment Acts, has found it necessary to refer. Whilst in the former Edition reference is made to not more than two hundred, in this Edition reference is made to more than six hundred decided cases. Many points that were left in doubt when the First Edition was published, have since been settled by judicial interpretation. The Editor has in every case, in his notes, given as nearly as possible the very language of the Judges. On some points decisions will be found in apparent conflict, and the Editor has, wherever conflict was apparent, done his best to reconcile the decided cases. But he is happy to say that the conflicts are few; and now that the law has been consolidated, there will be less risk of conflict in the future. With Courts of co-ordinate jurisdiction, and where, as in *quo warranto* cases, single Judges sit without appeal, conflict of opinion and decision can scarcely be avoided. The Editor has endeavoured, under the proper section and in the proper place, to note every

decided case bearing on the point under consideration. But, considering the multiplicity of decisions, it is possible that some have been unintentionally omitted. Should any such be discovered by any of his professional brethren, he will only be too happy to be informed of the omission.

Several statutes, bearing on the duties and power of Municipal bodies, which have been selected from the Consolidated Statutes of Canada, the Consolidated Statutes of Upper Canada, and the Statutes of Canada since the consolidation, are published at the end of the work, preceding the Index. The Editor does not assert that he has published all statutes and parts of statutes directly or indirectly affecting Municipal bodies. Were he to do so, it would be impossible for him to keep his work within reasonable bounds. He has therefore contented himself with a selection of the principal statutes; and in order to accomplish this, has been obliged to exclude from this Edition several Acts of a local and private nature, which are contained in the former Edition of the Manual. The omission of the latter will not render the work less useful to the general body of those who will require to use it, while it has the effect of keeping the volume within a convenient and portable form.

The preparation of the Index, as well as the supervision of the work while passing through the press, was entrusted to Henry O'Brien, Esq., Barrister-at-law, a gentleman who is already favourably known to the Profession as one of the Editors of "The Upper Canada Law Journal," and "The Local Courts Gazette," and Editor of an ably annotated Edition of the Division Courts Act. The Index, which is very full, will, it is hoped, be found all that is necessary to the ready use of the work. Much labour has been bestowed upon it, and, so far as the Editor can judge, it has been carefully compiled.

Imperfections in the work, either on the part of the Editor or of his assistant, are not to be attributed to wilful neglect; but as no such work can be made perfect, the Editor must ask forbearance. Much labour has been expended on it, and it is hoped that it will not only lighten the labour of members of the Legal Profession, but have the effect of expounding and making known the Municipal and Assessment law to the many, not members of the Profession, whose duty it is to give effect to the law, and work under it.

The First Edition of the work received a generous support, as well from the Legal Profession as the great body of the Municipal Councillors and officers of Upper Canada. It is hoped that this Edition, to which the Editor has devoted much thought, will be equally well received. The delays which have occurred in its issue were unavoidable, and to some extent rendered necessary by reason of the Editor's great anxiety to make his work simple in its language and reliable in its exposition of the law. The work is intended not merely for lawyers, but for men unacquainted with the niceties of law. Most of the notes are therefore written in a popular style, and as free as possible from legal phraseology.

ENGLEFIELD TORONTO,
26th March, 1867.

PREFACE TO THE FIRST EDITION.

In the Prospectus issued for this work it was said that the Municipal Laws of Upper Canada are in importance second to none of the laws of the Province, and that every Municipal Corporation is a small Parliament, possessed of extensive but yet limited powers. It was then pointed out, that to ascertain in every case the existence or non-existence of a power—the nature of it—its precise limit and the mode in which it should be exercised is the object of all who are in any manner concerned in the administration of Municipal affairs.

When it is considered, that in the first instance these matters are to be determined by Municipal Councils, seldom containing Members versed in the laws, often acting without the aid of Professional advice, the importance of a guide becomes, as said in the Prospectus, manifest.

That guide it has been the aim of the Editor in the following pages to produce. He now proposes as briefly as possible to state upon what principles and in what manner he has performed his task.

The Legislature having, by the Consolidated Act of the present year, classified many Municipal enactments and repealed many of those that were effete or thereby rendered useless, the Editor, with the assistance of legal friends of greater experience than himself, in the first place applied himself to the work of expounding the Consolidated Act by the light of adjudged cases. This he did patiently and assiduously, noting latent difficulties and explaining as far as possible all difficulties of every kind that occurred to him. The result is a body of notes more elaborate than he contemplated when he began his labours. All decisions reported in time for his pen have been carefully epitomized and introduced into the notes so written.

Having in this manner continued his labours until the completion of the Consolidated Act, he next turned his attention to other Acts of a

like kind, promiscuously scattered through the twenty-two volumes containing the Provincial Statutes. Beginning at the first Act, he selected in chronological order such acts as from their nature a person would expect to find in a Municipal Manual, until he reached the last Act of the kind now in force. The result is a large collection of Acts and parts of Acts, added to the end of the Consolidated Municipal Act.

One great difficulty which the Editor experienced from first to last, was, to publish all Acts at all of use to Municipalities, and yet to keep his book in a single volume of moderate dimensions. To accomplish this, Acts have been abbreviated by the omission of mere formal matter, Acts of a private nature and so of little public utility have been in some places abridged by the statement of substance only, and in others nothing has been given except the title or heading, when expressive of the object. Other Acts, such as those regulating the inspection of Beef, Pork, Ashes, and the incorporation of Road and other Companies, have, because of their great length, and, comparatively speaking, little general utility, been entirely excluded. So have the Common School and Grammar School Acts. The reason of the exclusion of the latter is, that they are contained in "The Education Manual," a small work within the reach of all, and it is presumed in the possession of all engaged in the execution of those statutes.

The arrangement adopted has been the chronological, in preference to the analytical; the reason being that by such an arrangement the growth of the law is opened to public view, while for convenience of reference the addition of a very full Analytical Index imparts to the work all the benefits of analysis. Thus, under Toronto, Kingston, Hamilton, &c., in the Index will be found references to Acts applying specially to these Cities, though published in different parts of the volume. To make the chronological arrangement still more effective, the Editor has, as a rule, in the margin of each statute wherever it is altered or affected by a subsequent statute, made a reference to the subsequent statute. The object of this is, to guard against reading any one provision as the only or whole law on the subject, wherever there are others which ought to be read in connection with it.

For the convenience of the Legal Profession as well as for the information of all concerned, the Rules of Court governing contested Municipal

Elections have been added in the Appendix and noted in the General Index like other parts of the work. In the Appendix will also be found a form of By-law to contract a debt by borrowing money. The utility not to say necessity of such forms is well known. In the preparation of this Edition of the MUNICIPAL MANUAL, the Editor had neither the time nor the materials to enable him to give a complete set of Municipal Forms. He, however, did what he could towards supplying the void by preparing a form of a By-law of more general use than that of any other form of By-law. His reasons for so doing were two-fold. First, to furnish a model whereby other By-laws may be drawn; and secondly, to furnish a form for that By-law, which of all others must essentially be correct both in form and in substance.

Great responsibility rests upon those who undertake to prepare By-laws, on the legality or illegality of which large monyed transactions are made to depend. Some form must be observed; and yet a close adherence to technical nicety may in certain cases work positive injustice. Were it possible to secure for money By-laws the stamp of legality, so as to remove all suspicion of informality, irregularity, or illegality, the effect would be eminently beneficial. It would beget a spirit of confidence, alike of advantage to the seller and to the buyer of Municipal Debentures. Less room would be left for speculation or trade in the fears of men or contingencies of law, and more stability be imparted to the negotion of Canadian Municipal Securities; one consequence of which—and not the least—would be, that the market value of all such securities would be proportionably increased. The only mode likely to attain so desirable an end that at present occurs to the Editor, would be to require all By-laws of this kind to be approved by some public functionary, and, when approved, to be unimpeachable on the ground of informality or want of technical accuracy. Such is the principle applied to By-laws passed to raise money on the credit of the Consolidated Revenue Fund. It is enacted that "no informality or irregularity in any such By-law, or in the proceedings relative thereto, anterior to the passing thereof, shall in any manner affect the validity thereof, after the Governor-General in Council shall have approved of such By-law; but the Order in Council approving such By-law should be held to cover any such informality or irregularity, and the By-law shall be valid to all intents and purposes." (16 Vict. cap. 123, sec. 5.)

It is easy to perceive how efficacious would be this seal of approval, if applied to all money By-laws. The object of it is to secure the confidence of the public. That object is as much needed in the case of any ordinary money By-law, as one to raise money on the credit of the Consolidated Municipal Loan Fund ; and if beneficial in the one case, the Editor cannot help suggesting that the benefits ought, by some appropriate machinery, to be extended to all similar cases. Indeed the Legislature have, in other instances, partially affirmed the principle. It is by the Consolidated Municipal Act enacted, that "in case a By-law by which a rate is imposed has been specially promulgated in the manner specified, no application to quash the By-law shall be entertained after six calendar months have elapsed since its promulgation," (sec. 195,) and that "in case no application to quash any By-law so specially promulgated is made within the time limited for that purpose, the By-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same ordains, prescribes or directs anything within the proper competence of the Council to ordain, prescribe, or direct, shall, notwithstanding any want of substance or form, either in the By-law itself or in the time or manner of passing the same be a valid By-law." (Sec. 200.)

With these observations, the present Edition of the MUNICIPAL MANUAL is submitted to the public. Of the public, the Editor has only one request to make. It is, that imperfections are notto be attri buted to neglect, but to circumstances—such as want of time and want of space—over which he, however well disposed, had no control.

QUEEN STREET WEST,
22nd December, 1858.

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CALENDAR.

JANUARY.

DAY.

1—Year for purposes of Assessment, to commence in districts of Algoma, Muskoka, Parry Sound, Nipissing and Thunder Bay. (Rev. Stat. Ont., cap. 175, sec. 27.) p. 874.

Last day on which Quail and Woodcock may be killed. (41 Vict. cap 18, sec. 2.) p. 978.

Last day on which waterfowl which are known as Mallard, Grey Duck, Black Duck, Wood or Summer Duck, and Teal may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

Separation of Junior and Senior Counties to take effect on. (Sec. 44, Municipal Act.) p. 38.

Yearly taxes to be computed from. (Sec. 347, Municipal Act.) p. 272.

10—Last day for return to be transmitted to Provincial Treasurer by Clerk of Municipality, or of any Corporate Body issuing Debentures. (Sec. 3 of The Debentures Registrations Act.) p. 881.

15—Last day for Treasurer of Municipalities indebted under the Municipal Loan Fund Acts to make returns to Provincial Treasurer of the amount of taxable property, debts and liabilities. (Sec. 363, Municipal Act.) p. 285.

30—Name and address of non-residents to be sent to Clerk on or before this day. (Sec. 3, Assessment Act.) p. 604.

31—Last day for all Councils to make return to Provincial Treasurer through Provincial Secretary of account of the debts of the several Corporations. (Sec. 364, Municipal Act.) p. 285.

Auditors to discharge the duty imposed upon them by this day. (Sec. 263, Municipal Act.) p. 197.

DAY.

31—County Treasurers to prepare and submit to County Councils at their first meeting in January a report, certified by the Auditors, of the state of the non-resident Land Fund. (Sec. 182, Assessment Act.) p. 760.

Members of Councils of Municipalities in Algoma, Muskoka, Parry Sound, Nipissing, and Thunder Bay, (except those returned by acclamation) to be elected on first Monday in January. (Rev. Stat., Ont., cap. 175, sec. 43.) p. 877.

Election of Trustees held in Police Villages on first Monday in January, if not returned by acclamation. (Sec. 575, Municipal Act.) p. 578.

Members of Councils (except County Councils) to be elected on the first Monday in January. (Sec. 85, Municipal Act.) p. 71.

First election for Councils, where Corporations are newly erected or extended, to be held on first Monday in January. (Sec. 86, Municipal Act.) p. 72.

Members of Municipal Councils, except County Councils, hold their first meeting at eleven o'clock a.m. on the third Monday in January, or on some day thereafter. (Sec. 215, Municipal Act.) p. 167.

Members of County Councils to hold their first meeting on the fourth Tuesday in January, at two o'clock in the afternoon, or some hour thereafter. (Sec. 215, Municipal Act) p. 167.

FEBRUARY.

DAY.

1.—Last day for Railway Companies to transmit to Clerk of Municipalities statements of Railway Property. (Sec. 26, Assessment Act.) p. 634.

Last day for Clerk to make up and deliver to Assessor list of parties requiring names to be entered on the Roll, and the lands owned by them. (Sec. 3, Assessment Act.) p. 605.

Last day for County Treasurer to furnish to Clerks of Local Municipalities list of land in arrears for Taxes for three years. (Sec. 118, Assessment Act.) p. 708.

Last day on which Wild Turkeys, Grouse, Pheasants, Prairie Fowl, or Partidge may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

DAY.

15—Last day for Assessors to begin to make their Rolls. (Sec. 42, Assessment Act.) p. 674.

28—Last day for Council of any Municipality to pass By-laws imposing larger duty up to $200 for Tavern or Shop Licenses, but not more without consent of electors. (Sec. 32, Liquor License Act.) p. 806.

Last day for Councils of Cities, Towns, Villages and Townships to pass By-laws limiting number of Tavern Licenses to be issued for ensuing year. (Sec. 17, Liquor License Act.) p. 797.

Last day for City or Town Council to prescribe further requirements for Taverns in addition to those prescribed by the Act. (Sec. 21, Liquor License Act.) p. 800.

Last day for City or Town Council to pass By-laws limiting number of shop licenses to be issued for ensuing year. (Sec. 24, Liquor License Act.) p. 801.

The Commissioner of Crown Lands is required in the month of February to transmit to County Treasurers lists of lands granted or agreed to be sold by the Crown or leased, or in respect of which a license of occupation issued during the preceding year. (Sec. 106, Assessment Act) p. 708.

During this month, majority of Reeves and Deputy Reeves of United Counties to petition Lieutenant-Governor for separation of Counties. (Sec. 35, Municipal Act.) p. 34.

MARCH.

DAY.

1—Clerk of every Township, Village and Town, within one week after the first day of March in each year, to make a return of certain particulars to Clerk of County in which Municipality situate. (Sec. 241, Municipal Act.) p. 182.

Last day on which Hares or Rabbits may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

31—Last day for Clerk of every County to make yearly return to Provincial Secretary, required by sec. 241. (Sec. 242, Municipal Act.) p. 184.

Last day for Clerk of City or Town to make return required by Section 241, Municipal Act, to Provincial Secretary. (Sec. 243, Municipal Act.) p. 184.

APRIL.

DAY.

1—Last day for petition for Tavern Licenses to be presented. (Sec. 9 of sub-sec. 2, Liquor License Act.) p. 792.

Last day for petitions for Shop Licenses to be presented. (Sec. 23, Liquor License Act.) p. 801.

8—Last day for Local Treasurers to furnish County Treasurer with the statement of arrears of taxes and school rates of non-resident lands afterwards occupied. (Sec. 113, sub-sec. 2, Assessment Act.) p. 714.

30—Last day for completion of Roll by Assessor. (Sec. 42, Assessment Act.) p. 647.

Liquor Licenses expire. (Sec. 7, sub-sec. 1, Liquor License Act.) p. 790.

Last day for License Commissioners to pass resolutions defining requisites for granting Shop and Tavern Licenses; for limiting number of licenses, etc.; for declaring houses exempt from having accommodation; for making regulations, etc. (Sec. 4, Liquor License Act.) p. 788.

MAY.

DAY.

1—Last day for Assessors to deliver their Rolls completed to Clerks of Municipalities. (Sec. 43, Assessment Act.) p. 649.

Last day for Non-residents to complain by petition to proper Municipal Council of Assessment. (Sec. 67, Assessment Act.) p. 679.

County Treasurers to complete and balance their books, charging lands with arrears of Taxes. (Sec. 120, Assessment Act.) p. 719.

First day on which Liquor Licenses may be issued. (Sec. 7, sub-sec. 2, Liquor License Act.) p. 790.

Liquor Licenses to be dated. (Sec. 7, Liquor License Act.) p. 790.

Last day on which Snipe may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

Last day on which all Duck (with the exception of Mallard, Grey Duck, Black Duck, Wood or Summer Duck, and Teal) and Wild Swan or Geese may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

DAY.

1—Last day on which Beaver, Muskrat, Mink, Sable, Martin, Racoon, Otter or Fisher may be killed. (41 Vict. cap. 18, sec. 7.) p. 979.

15—Last day for issuing Tavern and Shop Licenses. (Sec. 7, sub-sec. 2, Liquor License Act.) p. 790.

31—Last day for issuing Wholesale Licenses. (Sec. 7, sub-sec. 2. p. 790.

JUNE.

DAY.

30—Balance of License Fund, after deducting expenses of License Inspector and of office of License Commissioners and expense of enforcing law, to be paid one-third to Provincial Treasurer and two-thirds to Treasurer of Municipality. (Sec. 34, sub-sec. 2, Liquor License Act.) p. 808.

JULY.

DAY.

1—Last day for revision of Assessment Rolls, by Court of Revision. (Sec. 56, sub-sec. 19, Assessment Act.) p. 665.

Before or after 1st July, Court of Revision in certain cases, ay remit or reduce Taxes. (Sec. 58, Assessment Act.) p. 668.

Last day for revision of Rolls by County Council with a view to equalization. (Sec. 68, Assessment Act.) p. 680.

Last day for County Treasurers to return to Local Clerks an account of arrears due in respect of non-resident lands which have become occupied. (Sec. 111, sub-sec. 2, Assessment Act.) p. 712.

6—Last day for service of notice of appeal from Court of Revision to County Judge. (Sec. 59, sub-sec. 2, Assessment Act.) p. 670.

14—Last day for revision of Assessment Roll in Township of Shuniah, (Sec. 56, sub-sec. 19, Assessment Act.) p. 665.

15—Before this date in any year, Councils of Cities and Towns may pass resolutions affirming necessity of new division into wards. (Sec. 20, Municipal Act.) p. 23.

31—Last day for County Council to pass By-law lengthening time between nomination and polling in remote Townships. (Sec. 109, Municipal Act.) p. 85.

AUGUST.

DAY.

1—First day on which Woodcock may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

1—Last day for decision by County Judge in complaints of Municipalities complaining of equalization. (Sec. 68, sub-sec. 2, Assessment Act.) p. 683.

Last day for County Court Judge to defer judgment on appeals from the Court of Revision. (Sec. 59, sub-sec. 7, Assessment Act.) p. 673.

10—In Township of Shuniah, last day for service of notice of appeal from Court of Revision to County Judge. (Sec. 59, sub-sec. 2, Municipal Act.) p. 671.

14—Last day for Overseer of Highways to return as defaulter to Clerk of Municipality non-resident who has not performed Statute Labour. (Sec. 87, Assessment Act.) p. 692.

Last day for County Clerk to certify amounts to Clerks of Local Municipalties required for County purposes. (Sec. 74, Assessment Act.) p. 686.

15—First day on which Snipe may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

SEPTEMBER.

DAY.

1—Last day for Jury purposes for Assessors to return their rolls. (Sec. 194, Assessment Act.) p. 768.

First day on which waterfowl which are known as Mallard, Grey Duck, Black Duck, Wood or Summer Duck, and Teal may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

First day on which all Duck, with the exception of the above, and Wild Swan or Geese may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

First day on which Hares or Rabbits may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

DAY.

14—In Township of Shuniah, last day for County Court Judge to defer judgment in appeals from Court of Revision. (Sec. 59, sub-sec. 7, Assessment Act.) p. 673.

First day on which Deer, Elk, Moose, Reindeer or Cariboo may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

OCTOBER.

DAY.

1—Last day for returning Assessment Roll to City or Town Clerk in Cities and Towns where assessment taken between 1st July and 30th September. (Sec. 44, Assessment Act.) p. 650.

Last day for delivery by Clerks of Municipality to Collectors the Collectors' Rolls, unless some other day be prescribed by By-law of the Local Municipality. (Sec. 89, Assessment Act.) p. 695.

First day on which Wild Turkeys, Grouse, Pheasants, Prairie Fowl, Quail or Partridge may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

30—Last day for passing By-laws for holding first election in Junior Township after separation. (Sec. 88, Municipal Act.) p. 73.

NOVEMBER.

DAY.

1—Last day for transmission by Local Clerks to County Treasurer of rolls of lands of non-residents whose names not in Assessment Rolls. (Sec. 90, Assessment Act.) p. 695.

First day on which Beaver, Muskrat, Mink, Sable, Martin, Raccoon, Otter or Fisher may be killed. (41 Vict. cap. 18, sec. 7.) p. 979.

9—Last day for Collectors to demand Taxes of lands omitted from the Roll, found due under Sec. 121, Assessment Act. (Sec. 121, Assessment Act.) p. 720.

15—Day for closing Court of Revision in Cities and Towns separate from County, when assessment taken between 1st July and 30th September. (Sec. 44, Assessment Act.) p. 650.

DECEMBER.

DAY.

1—Clerk of every City, Town, Incorporated Village and Township on or before 1st December, in each year to transmit to Treasurer of Ontario a true return of the number of resident ratepayers appearing on revised Assessment Roll of his Municipality. (Sec. 240, Municipal Act.) p. 181.

DAY.

1—Last day for Councils to hear and determine appeals of lands omitted from the Roll, under 121, Assessment Act. (Sec. 121, Assessment Act.) p. 720.

11—Last day for Clerks to transmit to Provincial Treasurer a return of number of resident ratepayers appearing on the Assessment Rolls. (Sec. 240 of Municipal Act.) p. 181.

14—Last day for Collectors to return their Rolls and pay over proceeds, unless later time appointed by Council. (Sec. 101, Assessment Act.) p. 704.

Last day for payment of taxes by voters in Cities, Towns, Incorporated Villages and Townships, passing By-laws for that purpose. (Sec. 250, sub-sec. 3, Municipal Act.) p. 190.

15—Last day on which Deer, Elk, Moose, Reindeer or Cariboo may be killed. (41 Vict. cap. 18, sec. 2.) p. 978.

Collectors, in Municipalities which have passed By-laws requiring taxes to be paid before 14th December, to return to Treasurer names of all persons who have not paid their Municipal taxes on or before that day. (Sec. 250, sub-sec. 3, Municipal Act.) p. 190.

Treasurer to prepare and transmit to Clerk of Municipality a list of all persons who have not paid their Municipal Taxes on or before 14th December. (Sec. 197, Municipal Act.) p. 149.

31—License Commissioners to cease to hold office. (Sec. 3, Liquor License Act.) p. 788.

Final return by Judge of County Court in Cities and Towns separate from County, when assessment taken between 1st July and 30th September. (Sec. 44, Assessment Act.) p. 650.

Nomination of Candidates for office of Mayor in Cities, and for Mayor, Reeves and Deputy Reeves in Towns, to take place on the last Monday in December, at 10 a. m. (Sec. 104, Municipal Act.) p. 82.

Nomination of Candidates for the offices of Aldermen in Cities, Councillors in Towns, and of Reeves, Deputy Reeves and Councillors in Townships and Incorporated Villages, to take place at noon on last Monday in December. (Sec. 106, Municipal Act.) p. 84.

DAY.

Nomination of Candidates in Townships divided into Wards to be held on last Monday in December, at ten a.m. (Sec. 107. Municipal Act.) p. 84.

Meeting of Electors for nomination of Police Trustees in Police Villages to be held on last Monday in December in each year. (Sec. 572, Municipal Act.) p. 578.

Members of Councils of Municipalities in Algoma, Muskoka, Parry Sound, Nipissing, and Thunder Bay to be nominated on last Monday in December. (Rev. Stat., Ont., cap. 175, sec. 40.) p. 877.

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Title I.
II.

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THE

MUNICIPAL MANUAL.

An Act respecting Municipal Institutions (*a*).

R. S. O. Cap. 174.

Preliminary, ss. 1, 2.

Part I.—Municipal Organization.

Title I. *Incorporation. Ss.* 3-8.
II. *New Corporations.*
Division I. Villages, ss. 9-15.
" II. Towns and Cities, ss. 16-23.
" III. Townships, ss. 24-31.
" IV. Counties, ss. 32-34.
" V. Provisional County Corporations, ss. 35-49.

(*a*) It has been objected to Statutes, both Imperial and Colonial, that their sections are generally involved in a number of provisoes, and filled with a redundancy of words. For the first, the remedy is distinctness of subjects, short clauses, short sentences, and the avoidance of tautology. For the second, the use of the present instead of the future tense, as being a more familiar style of writing, and preventing the frequent use of the word "shall" as a mere auxiliary, expressing the future at one time and obligation or penal consequences at another. See Coode on Legislative Expression, 42; see also per Wilson, J., in *Snell and Belleville*, 30 U. C. Q. B. 81, 90. The framers of this Act, alive to the nature of such objections, have evidently sought to supply the appropriate remedies. The use of the present instead of the future tense throughout the Act, attests the anxiety of the framers to avoid obscurity. The propriety of this mode of expression depends upon the principle, that in a statute, as at common law, the law is at all times supposed to be speaking. The use of the future tense rests upon the principle that a statute speaks at and from the time that it becomes a law, and that so speaking, as it were prospectively its provisions must be expressed in the future tense. If it be a correct rule that a law speaks at all times as ever operative, the correctness of framing it in the present tense cannot be denied, and this whether the law is to be applied to present or passing, or to past or to future events.

Division VI. Matters Consequent on formation of New Corporations, ss. 50-60.

PART II.—MUNICIPAL COUNCILS, HOW COMPOSED.

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" IV. Incorporated Villages, s. 67.
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Title II. *Qualification, Disqualification and Exemptions.*
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" III. Witnesses and Jurors, ss. 404-406.
" IV. Convictions under By-laws, s. 407.
" V. Execution against Municipal Corporations, ss. 408-409.
" VI. Contracts void alike in Law and Equity, s. 410.
" VII. Police Office and Police Magistrate, ss. 411-412.

Division VIII. Commissioners of Police and Police Force, ss. 413-428.
" IX. Court-houses, Gaols, &c., ss. 429-451.
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" III. Counties, ss. 557-558.

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" III. Duties of Police Trustees, ss. 585-595.

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HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

Short title.

1. This Act may be cited as "*The Municipal Act.*" (*b*)

Interpretation of words.

2. Unless otherwise declared or indicated by the context, wherever any of the following words occur in this Act, they shall have the meanings hereinafter expressed, (*c*) namely:—

"Municipality."

(1.) "Municipality," shall mean any locality the inhabitants of which are incorporated, or are continued, or become so under this Act;

(*b*) This Act is a re-enactment of 36 Vict. c. 48, with subsequent amendments. References are generally made at the end of each section to the part of the original Act or Acts of which the section is a copy or consolidation. The language of the original Act is, as nearly as possible, in all cases retained. This is important; for many clauses of the former Acts have been before the Courts, and received a judicial interpretation. Where certain words in an Act of Parliament have received a judicial interpretation in one of the Superior Courts, and the Legislature has repeated the words without alteration in a subsequent statute, the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them. Per Sir W. M. James, L. J., in *Ex parte Campbell in re Cathcart*, L. R. 5 Ch. Ap. 706; see also *Ruckmaboye* v. *Lulloobhoy*, 8 Moore P. C. 4. The marginal note to the section of a statute, in the copy printed by the Queen's Printer, forms no part of the statute itself, and is not binding as an explanation or construction of the statute. *Claydon* v. *Green*, *Green* v. *Claydon*, L. R. 3 C. P. 511. But apparently the headings of the different portions of the statute may be referred to in order to determine the sense of any doubtful expression in a section ranged under any particular heading. See *The Directors, &c., of the Hammersmith and City Railway Co. and Brand et ux.*, L. R. 4 H. L. 171; *In re Kinnear and Haldimand*, 30 U. C. Q. B. 398, *The Queen* v. *Currie*, 31 U. C. Q. B. 582; *Laurie* v. *Rathburn*, 38 U. C. Q. B. 255; *In re Niagara High School Board and the Corporation of Niagara*, 39 U. C. Q. B. 362.

(*c*) An interpretation clause in an Act of Parliament should be understood to define the meaning of the word thereby interpreted in

"Local Municipality." (2.) "Local Municipality," shall mean a City, Town, Township, or Incorporated Village;

cases as to which there is nothing else in the Act opposed to or inconsistent with that interpretation. *The Midland Railway Company* v. *The Ambergate, Nottingham and Boston and Eastern Junction Railway Company*, 10 Hare 359. The meaning of particular words in an Act, in the absence of express definition, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be attained. Per Abbott, C. J., in *The King* v. *Hall*, 1 B. & C. 136; approved in *The Lion*, L. R. 2 P. C. 525. The intention of the Legislature must be ascertained from the words of the Act, and not from any general inferences to be drawn from the nature of the objects dealt with by the Act. *Fordyce* v. *Bridges*, 1 H. L. Cas. 1; see also *Logan* v. *Earl Courtown*, 13 Beav. 22. If the words are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. *Sussex Peerage Case*, 11 Cl. & F. 85. Each word must be interpreted according to its legal meaning, unless the context shew that the Legislature has used it in a popular or more enlarged sense. *Stephenson* v. *Higginson*, 3 H. L. Cas. 638. The Act should be construed according to the ordinary and grammatical sense of its language, if there be no inconsistency apparent in its provisions. *Smith* v. *Bell*, 10 M. & W. 378; see also *Phillpott* v. *St. George's Hospital*, 6 H. L. Cas. 338. Where the intention of the Legislature can be collected from the Act itself, words may be modified, altered, or supplied, so as to obviate any repugnancy to or inconsistency with such intention. *Quin* v. *O'Keefe*, 10 Ir. C. L. R. 393; see also *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94. It is the most natural and genuine exposition of an Act to construe one part by another. *The Queen* v. *Mallow Union*, 12 Ir. C. L. R. 35. The general words of a statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be put on the words consistently with the intention of preserving the existing policy untouched. *Minet* v. *Leman*, 20 Beav. 269; see also *O'Flaherty* v. *McDowell*, 6 H. L. Cas. 142. In construing Acts which infringe on the common law, the state of the law before the passing of the Act must be ascertained, to determine how far it is necessary to alter the law in order to carry out the object of the Act. *Swanton* v. *Gould et al.*, 9 Ir. C. L. R. 234. The general law of the country is not to be altered or controlled by partial legislation made without any special reference to it. *Denton* v. *Lord Manners*, 4 Jur. N. S. 151, affirmed on appeal, 4 Jur. N. S. 724; see also *Attorney-General* v. *Earl Powis*, 1 Kay 186. Difficulties sometimes arise owing to a conflict between general and particular Acts of Parliament. If the particular Act gives in itself a complete rule on the subject in hand, the expression of that rule would undoubtedly amount to an exception of the subject matter of the rule, not of the general Act. Per Lord Westbury, in *Ex parte St. Sepulchre's*, 33 L. J. Ch. 372; see also *London, Chatham and Dover Railway Co.* v. *Board of Works of Wandsworth*, L. R. 8 C. P. 185; *Taylor* v. *Corporation of Oldham*, L. R. 4 Ch. D. 395; *Benltey Rotherham and Kimberworth Local Board of Health*, *Ib.* 588. In dealing with a statute which proposes merely to repeal a

(3.) "Council," shall mean the Municipal Council or Provisional Municipal Council, as the case may be; "Council."

(4.) "County," shall mean County, Union of Counties or United Counties, or Provisional County, as the case may be; "County."

(5.) "Township," shall mean Township, Union of Townships or United Townships, as the case may be; "Township"

(6.) "County Town," shall mean the City, Town, or Village in which the Assizes for the County are held; County town.

(7.) "Land," "Lands," "Real Estate," "Real Property," shall respectively, include lands, tenements and hereditaments, and all rights thereto and interests therein; "Land." "Real Estate." "Real Property."

(8.) "Highway," "Road," or "Bridge," shall mean Public Highway, Road, or Bridge, respectively; "Highway," "Road," "Bridge."

(9.) "Electors," shall mean the persons entitled for the time being to vote at any municipal election, or in respect of any by-law, in the Municipality, Ward, Polling Subdivision, or Police Village, as the case may be; "Electors."

(10.) "Reeve" shall include the Deputy Reeve or Deputy Reeves where there is a Deputy Reeve for the Municipality, except in so far as respects the office of a Justice of the Peace. "Reeve."

(11.) The words "next day" shall not apply to or include Sunday or Statutory Holidays. 36 V. c. 48, s. 1; 40 V. c. 8, s. 46. "Next day."

PART I.

OF MUNICIPAL ORGANIZATION.

TITLE I.—INCORPORATION.
TITLE II.—NEW CORPORATIONS.

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former statute of limited operation, and to re-enact the provisions in an amended form, the court is not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shewn, but is to determine on the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed. Per Sir James Colville in *Brown* v. *McLachlan*, L. R. 4 P. C. 550. An Act of the Local Legislature, lawfully constituted in a colony, assented to lawfully on behalf of the Crown, has, as to matters within the competence of the Local Legislature, the operation and force of sovereign legislation. *Phillips* v. *Eyre*, 10 B. & S. 1004. Acts creating Muni-

TITLE I.—INCORPORATION.—*Secs.* 3-8.

Existing Municipal Corporations continued.

3. The inhabitants of every County, City, Town, Village, Township, Union of Counties, and Union of Townships incorporated at the time this Act takes effect, (*d*) shall continue to

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cipal Corporations are Acts of which the Courts will take judicial notice. *Prell* v. *McDonald*, 12 Am. 423.

(*d*) The English municipal system and the Canadian system are in many respects widely different. Corporate bodies were, from time to time, by charter and otherwise, constituted in several of the Cities, Towns, and Boroughs of England, for the purpose of Municipal Government. These, however, were anything but uniform. In 1835, the 5 & 6 Will. IV. cap. 76, was passed in order to establish, if possible, a municipal system in England and Wales. Still there were divisions of people into Parishes and Hundreds where there was no incorporation. In some cases the people of the Parishes, though not incorporated, were held liable to persons sustaining injury from acts of misfeasance. In some respects the liability of Corporations, continued or created by this Act, for neglect of duty is identical with the liability of parishes in England. See the decisions of Wilson, J., in *Wellington* v. *Wilson*, 14 U. C. C. P. 306, and in *Harrald* v. *Simcoe and Ontario*, 16 U. C. C. P. 50-53, and the language of Chancellor VanKoughnet in the last named case in Appeal, 18 U. C. C. P. 13; see also the decision of the Common Pleas in *The Queen* v. *Yorkville* 22 U. C. C. P. 437, 440. See further, *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113.

"A Corporation is an artificial being—invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality (in the legal sense, that it may be made capable of indefinite duration), and if the expression may be allowed, individuality —properties by which a perpetual succession of many persons are considered the same, and may act as a single individual They enable a Corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that Corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being." Per Marshall, C. J., in *Dartmouth College* v. *Woodward*, 4 Wheat. 636. The only powers of a Municipal Corporation are those which are expressly conferred by the Legislature or such as must be inferred from the purposes of their creation. See *Baby* v. *Baby*, 5 U. C. Q. B. 510. *Standly* v. *Perry*, 23 Grant 507. Acts done in excess of their express or implied powers are absolutely void: *In re Richmond* v. *The Municipality of the Front of Leeds and Lansdowne*, 8 U. C. Q. B. 567; *Campbell* v. *Corporation of Elma*, 13 U. C. C. P. 296, but there may be cases in which the Corporation is unable to avail itself of such a defence. See *Wade* v. *Brantford*, 19 U. C. Q. B. 207.

be a body corporate, with the municipal boundaries of every

Words making any Association or number of persons a Corporation o Body Politic and Corporate, vest in the Corporation power to sue and be sued, to contract and be contracted with in their corporate name, to have a common seal, and to alter and change the same at their pleasure; to have perpetual succession, and power to acquire and hold personal property or movables for the purposes for which the Corporation is constituted, and to alienate the same at pleasure, and also vest in any majority of the members of the Corporation the power to bind the others by their acts, and exempt the individual members of the Corporation from personal liability for its debts or obligations or acts, provided they do not contravene the Provisions of the Act incorporating them. 31 Vict. c. 1, s. 7, sub. 28.

To consider these powers more in detail.

The *first* in order is, "to sue and be sued." A Municipal Corporation, like an individual, under the limitations involved in its constitution and organization, may have recourse to the Courts of the country to enforce rights and redress wrongs. *Ottawa District Council* v. *Low et al.* 6 O. S. 546. So one Municipal Corporation may sue another. *Huron* v. *London*, 4 U. C. Q. B. 302. So a Municipal Corporation may be sued for a breach of contract, and in certain cases for wrongful acts not arising out of contract. Thus a Municipal Corporation may be sued for negligence in the construction of a sewer, malfeasance in illegally obstructing a drain or water course, so as to injure the owner or owners of land adjoining, or for wrongfully diverting a stream of water on plaintiff's land. *Farrell* v. *London*, 12 U. C. Q. B. 343; *Reeves* v. *Toronto*, 21 U. C. Q. B. 157; *Perdue* v. *Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590; *Stonehouse* v. *Enniskillen*, 32 U. C. Q. B. 562. *Darby* v. *Crowland*, 38 U. C. Q. B. 338. To support an action against a Municipal Corporation of the nature suggested, although it is not necessary to show any authority under seal to the person or persons, who, under the supposed instructions of the Corporation, actually did the wrongful act, something must be shown to connect the Corporation as a body with the doing of the act. *Farrell* v. *London*, 12 U. C. Q. B. 343, *Lewis* v. *Toronto*, 39 U. C. Q. B. 343. If the Corporation had a right to do that which they are charged as having wrongfully done, it seems they may plead in general terms that they did the act complained of as they lawfully might for reasons assigned. *Brown* v. *Sarnia*, 11 U. C. Q. B. 87. The Court of Chancery may under particular circumstances on the application of a Municipal Corporation appoint a receiver of the tolls of an incorporated company for whom the Municipal Corporation has made advances, *Brantford* v. *Grand River Navigation Co.* 8 Grant, 246.

The *second* power is, to "contract and be contracted with." It is a principle applicable to all Corporations, that they must contract under seal. To this principle there are some exceptions. One of some moment has been created with regard to Municipal Corporations. It is that such a Corporation is liable to be sued in an action of debt on simple contract for the price of goods furnished, or labour done at their request and accepted by them. *Fetterly* v. *Russell*

such corporation respectively then established. 36 V. c. 48, s. 2.

and Cambridge, 14 U. C. Q. B. 433. Though in such a case there be no contract under seal, the law implies an undertaking by a Corporation to pay for labour and materials employed in their service, and of which they have accepted and are enjoying the benefit, provided the purpose for which the labour and materials have been applied is one clearly within the legitimate object of their charter. *Bartlett* v. *Amherstburgh*, 14 U. C. Q. B. 152; *Fetterly* v. *Russell and Cambridge*, 14 U. C. Q. B. 433; *Pim* v. *Ontario*, 9 U. C. C. P. 302; *Perry* v. *Ottawa*, 23 U. C. Q. B. 391; *Brown* v. *Belleville*, 30 U. C. Q. B. 373; *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 585; *Brown et al.* v. *Lindsay*, 35 U. C. Q. B. 509. The exception, however, does not extend to executory contracts, such as works, &c., *to be* done, but is confined to work in fact done and accepted. *McLean* v. *Brantford*, 16 U. C. Q. B. 347; *Wingate* v. *The Enniskillen Oil Refining Co.*, 14 U. C. C. P. 379; *Mayor, &c., of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13; *Austin* v. *Guardians of Bethnal Green*, L. R. 9 C. P. 91; and in this particular the rule is the same both at Law and in Equity, *Houck* v. *Whitby*, 14 Grant, 671. An individual dealing with a Corporation through its Council or the members of the governing body, is bound to notice the objects and limits of their powers and the manner in which those powers are to be exercised, and it is of much consequence that it should be borne in mind that their acts, when beyond the scope of their authority or done in a manner unauthorized, are in general nugatory and not binding on the Corporation. *Ramsay et al.* v. *Western District*, 4 U. C. Q. B. 374. Where work was done under a contract not made with the Corporation or any of its known officers, but merely with persons assuming to act as a duly appointed committee, it was held that no action would lie against the Corporation. *Stoneburgh* v. *Brighton*, 5 U. C. L. J. 38. No action can be sustained for a breach of duty against the head of a Corporation in not applying the seal to make a contract between a Corporation and an individual, founded on a refusal which (if there had been a previous valid contract) would have constituted a breach of it; in other words, there cannot be a remedy against the head of a Corporation, equivalent to a remedy on the contract against the Corporation, had the contract been duly made so as to create a valid and binding agreement. *Fair* v. *Moore*, 3 U. C. C. P. 484.

Municipal Corporations, when authorized to trade, and trading, appear to have the same rights and to be under the like obligations as Corporations created for the purposes of trade. *Wells* v. *The Mayor, &c., of Kingston-upon-Hull*, L. R. 10 C. P. 402.

The powers of a Municipal Corporation to have a common seal, to acquire and hold personal property or movables, and alienate the same at pleasure, are too well known and too thoroughly understood to need comment in this place. A Corporation as well as an individual may adopt any seal. It need not declare that the seal is their common seal. See *Ontario Salt Co.* v. *The Merchants' Salt Co.*, 18 Grant 551. Proof of the signatures of the attesting officers, if the proper officers of the Corporation, is *prima facie* evidence that the seal was properly affixed. Per Kinsey, C. J., in *Den* v. *Vreelandt*, 2 Halst. (N. J.) 352. The right of a Corporation

Heads, officers, by-laws, contracts, &c., continued.

4. The head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of every Municipal Corporation, when this Act takes effect, shall be deemed the head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of such Corporation, as continued under and subject to the provisions of this Act (*e*) 36 V. c. 48, s. 3.

Names of municipal corporations.

5. The name of every body corporate (not being a provisional corporation) continued, or erected under this Act, shall be "*The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships* (as the case may be) *of* " (naming the same.) (*f*) 36 V. c. 48, s. 4.

Names of Provisional corporations.

6. The inhabitants of every junior County, upon a Provisional Council being or having been appointed for the

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to acquire, hold and alienate real estate, generally depends upon the special provisions of the statute or charter. The power, when not otherwise provided, of a majority to bind the others by their acts, and also the exemption of individual members of the Corporation from personal responsibility, will engage attention hereafter.

See further, note *k* to sec 81.

(*e*) See *Corporation of Ludlow* v. *Tyler*, 7 C. & P. 537; *Doe Governors of Bristol Hospital* v. *Norton*, 11 M. & W. 913, 928; *Attorney-General* v. *Kerr*, 2 Beav. 420, 429; *Attorney-General* v. *Newcastle*, 5 Beav. 314, 315; *Attorney-General* v. *Leceister*, 9 Beav. 546. See further, notes to preceding section.

(*f*) The proper corporate name of a Municipal Corporation ought to be used on all occasions and in all places. But it has been decided that a By-law of a Municipal Council is valid if it appear on the face of it to have been enacted by a Municipal body having authority to make the By-law under the Municipal laws. *Flewellyn* v. *Webster*, 6 O. S. 586; *In re Hawkins* v. *Huron, Perth, and Bruce*, 2 U. C. C. P. 72; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492; *In re Barclay and Darlington*, 11 U. C. Q. B. 470; *Brophy and Gananoque*, 26 C. P. 290; see also *Gwynne* v. *Rees*, 2 U. C. P. R. 282. Slight variances in the use of corporate names, where substantially correct, have been held immaterial even in matters of contract. *Brock District* v. *Bowen*, 7 U. C. Q. B. 471; *The Trent and Frankford Road Co.* v. *Marshall*, 10 U. C. C. P. 336; *Whitby* v. *Harrison*, 18 U. C. Q. B. 603; *Brace* v. *Cromar*, 22 U. C. Q. B. 321. See also *Mayor and Burgesses of Lynne Regis*, 10 Rep. 120, 122; *Mayor of Carlisle* v. *Blamire et al.*, 8 East. 487; *The King* v. *Croke*, Cowp. 29; *Beverley* v. *Barlow*, 10 U. C. C. P. 178; *In re Goodwin and The Ottawa and Prescott Railway Co.*, 13 U. C. C. P. 254. It was, however, held differently as to the intitling of a rule in a proceeding against a Municipal Corporation. *In re Sams* v. *Toronto*, 9 U. C. Q. B. 181. The general rule to be collected from the cases is, that a variation from the precise name of the Corporation, when the true name is necessarily to be collected from the instrument or is shown by proper averments, will not

County, shall be a body corporate (*g*) under the name of "*The Provisional Corporation of the County of* " (naming it.) (*h*) 36 V. c. 48, s. 5.

Inhabitants of counties, townships, &c., and of cities, towns, &c., to be a body corporate.

7. The inhabitants of every County, or Union of Counties erected by proclamation into an independent County or Union of Counties, and of every Township or Union of Townships, erected into an independent Township or Union of Townships, and of every locality erected into a City, Town or incorporated Village, and of every County or Township separated from any incorporated Union of Counties or Townships, and of every County or Township, or of the Counties or Townships, if more than one, remaining of the Union after the separation, being so erected or separated after this Act takes effect, shall be a body corporate under this Act. (*i*) 36 V. c. 48, s. 6.

Corporate powers to be exercised by councils.

8. The powers of every body corporate under this Act shall be exercised by the Council thereof. (*k*) 36 V. c. 48, s. 7.

TITLE II.—NEW CORPORATIONS.

DIV. I.—VILLAGES.
DIV. II.—TOWNS AND CITIES.
DIV. III.—TOWNSHIPS.
DIV. IV.—COUNTIES.
DIV. V.—PROVISIONAL COUNTY CORPORATIONS.
DIV. VI.—MATTERS CONSEQUENT UPON THE FORMATION OF NEW CORPORATIONS.

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invalidate a grant by or to a Corporation or a contract with it, and the modern cases show an increased liberality on this subject. Per Chancellor Kent, in 2 Com. 292; approved in *St. Louis Hospital* v. *Williams*, 19 Mo. 609. See further, *President* v. *Myers*, 6 Serg. & Rawle, Pa., 12; *Milford Co.* v. *Brush*, 10 Ohio 111; *People* v. *Runkle*, 9 Johns 147. A Municipal Corporation has no power to change its name. As the Corporation is the creature of the Legislature, it must retain the name given to it by the Legislature until the Legislature otherwise provide. See *The Queen* v. *The Registrar of Joint Stock Companies*, 10 Q. B. 839; *Episcopal Charitable Society* v. *Episcopal Church*, 1 Pick. 372; see further, *The King* v. *Norris*, 1 Ld. Raym. 337; *The Queen* v *Bailiffs of Ipswich*, 2 Ld. Raym. 1232, 1238, 1239.

(*g*) See note *d* to s. 3.

(*h*) See note *f* to s. 5.

(*i*) See note *d* to sec. 3.

(*k*) The Council is not the Corporation, but the legislative and executive body of the Corporation. It fluctuates from year to year, while the corporate body is, as it were, immortal. See *Harrison* v. *Williams*, 3 B. & C. 162; *The Queen* v. *Paramore*, 10 A. & E. 286;

DIVISION I.—VILLAGES.

When a Village may be incorporated. Sec. 9.
Restrictions as to area of Towns and Villages. Sec. 10.
Arrangements with respect to assets and debts of Townships. Sec. 11.
Case of Village partly in two Counties provided for. Sec. 12.
Arrangement as to debts when Village transferred from one County to another. Sec 13.
Additions to area. Sec. 14.
Reductions of area. Sec. 15.

The Queen v. *York*, 2 Q. B. 850. Its powers are limited. It has no other powers than such as are expressly granted, or such as are necessary to carry into effect the powers expressly granted. Per Jewett, J., in *Hodges* v. *Buffalo*, 2 Denio, 112. See also *In re Ross and York*, 14 U. C. C. P. 171. *City of Placeville* v. *Wilcox*, 2 Withrow, 63. See further *Lowell* v. *City of Boston*, 15 Am. 39; *The State ex rel. Griffith* v. *Oswokee Township*, 19 Am. 99. Until the case of *Hodges* v. *Buffalo* was decided, nothing was more frequent in the United States than for city authorities to vote largesses and give splendid banquets for objects and purposes having no possible connection with the growth or weal of the body politic, thus subjecting their constituents to unnecessary and oppressive taxation. Per Pratt, J., in *Halstead* v. *Mayor of New York*, 3 Comst. 433; see further, *Hood* v. *Lynn*, 1 Allen (Mass.), 103; *Gerry* v. *Stoneham*, *Ib.* 319; *Cornell* v. *Guilford*, 1 Denio, 510; *Claflin* v. *Hopkinton*, 4 Gray, 502; *Tash* v. *Adams*, 10 Cush. 252. The action of Municipal Corporations is to be held strictly within the limits prescribed by the statute. See note *f* to sec. 14, and notes to sec. 277. Within these limits they are to be favoured by the courts. See *Smith* v. *Maddison*, 7 Ind. 86; *Kyle* v. *Malin*, 8 Ind. 34, 37. Parties dealing with the agents or officers of a Municipal Corporation must at their peril take notice of the limits of the powers. *Maryland ex rel Baltimore* v. *Kirkley et al.*, 29 Md. 85; *S. C.* 2 Withrow, 406. It is sometimes supposed that members of a Municipal Council exceeding their corporate powers may be held personally liable for their acts. See *Thomas* v. *Wilson et al.*, 20 U. C. Q. B. 331. But assuming a want of power on the part of the Council, it does not follow that the members of the Council are personally liable on the contract. *East Nissouri* v. *Horseman*, 9 U. C. C. P. 189. The fact of an agent entering into a contract without authority does not, *per se*, render him liable on the contract. *Jenkins* v. *Hutchinson*, 13 Q. B. 744; *Lewis* v. *Nicholson*, 18 Q. B. 503; *Carr* v. *Jackson*, 7 Ex. 382; *Mill* v. *Hawker*, L. R. 9 Ex. 309; *S. C.* L. R. 10 Ex. 92. But an agent assuming to have an authority which he has not, may be sued on an implied contract by him that he had the authority which he professed to have. Per Jervis, C. J., in *Randell* v. *Trimen*, 18 C. B. 786, 794; *Collen* v. *Wright*, 7 E. & B. 301; 8 E. & B. 647; *Warlow* v. *Harrison*, 1 E. & E. 295; see also *Simons* v. *Patchett*, 7 E. & B. 568. Where a contract is signed by one who professes to be an agent, but who has no principal existing at the time, and the contract would be wholly inoperative unless binding on him, he is personally bound. *Kelner* v. *Baxter*, L. R. 2 C. P. 174. See further note *d* to sec. 3.

When population 750, county council may incorporate as a village, and name place for first election, and a returning officer.

9. When the census returns of an unincorporated Village, with its immediate neighbourhood, taken under the direction of the Council or Councils of the County or Counties in which the Village and its neighbourhood are situate, show that the same contain over seven hundred and fifty inhabitants, and when the residences of such inhabitants are sufficiently near to for an incorporated Village, then, on petition by not less than one hundred resident freeholders and householders of the Village and neighbourhood, of whom not fewer than one-half shall be freeholders, the Council or Councils of the County or Counties in which the Village and neighbourhood are situate shall, by by-law, erect the Village and neighbourhood into an incorporated Village, apart from the Township or Townships in which the same are situate, by a name, and with boundaries to be respectively declared in the by-law, and shall name in the by-law the place for holding the first election, and the Returning Officer who is to hold the same. (*l*) 36 V. c. 48 s. 8 *part*.

(*l*) Municipal bodies are the creatures of the Legislature, and therefore subject to legislative control. The Legislature may increase, abridge, sub-divide, or abolish them. *Cobb* v. *Kingman*, 15 Mass. 197; *Richland* v. *Lawrence*, 12 Ill. 1; *Gorham* v. *Springfield*, 21 Maine 61; The power by this section conferred on Municipal Councils is, strictly speaking, a legislative power. See *People ex rel. Shumway* v. *Bennett*, 18 Am. 107; *Dumodhar Gordhan* v. *Deoram Kanji*, L. R. 1 Ap. Div. 332. Before Confederation the right of the Legislature to delegate such a power to a Municipal body was never questioned. But now that the powers of the Local Legislature are limited by the B. N. A. Act, a question may exist as to the powers of that body to delegate legislative powers to other bodies. The general proposition is that the Legislature is the only body authorized to make laws. But in the United States, where, under a written constitution, constitutional questions have been frequent, it has been held competent for the Legislature of a State to delegate to Municipal Corporations the powers to make by-laws affecting only the inhabitants of their several localities. See *Perdue* v. *Ellis*, 18 Geo. 586; *St. Paul* v. *Coulter*, 12 Min. 41; *Commonwealth* v. *Duquet*, 2 Yeates (Pa.), 493; *State* v. *Clark*, 8 Fost. (N. H.) 176; *Hill* v. *Decatur*, 22 Geo. 203; *Milne* v. *Davidson*, 8 Martin (La.) 586; *Markle* v. *Akron*, 14 Ohio 586; *Mayor* v. *Morgan*, 9 Martin (La.) 381; *Metcalf* v. *St. Louis*, 11 Mo. 103; *Strauss* v. *Pontiac*, 40 Ill. 301; *Ashton* v. *Ellsworth*, 48 Ill. 299. Before Confederation it was usual for the Legislature to delegate legislative powers, not only to Municipal bodies, but to the Governor in Council. Whether the same can still legally be done has not as yet been questioned since Confederation. The lines between executive, legislative, and judicial power are however strictly drawn by the B. N. A. Act. If the Act is to be a success these powers should be as far as possible kept distinct. The exercise of legislative power by the executive is just as likely to lead to confusion as the exercise of executive power by the Legislature. See further note to sub. 27 of sec. 463.

10. No Town or Village incorporated after the passing of this Act, the population of which does not exceed one thousand souls, shall extend over or occupy within the limits of the incorporation an area of more than five hundred acres of land. (*m*) **Area of town or village limited.**

2. No Town or Village already or hereafter incorporated, and containing a population exceeding one thousand souls, shall make any further addition to its limits or area, except in the proportion of not more than two hundred acres for each additional thousand souls, subsequent to the first thousand. (*n*) **Regulations as to enlargement of area.**

3. In the case of all Towns or Villages now incorporated, whenever the area thereof exceeds the proportionate limit above prescribed, to wit, in all cases where the area exceeds the proportion of five hundred acres for the first thousand souls, and two hundred acres for each subsequent additional thousand, then in all such cases the said Towns or Villages shall not be permitted to make any further addition to their limits until their population has reached such a proportion to their present area. (*o*) **Existing towns or villages area of which exceeds proportionate limit not to be enlarged.**

4. But in all cases, the persons then actually inhabiting the land about to be included within the limits of any Town or Village, may, for the purpose of such extension, be held and reckoned as among the inhabitants of such Town or Village; and the land occupied by streets or public squares may be excluded in estimating the area of such Town or Village. (*p*) 36 V. c. 48, s. 8, *last part*. **How population and area may be reckoned.**

11. In all cases where an incorporated Village is separated from the Township or Townships in which it is situate, the **Disposition of property and pay-**

(*m*) This sub-section is prospective. Provision is made by sub-sec. 3 for existing Towns and Villages.

(*n*) This sub-section is also prospective. When the population does not exceed one thousand souls, the maximum area allowed is five hundred acres, and by the sub-section here annotated, two hundred acres only can be allowed for each additional thousand persons beyond the first thousand.

(*o*) While in the case of existing Towns and Villages no provision is, by this sub-section, made for restricting their existing limits, provision is made as to future increase, &c., that it shall be in the proportions indicated, viz., five hundred acres for first thousand souls, and two hundred acres for each additional thousand.

(*p*) Not for all purposes, but for the purpose of "such extension," which is an expression by no means free from doubt.

ment of debts when incorporated village is separated from township.

provisions of this Act for the disposition of the property, and payments of debts, upon the dissolution of a union of Townships, shall be applicable as if the localities separated had been two Townships, and the Councils of such Village and Township or Townships shall respectively perform the like duties as by such provisions devolve upon the Councils of separted Townships, the said Village being considered as the junior Township. (*q*) 36 V. c. 48, s. 9.

When the village lies within two or more counties, village to be annexed to one of them by the county councils or Governor.

12. When the newly incorporated Village lies within two or more Counties, the Councils of the Counties shall, by by-law, annex the Village to one of the Counties; and if within six months after the petitions for the incorporation of the Village are presented, the Councils do not agree to which County the Village shall be annexed, the Wardens of the Counties shall memorialize the Lieutenant-Governor in Council, setting forth the grounds of difference between the Councils; and thereupon the Lieutenant-Governor shall, by proclamation, annex the Village to one of such Counties. (*r*) 36 V. c. 48, s. 10.

In case of failure of councils to act, freeholders, &c., may petition Lieutenant-Governor.

2. In case the Wardens do not, within one month next after the expiration of the six months, memorialize the Lieutenant-Governor as aforesaid, then one hundred of the freeholders and householders on the census list may petition the Lieutenant-Governor to settle the matter, and thereupon the Lieutenant-Governor shall, by proclamation, annex the incorporated Village to one of the said Counties. (*s*) 36 V. c. 48, s. 11.

Liability of territory detached from

13. In case any locality is, under the twelfth section of this Act, detached from one County and annexed to another,

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(*q*) See s. 27 and notes.

(*r*) The annexation is, in the first instance, left to the County Councils jointly. If they do not pass the necessary By-law within six months from the time the petition for the incorporation is presented, the Wardens are to notify the Lieutenant-Governor in Council thereof, and he is then to cause the annexation by proclamation. As to the exercise of delegated legislative powers, see note *l* to sec. 9.

(*s*) This is a necessary provision, in the nature of a delegated legislative power. (See note *l* to sec. 9). The previous section provides against neglect or failure to agree on the part of the Counties. In either event, it is made the duty of the Wardens to memorialize the Lieutenant-Governor in Council. But as the Wardens may neglect to do as required of them, power is, in that event, given by this section to one hundred of the freeholders and householders on the census list to petition the Lieutenant-Governor "to settle the matter."

the Council of the County to which [illegible] locality is annexed and the Council of the Village shall agree with the Council of the County from which such locality is detached, as to the amount (if any) of the County liabilities which should be borne by the locality so detached, and the times of payment thereof. (*a*). one county and annexed to another.

2. If the Councils do not agree within three months of the separation in respect of the said matter, the same shall be determined by arbitration under this Act; (*b*) and the amount (if any) so agreed or determined shall become a debt of the County to which the locality is attached, and such locality shall, until the said amount has been paid by the proceeds of such rates, continue subject to all rates which had been, prior to the separation, imposed for the payment of County debts or for the payment of bonuses or aids granted by sections of the County to railways, or for the payment of local improvement debts. (*c*)

3. The Council of the County or of the Village, as the case may require, shall pass such by-laws and take such proceedings as may be necessary for levying the said rates; and shall, unless such Council has previously paid the amount to the Municipality so liable, pay over the same when collected

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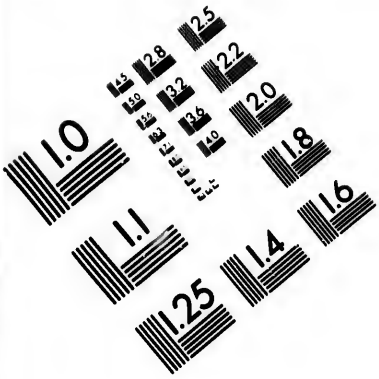
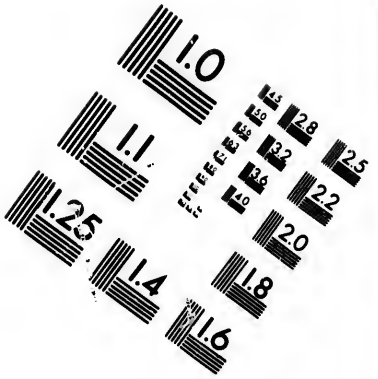
(*a*) Locality, under our system of Municipal Government, is subject to taxation. Each portion of a County therefore should bear its proper proportion of the taxation of the whole County. Where a portion is detached from one and added to another County, some mode of adjustment of existing liabilities becomes indispensable. See *McKee* v. *Huron District Court*, 1 U. C. Q. B. 368; *In re North Dumfries* v. *The County of Waterloo*, 12 U. C. Q. B. 507; *County of Wellington* v. *Township of Waterloo*, 8 U. C. C. P. 358; *County of Wellington* v. *Township of Wilmot*, 17 U. C. Q. B. 82; *Windham* v. *Portland*, 4 Mass. 384; *Hampshire* v. *Franklin*, 16 Mass. 75, 86; *Plunkett's Creek* v. *Crawford*, 27 Penn. St. 107; *New London* v. *Montville*, 1 Root (Conn.) 184; *North Yarmouth* v. *Skillings*, 45 Maine 133; *Lakin* v. *Ames*, 10 Cush. 98; *Brewster* v. *Harwich*, 4 Mass. 278; *Randolph* v. *Braintree Ib.* 315; *Blackstone* v. *Taft*, 4 Gray 250; *Hartford Bridge Co.* v. *East Hartford*, 16 Conn. 491; *East Hartford* v. *Hartford Bridge Co.* 17 Conn. 80, 96, 10 How. 511; *Crawford County* v. *Iowa County*, 2 Chand. (Wis.) 14; see further Dillon on Municipal Corporations, 2 ed. sec. 126.

(*b*) See s. 367.

(*c*) This section operates as a transfer of the obligation where the amount of it has been agreed upon or determined under the Act. The County, to which the transfer of locality is made, becomes liable for the amount of its agreed or ascertained debt, payable to the County from which it is detached.





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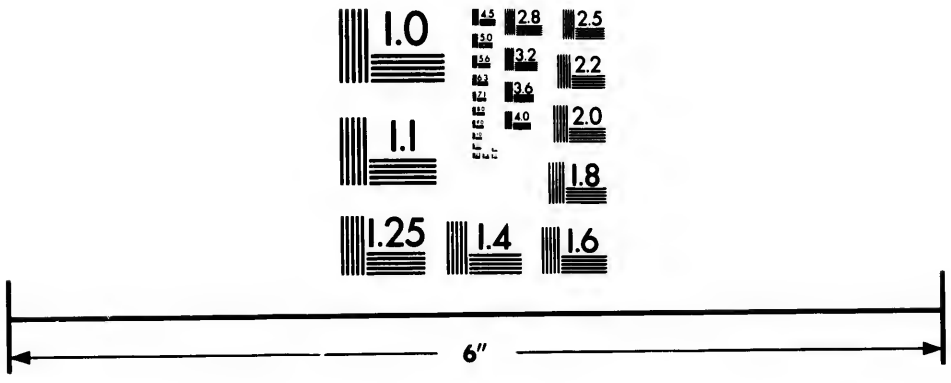

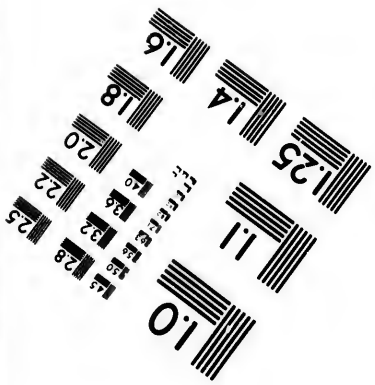

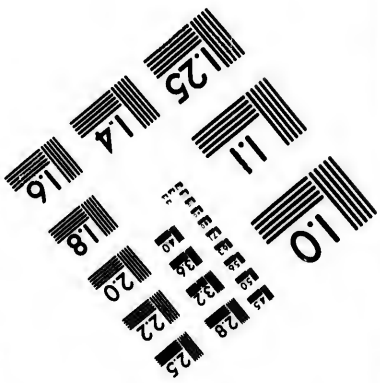

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to the Municipality which is liable for the debt on account of which the rates were imposed. (*d*)

4. Where the said Councils do not agree as aforesaid, the Lieutenant-Governor in Council may, before proclamation has been made, and upon the petition of a majority of the resident freeholders and householders of the said Village, and with the assent of at least two of the Councils of the Townships in which the said Village is situate, annul the incorporation of the said Village and restore the same to its former position as an unincorporated Village, and the same shall thereupon be reinstated to its former position to the same extent as if no proceedings for incorporation had ever been taken. (*e*). 37 V. c. 16, s. 1.

Addition to villages by Lieutenant-Governor.

14. In case the Council of an incorporated Village petitions the Lieutenant-Governor to add to the boundaries thereof, (*f*) the Lieutenant-Governor may, subject to the provisions of section ten of this Act, by proclamation add to the Village any part of the localities adjacent, which, from the proximity of the streets or buildings therein, or the probable future

(*d*) This is the machinery provided by the Legislature for the purpose of carrying out the purpose of the section, which is the payment to the County from which the locality is detached, the amount of liability agreed upon or ascertained under the section.

(*e*) The withdrawal is made conditional on the payment of the proportion of liability for which the locality is liable to the County from which detached. Therefore the non-payment of that amount may, under the section, be followed by the restoration of all things as they were before the incorporation of the new Village and annexation of it to a County other than that in which originally situate. The exercise of such powers is, as explained in note *l* to s. 9, the exercise of legislative power.

(*f*) Municipal Councils are local governing bodies. The localities over which their jurisdiction extends ought to be certain and well defined. They may pass by-laws for ascertaining and establishing the boundary lines of the Municipality according to law, in case the same has not been done, and for the erection and preservation of durable monuments. Sub-s. 35 of sec. 461. See *Cutting* v. *Stone*, 7 Vt. 471; *Gray* v. *Sheldon*, 8 Vt. 402; *Pierce* v. *Carpenter*, 10 Vt. 480; see also *Hamilton* v. *McNeill*, 13 Gratt. (Va.) 389; *Raab* v. *Maryland*, 7 Md. 483; *Green* v. *Cheek*, 5 Ind. 105; *Elmendorf* v. *New York*, 25 Wend. 693; *People* v. *Carpenter*, 24 N. Y. 86. As to river boundaries, See *Palmer* v. *Hicks*, 6 Johns. Cas. 133; *State* v. *Canterbury*, 8 Fost. (N. H.) 195; *State* v. *Gilmanton*, 14 N. H. 467; *Cold Springs* v. *Tolland*, 9 Cush. 492; *Pratt* v. *State*, 5 Conn. 388; *Hayden* v. *Noyes*, *Ib.* 391; *Re Furman Street*, 17 Wend. 649; *Udall* v. *Trustees of Brooklyn*, 19 Johns. Cas. 175; *Jones* v. *Soulard*, 24 How. 41.

exigencies of the Village, it may seem desirable to add thereto; (*g*) and in case the territory so added belonged to another County, it shall thenceforward, for all purposes, cease to belong to such other County, and shall belong to the same County as the rest of the Village. 36 V. c. 48, s. 12; 40 V. c. 7, Sched. A (168).

Reducing the area of villages.

15. The County Council of any County or Union of Counties upon the application by petition of the Corporation of any incorporated Village, whose outstanding obligations and debts do not exceed double the net amount of the yearly rate then last levied and collected therein, may, in their discretion, by by-law in that behalf reduce the area of such Village by excluding from it lands used wholly for farming purposes. (*h*)

New limit to be defined,

2. Such by-law shall define, by metes and bounds, the new limits intended for such incorporated Village. (*i*)

And population not reduced below 750,

3. No incorporated Village shall by any such change of boundaries be reduced in population below the number of seven hundred and fifty souls. (*j*)

Nor municipal rights of village abridged.

4. That the municipal privileges and rights of such Village shall not thereby be diminished, or otherwise interfered with as respects the remaining area thereof. (*k*) 36 V. c. 48, s. 13.

(*g*) The power to add to boundaries is one that should exist somewhere. It is, properly speaking, a legislative power. See note *l* to sec. 9. But by this section, subject to the provisions of sec. 10 of this Act, it is vested in the Lieutenant-Governor in Council.

(*h*) This is the opposite of the power of extension. It, like the power of extension, is, properly speaking, a legislative power. See note *l* to sec. 9. But while the latter is vested in the Lieutenant-Governor in Council, the power of contraction is by this section subject to certain checks, after mentioned, vested in the County County Council.

(*i*) See note *f* to sec. 14.

(*j*) This is the number made necessary for the incorporation of a Village. See sec. 9.

(*k*) There cannot exist in the same locality two municipal bodies exercising similar powers. Each Municipal Council, no matter what its area, is independent, or ought to be independent, of every other similar Municipal Council. See *The King* v. *Passmore*, 3 T. R. 243; *The King* v. *Amery*, 2 Bro. P. C. 336; *Patterson* v. *Society*, &c., 4 Zabriskie, (N. J.) 385; *Milne* v. *Mayor*, 13 La. 69; *Hamilton* v. *McNeil*, 13 Gratt. (Va.) 389; *People* v. *Farnham*, 35 Ill. 562.

DIVISION II.—TOWNS AND CITIES.

Towns and Cities, how formed, and limits. *Secs.* 16-18.
Restrictions as to area of Towns. *Sec.* 10.
Wards, and additions to area. *Secs.* 19-21.
Towns, how withdrawn from and re-united to jurisdiction of of County. *Secs.* 22, 23.

Census of towns and villages.

16. A census of any Town or incorporated Village, may at any time be taken under the authority of a by-law of the Council thereof. (*l*) 36 V. c. 48, s. 14.

Town containing over 15,000 inhabitants may be erected into a city; and village containing over 2,000 into a town. Conditions.

17. In case it appears by the census return taken under any such by-law, or under any statute, (*m*) that a Town contains over fifteen thousand inhabitants, the Town may be erected into a City; and in case it appears by the return that an incorporated Village contains over two thousand inhabitants, the Village may be erected into a Town; (*n*) but the change shall be made by means of and subject to the following proceedings and conditions:—

1st. Notice to be given.

1. The Council of the Town or Village shall, for three months after the census return, insert a notice in some newspaper published in the Town or Village, or, if no newspaper is published therein, then the Council shall, for three months, post up a notice in four of the most public places in the Town or Village, and insert the same in a newspaper published in the County Town of the County in which the Town or Village is situate, or if there is no such newspaper, then in the newspaper published nearest to the said Town or Village, setting forth in the notice the intention of the Council to apply for the erection of the Town into a City, or of the Village into

(*l*) This and the following sections are designed to facilitate the formation of Villages, into Towns and Towns into Cities, whenever the population is sufficiently increased to admit of the changes. See sec 17. The census authorized under this section may be taken "at any time." In this respect it differs from a census taken under a statute, which is usually required to be taken at fixed periods. If the necessary population be shown by a census taken under a statute, the necessary action as to formation may also be had. See sec 17.

(*m*) See Dom. Act 33 Vict. cap. 21, as amended by 34 Vict. cap. 18, in respect to the Dominion Census.

(*n*) The population for a Village is 750
for a Town 2,000
for a City 15,000

a Town, and stating the limits intended to be included therein; (*o*)

2nd. Census returns to be certified and publication of notice proved.

2. The Council of the Town or Village shall cause the census returns to be certified to the Lieutenant-Governor in Council, under the signature of the head of the Corporation, and under the corporate seal, and shall also cause the publication aforesaid to be proved to the Lieutenant-Governor in Council; then, in the case of a Village, the Lieutenant-Governor may, by proclamation, erect the Village into a Town by a name to be given thereto in the proclamation; (*p*)

Village may be made a town by proclamation.

3rd. Existing debts to be adjusted in case of a town to be made a city.

3. In case the application is for the erection of a Town into a City, the Town shall also pay to the County of which it forms part, (*q*) such portion, if any, of the debts of the County as may be just, or the Council of the Town shall agree with the Council of the County as to the amount to be so paid, and the periods of payment with interest from the time

(*o*) Two things are here to be observed; first, the contents of the notice; second, the mode of publication. The notice should not only set forth the intention of the Council to apply for the erection of the Village into a Town, or of the Town into a City, but state the limits intended to be included therein. The notice should, for three months after the census return, be inserted in some newspaper published in the Village or Town. If no such newspaper, the notice should be posted up for the three months in four of the most public places in the Village or Town, and inserted in a newspaper published in the County Town, or, if no such newspaper as last mentioned, then in the newspaper published *nearest* to the Village or Town. See, as to the notice necessary in the case of the alteration of School boundaries, *Ness* v. *Saltfleet*, 13 U. C. Q. B. 408; *In re Ley* v. *Clark*, 13 U. C. Q. B. 435; *In re Taylor* v. *West Williams*, 30 U. C. Q. B. 346; *Patterson* v. *Hope*, 30 U. C. Q. B. 484; see further section 286 of this Act, and notes thereto.

(*p*) Two things are here made necessary; first, that the census returns should be certified to the Lieutenant-Governor in Council; second, that proof of the publication of the notice referred to in the last note should be adduced to the Lieutenant-Governor in Council. The certificate as to the census must be not only under the seal of the Corporation, but under the signature of the head of the Corporation. No provision is made as to the mode of proof of notice, whether by certificate or affidavit; this is left entirely to the discretion of the Lieutenant-Governor in Council. In the case of the erection of a Town into a City, there must be also proved the settlement of debts between the Town and the County of which it forms a part. See next sub-section. As to the exercise of delegated legislative powers, see note *l* to sec. 9.

(*q*) A City, for Municipal purposes, becomes a County in itself. Hence the necessity for the adjustment of a County debt before a separation takes place.

of the erection of the new City, or in case of disagreement the same shall be determined by arbitration under this Act; (*r*) and upon the Council proving to the Lieutenant-Governor in Council the payment, agreement, or arbitration, then the Lieutenant-Governor may, by proclamation, erect the Town into a City, by a name to be given thereto in the proclamation. (*s*) 36 V. c. 48, s. 15.

Town may be made a city by proclamation.

Limits of such new town or city.

18. The Lieutenant-Governor may include in the new Town or City such portions of any Township or Townships adjacent thereto, and within the limits mentioned in the aforesaid notice, (*t*) as, from the proximity of streets or buildings, or the probable future exigencies of the new Town or City, the Lieutenant-Governor may consider desirable to a tach thereto. (*u*) 36 V. c. 48, s. 16.

Wards.

19. The Lieutenant-Governor may divide (*v*) the new Town or City into Wards, with appropriate names and boundaries, (*x*) but no Town shall have less than three Wards, and no Ward in any such Town or City less than five hundred inhabitants (*y*). 36 V. c. 48, s. 17.

(*r*) See sec. 367 and following sections.

(*s*) Each Municipality should have a name to distinguish it from all other Municipalities. The power is here conferred, not only to create a new Municipality, but to give it a name. The name can only be changed by the Legislature. No Municipal Corporation has power to change its name. See note *f* to sec. 4.

(*t*) See note *o* to sec. 17.

(*u*) Municipalities being localities must have boundaries to separate them from other similar localities, see note *f* to sec. 14, and without express legislative authority, Municipal Councils have no power to acquire lands beyond their local limits. *North Hempstead* v. *Hempstead*, 2 Wend. 131; *Denton* v. *Jackson*, 2 Johns. Ch. 336; *Riley* v. *Rochester*, 9 N. Y. 64; *Chambers* v. *St. Louis*, 29 Mo. 543; *Girard* v. *New Orleans*, 2 La. An. 897; *Concord* v. *Boscawen*, 17 N. H. 465; see further s. 277 and notes thereto. Township Councils were formerly authorized to divide Townships into Wards. See *Regina ex rel. Woodward* v. *Ostrom et al.*, 2 C. L. Chamb. 47; *In re Loucks* v. *Russell*, 7 U. C. C. P. 388.

(*v*) See note *l* to sec. 9.

(*x*) See note *f* to sec. 14.

(*y*) This section has no reference to an Incorporated Village. The population of such a village may be no more than 750. See sec. 9, whereas the minimum population made necessary for a Ward under this section is 500. A Town requires to have 2000 inhabitants. See note *n* to sec. 17. But here it is declared that no Town shall have less than three Wards, and no Ward have a less population than 500 inhabitants.

20. In case two-thirds of the members of the Council of a City or Town do, in Council, (*a*) before the fifteenth day of July in any year, (*b*) pass a resolution affirming the expediency of a new division into Wards being made of the City or Town, or of a part of the same, (*c*) either within the existing limits or with the addition of any part of the localities adjacent, which, from the proximity of streets or buildings therein, or the probable future exigencies of the City or Town, it may seem desirable to add thereto respectively, or the desirability of any addition being made to the limits of the City or Town, the Lieutenant-Governor may, (*d*) by proclamation, divide the City or Town or such part thereof into Wards, as may seem expedient, and may add to the City or Town any part of the adjacent Township or Townships which the Lieutenant-Governor in Council, on the grounds aforesaid, considers it desirable to attach thereto. (*e*) 36 V. c. 48, s. 18.

New division of wards in cities and towns.

Extnsion of city or town.

21. In case any tract of land so attached to the Town or City belonged to another County, the same shall thenceforward for all purposes cease to belong to such other County,

Where land attached to town, &c., belonged to

(*a*) This, it is apprehended, means a majority of two-thirds of the *whole* number of Councillors, and not merely two-thirds of a less number present at the meeting, though the number present be sufficient to form a quorum for ordinary business.

(*b*) It ought to be observed that the time is here expressly limited. If the act authorized, be done after the time limited, it would, it is apprehended, looking at the subject matter of the section, be a nullity.

(*c*) A Municipal Council ordinarily does public acts through the instrumentality of a By-law. No By-law is, however, here necessary. A formal resolution is all that is required. One difference between a By-law and a resolution is, that the former must bear the corporate seal, and the latter need not do so. See sec. 281 and notes thereto.

(*d*) A change in one or more Wards of a City or Town, without disturbing the remaining Wards, is contemplated.

(*e*) This admits of tracts of adjacent Townships being added to Cities or Towns and annexed to specific Wards. It would seem to be in the discretion of the Lieutenant-Governor to fix or define the Wards, or make any necessary alterations therein, but it is probable that the wishes of the Town or City Council would be complied with by him. It may therefore be important that the resolution should explicitly state the changes or additions deemed expedient by the Council. No published or other notice of the intended application is required.

another county.

and shall belong to the same County as the rest of the Town or City. (*f*) 36 V. c. 48, s. 19.

Town may be withdrawn from jurisdiction of county by by-law on certain conditions.

22. The Council of any Town may pass a by-law to withdraw the Town from the jurisdiction of the Council of the County within which the Town is situated, upon obtaining the assent of the electors of the Town to the by-law in manner provided by this Act, subject to the following provisions and conditions: (*g*)

Amount to be paid by town to county for expenses of administration of justice to be settled by agreement or arbitration.

1. After the final passing of the by-law, the amount which the Town is to pay to the County for the expenses of the administration of justice, the use of the Gaol, and the erection and repairs of the Registry Office, and for providing books for the same, and for services for which the County is liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands, as well as for the then existing debt of the County, (*h*) if not mutually agreed upon, shall be ascertained by arbitration under this Act; (*i*) and the agreement or award shall distinguish the amount to be annually paid for the said expenses, and for the then debt of the County, and the number of years the payments for the debt are to be continued;

Matters to be considered in settling the same.

2. In adjusting their award, the arbitrators shall, among other things, take into consideration the amount previously paid by the Town, or which the Town is then liable to

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(*f*) Towns and Cities, for some purposes, continue parts of the County in which situate. See sec. 22. And this provides for the annexation, for all purposes, of tracts detached under the operation of the foregoing section.

(*g*) The exercise of the powers of the Council is made subject to the assent of the electors, and, even with the assent of the electors, is further subject to the provisions and conditions in this section also contained.

(*h*) The amount to be paid by the Town to the County is made up of the followings items:—

1. Expenses of Administration of Justice.

2. Use of the Gaol.

3. Erection and repairs of Registry Office.

4. Books for the same, and for services for which the County is liable, as required by any Act respecting the registration of instruments relating to lands.

5. The then existing debt of the County.

(*i*) See s. 367 *et seq.*

pay, for the construction of roads or bridges by the County, without the limits of the Town; and also what the County has paid, or is liable to pay, for the construction of roads or bridges within the Town; and they shall also ascertain and allow to the Town the value of its interest in all County property, except roads and bridges within the Town; (*j*)

Copy of agreement or award to be sent to the Lieut. Governor. Proclamation.

3. When the agreement or award has been made, a copy of the same, and of the by-law, duly verified by affidavit, shall be transmitted to the Lieutenant-Governor, who shall thereupon issue his proclamation, withdrawing the Town from the jurisdiction of the Council of the County; (*k*)

Effect of such proclamation.

4. After the proclamation has been issued, the offices of Reeve and Deputy Reeve or Deputy Reeves of the Town shall cease; and no by-law of the Council of the County thereafter made shall have any force in the Town, except so far as relates to the care of the Court House and Gaol, and other County property in the Town; and the Town shall not thereafter be liable to the County for, or be obliged to pay to the County, or into the County treasury any money for County debts or other purposes, except such sums as may be agreed upon or awarded as aforesaid; (*l*)

New agreement or award after five years.

5. After the lapse of five years from the time of the agreement or award, or such shorter time as may be stated in the agreement or award, a new agreement or a new award may be made, to ascertain the amount to be paid by the Town to the County for the expenses of the administration of

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(*j*) The rule laid down is a fair one. Where the Town has contributed towards building roads or bridges outside of its limits, credit is to be given; but when the roads, &c., are within the limits, it is to be debited with a fair proportion of the outlay. In addition, the Town is to receive credit for the value of its interests in all County property, except roads and bridges within the Town.

(*k*) There is no time limited in any year within which the application to the Lieutenant-Governor is to be made.

(*l*) The effects of withdrawal are here explained.

1. The offices of Reeve and Deputy-Reeve, necessary only as representatives of the Town in the County Council, are to cease.

2. No By-law of the County (except so far as relates to the care of the Court House and Gaol, and other County property in the Town) is to have any force in the Town.

3. The Town is not to be liable to the County for, or be obliged to pay into the County Treasury, any moneys (except as agreed upon or awarded) for County debts or other purposes.

justice, the use of the Gaol, erection and repairs of the Registry Office or offices, the providing of books for the same, and for services for which the County is liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands; (*m*)

Property after withdrawal.

6. After the withdrawal of a Town from the County, all property theretofore owned by the County, except roads and bridges within the Town, shall remain the property of the County. (*n*) 36 V. c. 48, s. 20.

Town may after five years from withdrawal pass by-law for re-union with county.

23. The Council of any Town which has withdrawn from a County, or union of Counties, (*o*) may, after the expiration of five years from such withdrawal, pass a by-law (to be assented to by the electors in manner provided for by this Act in respect of by-laws for creating debts) to re-unite with such County or Union of Counties. (*p*)

Proviso, that by-law shall have no effect until ratified by council of county, &c.

2. The said By-law shall have no effect unless ratified and confirmed by the Council of the County or Union of Counties from which the said Town had previously withdrawn, within six months after the passing of the said By-law, (*q*) and unless the terms and conditions which the Town shall pay, per-

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(*m*) Most of the services mentioned are County Services, in which the Town, though withdrawn from the County, must be continuously interested. But the nature and value of the services may from year to year vary; hence provision is made for a settlement every five years, unless a shorter time be stated in the agreement or award last made.

(*n*) All real property of the County, with the exceptions named in this sub-section continue the property of the County notwithstanding the withdrawal. The only exceptions are "roads and bridges" *within* the Town.

(*o*) See sec. 22.

(*p*) In some cases it has been found that the withdrawal of a Town from the jurisdiction of the County in which situate, was not to the pecuniary advantage of the Town. But until this provision there could not be a re-union without an Act of Parliament. See note *l* to sec. 9.

(*q*) It is in the power of a Town to withdraw from a County without the assent of the County. But after withdrawal there can be no restoration of the union in the absence of mutual assent. That assent is to be signified by the passing of By-laws by each of the municipal bodies interested. The By-law of the County, to be operative, must be passed within six months after the passing of the By-law of the Town. The initial proceeding is to be had by the Town.

form, or be subject to, have been previously agreed upon or settled in manner following, (*r*) that is to say :—

And before by-law ratified, the amounts of the debts of town and county respectively shall be determined.

3. Before the said by-law is confirmed by the Council of the County, the Councils of the Town and County shall determine by agreement the amounts of the debts of the Town and County respectively which shall be paid or borne by the County after the re-union, or what amount shall be payable by a special rate to be imposed upon the ratepayers of the Town, over and above all other County rates, and all other matters relating to property, assets, or advantages consequent upon such re-union, and as affecting the County or Town respectively, and such other terms or conditions as appear just shall be settled by such agreement; and in default of such agreement being come to within three months after the passing of the By-law by the Council of the Town, the said matters shall be settled by arbitration, as provided by this Act. (*s*) 36 V. c. 48, s. 21.

DIVISION III.—TOWNSHIPS.

Townships, how attached to other Municipalities. *Sec.* 24.
When junior Township may become a separate Corporation. *Secs.* 25-26.
Arrangement of joint assets and debts. *Sec.* 27.
New Townships, union of. *Secs.* 28-29.
Seniority of Townships. *Secs.* 30-31.

New townships beyond limits of incorporated county may be attached to a county by proclamation.

24. In case a Township is laid out by the Crown in territory forming no part of an incorporated County, the Lieutenant-Governor may, by proclamation, annex the Township, or two or more of such Townships lying adjacent to one another, to any adjacent incorporated County, and erect the same into an incorporated union of Townships with some other Township of such County. (*a*) 36 V. c. 48, s. 22.

(*r*) The withdrawal could only take place after certain financial arrangements, made to the satisfaction of both parties, or, if unable to agree, by arbitration. See sec. 22. The re-union is also made to depend upon a settlement of the financial matters specified.

(*s*) See sec. 367 and following sections.

(*a*) The ordinary Municipal Divisions are Counties, Townships, Towns, and Villages. Of these the County is the major municipality,

Junior township containing 100 freeholders, &c., may be separated from union.

25. When a junior Township of an incorporated Union of Townships has one hundred resident freeholders and householders on the assessment roll as last finally revised and passed, such Township shall, upon the first day of January next after the passing of the proper by-law in that behalf by the County Council, become separated from the Union. (*b*) 36 V. c. 48, s. 23.

In what cases junior township containing 50 freeholders, &c., but less than 100, may be separated from union,

26. In case a junior Township has at least fifty, but less than one hundred resident freeholders and householders on the last revised assessment roll, and two-thirds of the resident freeholders and householders of the Township petition the Council of the County to separate the Township from the Union to which it belongs, and in case the Council considers the Township to be so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently be united with the inhabitants of an adjoining Township for municipal purposes, the Council may, by by-law, separate the same from the Union; (*c*) and the by-law shall name the Returning Officer who is to hold,

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composed of the smaller or minor municipalities. Apart from the Townships, Towns, and Villages, the County has no local existence. But covering as it does the smaller municipalities, it, through its Council, exercises certain superior powers over them. The municipal scheme requires that every Township should belong to some County. The object of this section is to annex a Township or Townships, territorially out of any County, to some adjacent County for municipal purposes.

(*b*) When the Junior Township attains the required population, the separation is to take place after the passing of the necessary by-law by the County Council. This is a delegated legislative power. See note *l* to s. 9.

(*c*) It is the rule to have at least one hundred resident freeholders and householders on the last roll, as finally revised, in order to constitute a separate Township, and to have Townships of a less number of inhabitants united. The exception which may be created by this section is where a Township, having at least fifty resident freeholders and householders, is so situate, with reference to streams or other natural obstructions, that its inhabitants cannot be conveniently united with the inhabitants of an adjoining Township. In such case, if there be a petition to the County Council from two-thirds of the resident freeholders and householders of the Township, setting forth the above facts and praying for separation, and the Council of the County considers the prayer of the petition well grounded, a By-law may be passed for the purpose, and thereby a separation be effected. This also is a legislative power. See note *l* to sec. 9.

and the place for holding, the first election under the same (*d*).

and attached to an adjoining Municipality.

2. In case two-thirds of the resident freeholders and householders of one or more junior Townships petition the Council of the County to be separated from the Union to which they belong, and to be attached to some other adjoining Municipality, and in case said Council considers that the interests and convenience of the inhabitants of such Township or Townships would be promoted thereby, they may, by by-law, separate such Township or Townships from said Union, and attach them to some other adjoining Municipality. (*e*) 36 V. c. 48, s. 24.

Disposition of property upon dissolution of township unions.

27. After the dissolution of a Union of Townships, the following shall be the disposition of the property of the Union; (*f*)

1. The real property of the Union situate in the junior Township shall become the property of the junior Township;

Real property.

2. The real property of the Union situate in the remaining Township or Townships of the Union shall be the property of the remaining Township or Townships; (*g*)

(*d*) A separate Returning Officer is a necessary consequence of a separation. For this reason the By-law which effects the separation must name the Returning Officer, and appoint the place for holding the first election.

(*e*) This section may be conveniently divided into two parts. The first provides for the separation from a Union of a Township so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently remain in the Union or be attached to any other Union, in which case provision is made under certain restrictions for a separate municipal existence. The latter part of the section provides for the detachment of a Township or Townships from one Union, and its annexation to another Township or Union where the County Council, upon petition, considers that the interest and convenience of the inhabitants would be thereby promoted.

(*f*) As to the necessity for such provision as the following in regard to the disposition of property in the event of a division of a Municipality, see cases mentioned in note *a* to sec. 13.

(*g*) The situation of the real property is made to govern its ownership. If in the junior Township, it becomes the property of the junior Township; if in the remaining Township or Townships, it becomes the property of such Township or Townships. This is the rule which was held to apply, by the Supreme Court of New York, to the division of a Municipality, in the absence of express provision

Other assets of the corporations.

3. The two Corporations shall be jointly interested in the other assets of the Union, and the same shall be retained by the one, or shall be divided between both, or shall be otherwise disposed of, as they may agree; (*h*)

Arrangement as to debts.

4. The one shall pay or allow to the other, in respect of the said disposition of the real and personal property of the Union, and in respect of the debts of the Union, such sum or sums of money as may be just (*i*);

How to be determined in case of disagreement.

5. In case the Councils of the Townships do not, within three months after the first meeting of the Council of the junior Township, agree as to the disposition of the personal property of the Union, or as to the sum to be paid by the one to the other, or as to the times of payment thereof, the

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to the contrary. *North Hempstead* v. *Hempstead*, 2 Wend. 109; see further *Milwaukee* v. *Milwaukee*, 12 Wis. 93. The *situs* of real property, as between Municipalities, in the event of a dissolution of the Union formerly existing, in general determines its ownership. But, as regards property other than real property, a different rule in general prevails. See *Windham* v. *Portland*, 4 Mass. 384; *Hartford Bridge* v. *East Hartford*, 16 Conn. 149; *S. C.* 10 How. (U. S.) 511; *Hampshire* v. *Franklin*, 16 Mass. 75.

(*h*) The assets of the Union may consist either of real or personal property, or of both. The disposition of the real property is provided for in the preceding subsections. Its *situs* determines its ownership. But as regards assets other than real property its disposition is necessarily made to depend on the agreement of the Townships, unless clothed with a trust of some kind. See *North Yarmouth* v. *Skellings*, 45 Maine 133; *Harrison* v. *Brigeton*, 16 Mass. 16; *Milwaukee* v. *Milwaukee*, 12 Wis. 93.

(*i*) *As may be just.* This has reference to more than a mere equalization of the assessment between the different Municipalities. *In re Howick and Wroxeter*, 12 U. C. L. J. N. S. 64. So long as the Townships remain united, they constitute one Municipality, as much as the various Wards of a City constitute one Municipality; but when United Townships separate, there are matters which require adjustment, according to what is right and fair, between the parties. It is in the division and disposal of the property and in the provisions which the liabilities of the Union may require, that on the dissolution one may have to pay to the other such sum of money as may be just. This amount is, in the first instance, if possible, to be determined by mutual agreement. On the separation of three Townships into two Municipalities, the two Corporations executed an instrument whereby one agreed to pay to the other a certain sum as soon as certain non-resident rates theretofore imposed should become available. It was subsequently discovered that these rates had been illegally imposed, and that the supposed fund would never be available. Its supposed existence had been an element in determining the amount to be paid. It was held that the Corpora-

matters in dispute shall be settled by arbitration under this Act; (*j*)

6. The amount so agreed upon or settled shall bear interest from the day on which the Union was dissolved; and shall be provided for by the Council of the indebted Township like other debts; (*k*) 36 V. c. 48, s. 25.

Amount agreed to be paid shall bear interest.

28. In case a Township is laid out by the Crown in an incorporated County or Union of Counties, or in case there is any Township therein not incorporated and not belonging to an incorporated Union of Townships; the Council of the County or United Counties shall, by by-law, unite such Townships for municipal purposes, to some adjacent incorporated Township or Union of Townships in the same County or Union of Counties. (*l*) 36 V. c. 48, s. 27.

New townships, &c., within the limits of incorporated counties, to be united to adjacent townships, and how.

29. In case of there being at any time in an incorporated County or Union of Counties two or more adjacent Townships not incorporated, and not belonging to an incorporated Union of Townships; and in case such adjacent Townships have together not less than one hundred resident freeholders and householders within the same, the Council of the County or Union of Counties may, by by-law, form such Townships

Township not incorporated or united may be formed into unions.

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tion to which the money was made payable was not entitled to have the agreement reformed so as to make the money payable by the other absolutely. *Arran* v. *Amabel*, 17 Grant 163, reversing *S. C.* 15 Grant 701.

(*j*) So far as the Act directs a distribution of property, the Act must be followed. The Corporations cannot of themselves make an arrangement contrary to the Act of Parliament, but in matters where the Act is silent as to the particular division of property or adjustment of assets, it is in the power of the Corporation, by amicable arrangement or through the medium of an arbitration, to adjust the same. See *Wellington* v. *Wilmot*, 17 U. C. Q. B. 71.

(*k*) In the absence of an agreement to the contrary, the rate of interest would be six per cent. per annum. See sec. 8 of C. S. C. c. 58. This is besides the rate of interest to be paid when a balance is found due by one County to another after a separation. See sec. 42.

(*l*) There are in some Counties tracts of land not surveyed or laid out in Townships, and this section requires the County Council of any such County to unite new Townships when laid out with some adjacent Township or Townships, in order that the inhabitants may at once enjoy Municipal rights and be subject to Municipal liabilities. See note *u* to s. 18. This provision is made in lieu of an Act of Parliament, which would be otherwise necessary in such a case. See note *l* to s. 9.

into an independent Union of Townships. (*n*) 36 V. c. 48, s. 28.

Seniority of such townships, how regulated.

30. Every proclamation or by-law forming a Union of Townships shall designate the order of seniority of the Townships so united; and the Townships of the Union shall be classed in the by-law according to the relative number of freeholders and householders on the last revised assessment roll; or if there be no such revised assessment roll for any of such Townships, then the order of seniority shall be determined by the proclamation or by-law, as the Lieutenant-Governor or County Council may think fit. (*o*) 36 V. c. 48, s. 29; 40 V. c. 8, s. 47.

Townships in different counties.

31. In case the United Townships are in different Counties the by-law shall cease to be in force whenever the Union of the Counties is dissolved. (*p*) 36 V. c. 48, s. 30.

DIVISION IV.—OF COUNTIES.

Counties, how formed. *Sec.* 32.
Seniority of. *Sec.* 33.
Laws applicable—Venue in Judicial Proceedings. *Sec.* 34.

New counties how

32. The Lieutenant-Governor may, by proclamation, form into a new County any new Townships not within the limits

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(*m*) Under this section Unions may be formed of two or more *new* Townships, instead of annexing them to *old* Townships. This can only be done when the joint population of resident freeholders and householders is not less in number than one hundred. The power is a delegated legislative power. See note *l* to s. 9.

(*o*) The order of seniority of United Townships, when there are revised assessment rolls, is to be declared in the proclamation or by-law, as the case may be, and the seniority is to be governed by population, so that the more populous Township is to be the Senior Township; but, if there be no revised assessment roll, then the order of seniority is to be determined by the Lieutenant-Governor by proclamation, or by the County Council by by-law.

(*p*) No case can arise under this section, unless the Union has been made by the Council of United Counties of Townships in different Counties of the Union. When such has been done, and the Counties afterwards become separated, provision is made for the separation of the United Townships. The fact that the by-law is in such an event to "cease to be in force," as near as may be restores the Townships to the situation in which they were before the By-law passed.

of an incorporated County, and may include in the new County one or more unincorporated Townships or other adjacent unorganized territory (defining the limits thereof) not being within an incorporated County, (*q*) and may annex the new County to any adjacent incorporated County; (*r*) or in case there is no adjacent incorporated County, or in case the Lieutenant-Governor in Council considers the new County, or any number of such new Counties lying adjacent to one another, and not belonging to any incorporated Union, so situated that the inhabitants cannot conveniently be united with the inhabitants of an adjoining incorporated County for municipal purposes, the Lieutenant-Governor may, by the proclamation, erect the new County, or new adjacent Counties, into an independent County or Union of Counties for the said purposes, and the proclamation shall name the new County or Counties. (*s*) 36 V. c. 48, s. 31.

formed by proc' ation, and annexed or united.

33. In every Union of Counties, the County in which the County Court House and Gaol are situate shall be the Senior County, and the other County or Counties of the union shall be the Junior County or Counties thereof. (*t*) 36 V. c. 48, s. 32.

Seniority of united counties, how regulated.

34. During the union of Counties, all laws applicable to Counties (except as to representation in Parliament or the Legislative Assembly and registration of titles) shall apply to

Laws applicable to union of counties.

(*q*) The provisions of this section were originally taken from sec. 35 of Con. Stat. U. C. cap. 54. They facilitate the formation of Counties and Unions of Counties in newly-organized tracts of land, without the necessity of legislative intervention. See note *l* to s. 9.

(*r*) In the event of annexation, it is presumed that the inhabitants of the part annexed would become subject to the liabilities, if any, of the County to which annexed. See *Powers* v. *Wood County*, 8 Ohio St. 285; *Layton* v. *New Orleans*, 12 La. An. 515; *Arnoult* v. *New Orleans*, 11 La. An. 54; *Gorham* v. *Springfield*, 21 Maine 58; *St. Louis* v. *Allen*, 13 Mo. 400; *Railroad Co.* v. *Spearman*, 12 Iowa 112; *Wade* v. *Richmond*, 18 Gratt. (Va.) 583; *Norris* v. *Mayor, &c.*, 1 Swan (Tenn.) 164; *Elston* v. *Crawfordsville*, 20 Ind. 272; *Girard* v. *Philadelphia*, 7 Wall. 1; *Blanchard* v. *Bissell*, 11 Ohio St. 96; *The Queen* v. *The Local Government Board*, L. R. 8 Q. B. 227.

(*s*) See note *f* to sec. 5.

(*t*) There is not only seniority among United Townships, but seniority among United Counties. While, among the former, seniority is to be determined by population, see sec. 30, among the latter, it is to be determined by the situation of the County Court House and Gaol.

Venue.

the Union as if the same formed but one County; (*u*) and in any civil judicial proceedings the venue shall be so laid. (*v*) 36 V. c. 48, s. 33.

DIVISION V.—OF PROVISIONAL COUNTY CORPORATIONS.

Provisional Corporations, formed by separation of junior County. *Sec.* 35.
Provisional officers. *Secs.* 36, 37.
Property may be acquired for Gaol and Court House. *Sec.* 38.
Powers of Provisional Council not to interfere with United Corporation. *Sec.* 39.
Arrangement of joint assets and debts. *Secs.* 40–42.
Officials, when appointed. *Sec.* 43.
Separation, when complete. *Secs.* 44, 45.
Judicial proceedings on separation. *Secs.* 46–49, *and* 29–30 V. *c.* 51, *ss.* 52, 53, 55.

Separation of united counties.

35. Where the census returns taken under a Statute, or under the authority of a By-law of the Council of any United Counties, show that the Junior County of the Union contains seventeen thousand inhabitants or more, then if a majority of the Reeves and Deputy Reeves of such County do, in the month of February, pass a resolution affirming the expediency of the County being separated from the Union; and if, in the month of February in the following year, a majority of the Reeves and Deputy Reeves transmit to the Lieutenant-Governor in Council a petition for the separation, and if the Lieutenant-Governor deems the circumstances of the Junior

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(*u*) Improvements, however, may, under certain circumstances, be made by either County separately. See secs. 478 *et seq.*

(*v*) A declaration laying the venue in the United Counties of, &c., (not naming the particular County) was, before the C. L. P. Act, held bad on special demurrer. *Nelson & Nassagaweya Road Co.* v. *Bates*, 4 U. C. C. P. 281. And if now persisted in, would, probably, be held bad on general demurrer. See *Bank of Upper Canada* v. *Owen*, 26 U. C. Q. B. 154. A writ of summons was sued out before the separation of the County of Ontario from the United Counties of York and Peel, directing defendant to appear in the United Counties of York, Ontario, and Peel. It was not served until after the separation, and the venue in the declaration was laid in the three United Counties. The defendant thereupon demurred. *Held*, not a frivolous demurrer. *Plaxton et al* v. *Smith*, 1 U. C. P. R. 228.

County such as to call for a separate establishment of Courts and other County institutions, he may, by proclamation setting forth those facts, constitute the Reeves and Deputy Reeves in that County a Provisional Council, and in the proclamation appoint a time and place for the first meeting of the Council, and therein name one of its members to preside at the meeting, and also therein determine the place for and the name of the County Town. (*a*) 36 V. c. 48, s. 34.

Appointment by proclamation of provisional council in junior county.

First meeting thereof.

County town

36. The member so appointed shall preside in the Council until a Provisional Warden has been elected by the Council from among the members thereof. (*b*) 36 V. c. 48, s. 35.

Who to preside.

37. Every Provisional Council shall from time to time by By-law appoint a Provisional Warden, a Provisional Treasurer, and such other provisional officers for the County as the Council deems necessary. (*c*) The Provisional Warden shall hold office for the municipal year for which he is elected, and the Treasurer (*d*) and other officers so appointed shall hold office until removed by the Council. 36 V. c. 48, s. 36.

Appointment of provisional warden and other officers

Terms of office.

38. Every Provisional Council may acquire the necessary property at the County Town of the Junior County on which to erect a Court House and Gaol, and may erect a Court

Provisional councils may acquire lands for gaols and

(*a*) The provisions of this section are designed to prevent the necessity of special legislation. See note *l* to sec 9. Special legislation in such matters, as herein provided for, has not hitherto been either successful or satisfactory. See Stats. 19 Vict. cap. 19, and 20 Vict. cap. 77, as to the separation of Huron and Bruce; and 19 Vict. cap. 66, and 23 Vict. cap. 95, as to the separation of York and Peel. The Reeves and Deputy Reeves of the several Municipalities within the Junior County are *ex officio* members of the Provisional Council. Sec. 69.

(*b*) The new Council demands the appointment of a new presiding officer. The proper officer to preside over a County Council is the Warden of the County. But temporary provision is needed for the appointment of a presiding officer at the election of Warden. This section makes the provision temporally needed in such a case. The next section provides for the election of Warden and other provisional officers.

(*c*) The primary duty of the Warden is, to preside at the meetings of the County Council. He needs no greater qualification than any other member of the Council. His selection is made from the Reeves and Deputy Reeves who compose the Council.

(*d*) The obligation of a Provisional Treasurer or his sureties would not appear to extend beyond the duration of the existence of the Provisional Council whose moneys he is to receive and for which he is to account. *Ontario* v. *Paxton, et al.*, 27 U. C. C. P. 104.

court houses.

House and Gaol thereon, adapted to the wants of the County, and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass By-laws for such purposes. (*e*) 36 V. c. 48, s. 37.

Respective powers of provisional council and council of union.

39. The powers of a Provisional Council shall not interfere with the Powers of the Council of the Union, and any money raised by the Provisional Council in the junior County shall be independent of the money raised therein by the Council of the Union. (*f*) 36 V. c. 48, s. 38.

Agreement upon dissolution as to joint liabilities and joint assets.

40. After a Provisional Council has procured the necessary property, and erected thereon the proper buildings for a Court House and Gaol, such Council, and the Council of the senior or remaining Counties, may enter into an agreement for the settlement of their joint liabilities and the disposition of their joint assets (other than real estate), and for determining the balance or amount that may be due by the one County to the other, and the times of payment thereof; and in determining such balance the senior or remaining Counties shall assume the debts of the Union, and the Junior County be charged with such part thereof as may be just, and the value of the real estate, which, upon the separation, becomes the property of the Senior or Junior County respectively, and any improvement effected by the Union which either County

Senior county to assume debts of union. Junior county to be charged with just proportion.

(*e*) Power is given to the Provisional Council—

1. To acquire the necessary property on which to erect a Court House and Gaol.

2. To erect a Court House and Gaol.

And these powers should be exercised by By-law.

The power conferred is in terms limited. It is not to acquire any property, or such property as the Council sees fit, but only such property as may be *necessary* for the purposes mentioned. See *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *Davison College* v. *Executors of Chambers*, 3 Jones, Eq. (N.C.) 253; *State Bank* v. *Brackenridge* 7 Blackf. (Ind.) 395.

(*f*) Each Council is intended to govern a different body of ratepayers. It is only right, therefore, that the powers of either should not needlessly interfere with the powers of the other. But until the Provisional Council becomes a permanent Council, the ratepayers of the Provisional County must, for some purposes, remain subject to the powers of the Council of the Union. Money, however, raised by the Provisional Council is declared by this section to be independent of the money raised therein by the Council of the Union.

gets the exclusive benefit of, shall also be taken into account. (*g*). 36 V. c. 48, s. 39.

41. No member of the Provisional Council shall vote or take any part in the Council of the Union on any question affecting such agreement, or the negotiation therefor. (*h*) 36 V. c. 48, s. 40.

When provisional councillors shall not vote.

42. In case the Councils, within one month after the period mentioned in section forty, are unable to determine by agreement the several matters hereinbefore mentioned with respect to their debts, assets and property, such matters shall be settled between them by arbitration under this Act, (*i*) and the County found liable shall pay to the other County the balance or amount agreed or settled to be due by such County, and such amount shall bear interest at six per centum per annum from the day in which the Union is dissolved, and shall be provided for, like other debts, by the Council of the County liable therefor after separation. (*j*) 36 V. c. 48, s. 41.

In case of disagreement, disputes to be determined by arbitration.

Payment of amounts found due.

(*g*) It is necessary that the Gaol and Court House should be erected before an agreement respecting the debts of the Union is to be entered into, and then, and not till then, the County about to be separated is to arrange with the remaining County or Counties for a due proportion of the joint debts. See sec. 27 and notes thereto, In case the Councils do not agree as to the amount or periods of payment, they are to arbitrate. See sec. 367 and following sections.

(*h*) The reason is plain. Though the members of the Provisional Council are also members of the Council of the Union, yet in this negotiation the matter lies between the Provisional Council on the one hand ond the Council of the Union on the other. And the Provisional Council being for this purpose an independent and interested body, it follows that the interest of the Union, which is virtually the interest of the Senior or remaining County or Counties, should be protected by the Councillors of the Senior or remaining County or Counties.

(*i*) The matters for settlement are—

1. Joint liabilities.
2. Disposition of joint assets (other than real estate.)
3. Determination of balance due by the one County to the other, and the times of payment thereof. See s. 40.

These are to be settled, if possible, by agreement, as provided in the preceding section. Failing agreement, there must be a settlement by arbitration. After the settlement, in either of the modes provided, certain judicial and other officers are to be appointed, sec. 43, and then a proclamation may be issued for the separation.

(*j*) The rate of interest is here named, and not left to inference, as under sec. 27 sub-sec. 6, in the case of the separation of United Townships.

Terms and time of separation.

43. After the sum, if any, to be paid by the Junior County to the senior or remaining County or Counties has been paid or ascertained by agreement or arbitration, a Judge may be appointed, as provided by "The British North America Act, 1867," and the Lieutenant-Governor, or the Lieutenant-Governor in Council, as the case may be, shall appoint a Sheriff, one or more Coroners, a Clerk of the Peace, a Clerk of the County Court, a Registrar, and at least twelve Justices of the Peace, and shall provide, in the commission or commissions, that the appointments are to take effect on the day the Counties become disunited. (*k*) 36 V. c. 48, s. 42.

Officials appointed.

Final separation of united counties by proclamation.

44. After such appointments are made, the Lieutenant-Governor shall, by proclamation, (*l*) separate the Junior County from the Senior or remaining County or Counties, and shall declare such separation to take effect on the first day of January next after the end of three months from the date of the proclamation; and on that day the Courts and Officers of the Union (including Justices of the Peace) shall cease to have any jurisdiction in the Junior County; (*m*) and the real property of the Corporation of the Union situate in the junior County shall become the property of the Corporation of the Junior County, and the real property situate in the remaining County or United Counties shall be the property of the Corporation of the remaining County or United

Property, how divided.

(*k*) Judges are appointed under the B. N. A. Act by the Government of Canada. The remaining appointments may be made by the Provincial Government.

(*l*) See note *l* to sec. 9.

(*m*) A commission granted to a person to take recognizances of bail, &c., within the Gore District, was held not to empower him to take recognizances of bail in the County of Brant after its separation from the Gore District. *Carter* v. *Sullivan*, 4 U. C. C. P. 298. But where the commission was granted for the Midland District, which included the County of Prince Edward and the United Counties of Frontenac, Lennox and Addington, it was held that the commissioner resident in Frontenac, Lennox and Addington, after the separation of Prince Edward, had authority still to administer affidavits, as in the United Counties. *McWhirter* v. *Corbett*, 4 U. C. C. P. 203; see also *Glick* v. *Davidson*, 15 U. C. Q. B. 591; *Fleming* v. *McNaughton*, 16 U. C. Q. B. 194. It has been held that before the passing of 32 Vict. c. 36, sec. 132, sub-sec. 2, Ont. that the Treasurer of the Senior County had no power to sell lands situate in the Junior County for arrears of taxes due to the Union before the separation. *Canada P. Building Society* v. *Agnew*, 23 U. C. C. P. 200. By Imp. Stat. 2 & 3 Will. IV. c, 64, Sch. O. 30, Clifton was made a part of the Parliamentary Borough of Bristol, which is a County in itself. Except so far

Counties; (*n*) and the other assets, belonging to the Corporation of the Union, shall belong to and be the property of the Senior or Junior County, or Union of Counties respectively, as agreed upon at the separation; (*o*) and, if not otherwise disposed of by agreement or arbitration, they shall belong to and be the property of the Senior County, or Union of Counties; (*p*) and in the case of *choses* in action, they may be recovered in a suit, action, or other legal proceeding instituted or commenced in the name of the Senior County or Union of Counties. (*q*) 36 V. c. 48, s. 43.

Officers and property, &c., continued.

45. When a Junior County is separated from a Union of Counties, the head and members of the Provisional Council of the Junior County, and the officers, by-laws, contracts, property, assets and liabilities of the Provisional Corporation, shall be the head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of the new Corporation. (*r*) 36 V. c. 48, s. 44.

Execution and service of process in hands of sheriff at time of separation.

46. The dissolution of a Union of Counties shall not prevent the Sheriff of any Senior County from proceeding upon and completing the execution or service within the Junior County of any writ of mesne or final process in his

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as that Act operated, Clifton was in the County of Gloucester. *Held*, that after the passing of the Municipal Corporations Act, 5 & 6 Will. IV. c. 76, secs. 7, 8, the Gloucester Justices had no longer the power to make an order diverting a footway in Clifton. *The King* v. *The Justices of Gloucestershire*, 4 A. & E. 680. See further *The People* v. *Morell*, 21 Wend. 563; *The State* v. *Hartshorn*, 17 Ohio 135; *The State* v. *Jacobs*, *Ib.* 143.

(*n*) See note *g* to sec. 27.

(*o*) See note *h* to sec. 27.

(*p*) See note *j* to sec. 27.

(*q*) A chose in action formerly was not assignable so as to give a right to the assignee to sue in a Court of Law. But the rule was different in Courts of Equity. The right of the assignee to sue in his own name is now the same both at law and in equity. 35 Vict. c. 12, Ont.

(*r*) The Reeves and Deputy Reeves of a Junior County may, under sec. 35, and subject to the provisions of that section, be constituted a Provisional Council, with power, under sec. 37, to appoint Provisional officers, and, under and subject to the provisions of section 44, such Junior County may, by proclamation, be separated from the Union. Hence it is enacted by the section here annotated, that the head and members of the Provisional Council of the Junior County, and the officers, &c., shall be the head, &c., and the officers, &c., of the new Corporation. See note *d* to sec. 37.

hands at the time of such separation, or of any renewal thereof, or of any subsequent or supplementary writ in the same cause; or in the case of executions against lands, from executing all necessary deeds and conveyances relating to the same, and the acts of all such Sheriffs in that behalf shall be and be held and construed to be legal and valid in the same manner and to the same extent as if no separation had taken place, but no further. (*s*) 36 V. c. 48, s. 45.

Change of venue in actions, &c., after separation.

47. If upon a dissolution of a Union of Counties, there is pending an action, or other civil proceeding in which the venue is laid in a County of the union, the Court in which the action or proceeding is pending, or any Judge who has authority to make orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the venue to be changed to the new County, and all records and papers to be transmitted to the proper officers of such County. (*t*) 36 V. c. 48, s. 46.

If no special order made, proceedings to be carried on in senior county.

Proviso as to criminal proceedings.

48. In case no such change is directed, all such actions and other civil proceedings shall be carried on and tried in the Senior County; (*a*) but nothing in this Act contained shall be construed to affect the provisions of sections fifty-two, fifty-three and fifty-five of the Act of the Parliament of the Province of Canada passed in the session held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, and chaptered fifty-one, so far as the same relate to criminal proceedings. (*b*) 36 V. c. 48, s. 47.

(*s*) This section is intended to prevent difficulties such as presented themselves for the decision of the Common Pleas in *Ross et al.* v. *Farewell et al.*, 5 U. C. C. P. 101.

(*t*) The disolution should not affect pending proceedings. But where it is for the convenience of the parties that the venue should be changed to the new County, a discretionary power to order the change is here vested in the Court or a Judge. The change may be by consent or without consent, on a proper case shewn by affidavit. See Harrison's C. L. P. Act, sec. 85, and notes thereto.

(*a*) The Senior County is that in which the Court House and Gaol, &c., are situate. Sec. 33. The object of this section is to fix the County in which pending proceedings are to be continued, when no order has been made under the preceding section for changing the venue to the Junior County after its separation.

(*b*) These old sections, so far as they relate to Criminal Procedure, are here preserved. The reason is, that Criminal Procedure, under the B. N. A. Act, sec. 91, sub-sec. 27, can only be repealed by the Dominion Legislature.

[*Sections* 52, 53 *and* 55 *of* 29-30 *V. c.* 51, *are as follows:*—

Place of trial after dissolution of unions, to be as ordered by the court or a judge.

52. If upon the dissolution of a Union of Counties, there is pending an action, information, indictment or other judicial proceeding in which the venue is laid in a County of the Union, the Court in which the action, information or indictment is pending, or any Judge who has authority to make orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the venue to be changed to the new County, and all records and papers to be transmitted to the proper officers of such County; and in the case of any such indictment found at any Court of Oyer and Terminer and General Gaol Delivery, any Judge of either of the Superior Courts of Common Law may make the order.

If no special order is made.

53. In case no such change be directed, all such actions, informations, indictments and other judicial proceedings shall be carried on and tried in the Senior County.

PERSONS IN PRISON.

Indictable offences how to be disposed of.

55. Any person charged with an indictable offence, who, at the time of the disuniting of a Junior from a Senior County, is imprisoned on the charge in the Gaol of the Senior County, or is under bail or recognizance to appear for trial at any Court in the Senior County, and against whom no indictment has been found before the disunion takes place, shall be indicted, tried and sentenced in the Senior County, unless a Judge of one of the Superior Courts of Common Law orders the proceedings to be conducted in the Junior County, in which event the prisoner or recognizance (as the case may be) shall be removed to the latter County and the proceedings shall be had therein; and when in any such case the offence is charged to have been committed in a County other than that in which such proceedings are had, the venue may be laid in the proper County, describing it as "formerly one of the United Counties of," &c.]

Place for holding courts in Junior county.

49. All Courts of the Junior County required to be held at a place certain, shall be held in the County Town of the Junior County (*c*). 36 V. c. 48, s. 48.

Division VI.—Matters Consequent upon the Formation of New Corporations.

By-Laws, continuance of existing. *Secs.* 50–51.
Debts and Liabilities how affected. *Secs.* 52–56.
Officials and their Sureties, how affected. *Secs.* 57–60.

By-laws in force prior to formation of new cor-

50. In case any Village is incorporated, or Village or Town (with or without additional area) erected into a Town or City, or a Township or County becomes separated, the by-

(*c*) Such as Assizes, Quarter Sessions, County Courts and Surrogate Courts.

porations to continue in force until altered by council of such corporation.

laws in force therein respectively shall continue in force until repealed or altered by the Council of the new Corporation ; (*g*) but no such by-laws shall be repealed or altered unless they could have been or can be legally repealed or altered by the Council which passed the same. (*h*) 36 V. c. 48, s. 51.

What by-laws bind where limits of a municipality are extended.

51. In case an addition is made to the limits of any Municipality, the by-laws of such Municipality shall extend to the additional limits, and the by-laws of the Municipality from which the same has been detached shall cease to apply to the addition, (*i*) except only by-laws relating to roads and streets, and these shall remain in force until repealed by by-laws of the Municipality to which the addition has been made. (*j*) 36 V. c. 48, s. 52.

Liability for debts at the

52. In the case of the erection of any locality into an incorporated Village, or of a Village into a Town, or of a Town

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(*g*). The effect of this section is to continue existing By-laws of the Union in both the Senior and Junior Counties and Townships respectively, after a separation, subject to the powers of each independent Council, to repeal or alter the same when the Council of the Union might have done so. The Council of a Municipality has, in general, power to repeal a By-law without reference to the people. *The King* v. *Ashwell*, 12 East 22 ; *The King* v. *Bird*, 13 East 367 ; *Great Western R. W. Co. and North Cayuga*, 23 U. C. C. P. 28 ; *Bloomer* v. *Stolley*, 5 McLean 158 ; *Santo et al.* v. *State of Iowa*, 2 Iowa 165 ; *Bank of Chenango* v. *Brown*, 26 N. Y. 467 ; *Magee* v. *State*, 4 Ind. 362 ; *Rice* v. *Foster*, 4 Harring. (Del.) 479 ; *The People* v. *Collins*, 3 Mich. 347.

(*h*) It was held that the Council of a Village incorporated and separated from a Township in which, before and at the time of the incorporation, a By-law existed prohibiting the sale of intoxicating liquors in shops and places other than houses of public entertainment within the Township, could not, by By-law not submitted for approval of the electors of the Village, repeal the prohibitory by-law as far as it affected the Village. *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459.

(*i*) The object of this section is to extend the existing By-laws of a Municipality to tracts of land added to the Municipality after the passing of the By-laws, and to indicate the exemption of such tracts of land from the operation of the By-laws of the Municipality to which they formerly belonged. Even the operation of the By-laws of the old Municipality creating debts, &c., are thus in effect got rid of ; but By-laws relating to roads or streets, within the limits of such tracts, are, for obvious reasons, continued until repealed by the Council acquiring jurisdiction over the same. But see sec. 53.

(*j*) See *The Queen* v. *Inhabitants of New Sarum*, 7 Q. B. 941 ; *The Queen* v. *Birmingham*, 10 Q. B. 116 ; *The Queen* v. *New Windsor*, L. R. 1 Q. B. D. 152.

into a City, the Village, Town or City shall remain subject to the debts and liabilities to which such locality was previously liable, in like manner as if the same had been contracted or incurred by the new Municipality; (*k*) and, after the separation of a County or Township from a Union, each County or Township which formed the Union shall remain subject to the debts and liabilities of the Union, as if the same had been contracted or incurred by the respective Counties or Townships of the Union after the dissolution thereof. (*l*) 36 V. c. 48, s. 53. time of dissolution.

53. After an addition has been made to a Village, Town or City, the Village, Town or City shall pay to the Township or County from which the additional tract has been taken, such part (if any) of the debts of the Township or County as may be just; (*m*) and in case the Councils do not, within three months after the first meeting of the Council of the Municipality to which the addition has been made, agree as to the sum to be Debts in case of an extension of limits.

(*k*) This strengthens the provisions contained in the previous section for the protection of creditors. At one time Junior Townships and Junior Counties only, after separation, were still made liable to existing debts. The present section extends the liability to a newly erected Incorporated Village, *i. e.*, renders it still liable for debts of the Township at the time of the incorporation of the Village. A Village made a Town of course remains subject to its debts, being in effect the same Municipality advanced to a Town. So if a Town be erected into a City. The effect of this section is that a Village newly incorporated remains liable to pre-existing Township debts, and Towns and Cities respectively remain liable for the debts contracted by them while they were Incorporated Villages or Towns. The same principle is also, by this section, made applicable to Townships separating from a Union. See further note *a* to sec 13.

(*l*) The United Counties of York and Peel, notwithstanding separation, were held to be jointly liable to the Registrar of Peel for services rendered by him under secs. 26 and 33 of the Registry Act. *Campbell* v. *York and Peel*, 26 U. C. Q. B. 635; *S. C.*, 27 U. C. Q. B. 125. In such case the action cannot properly be brought against one of the Counties without joining the other. *Ekins* v. *Bruce*, 30 U. C. Q. B. 48. A suit properly brought against three United Counties was held to be properly continued against the three, notwithstanding a dissolution of the union. *Lincoln, Welland and Haldimand* v. *Thompson et al.*, 8 U. C. Q. B. 615.

(*m*) The effect of sec. 51 is to exempt tracts of land annexed, from the debts of the Municipality to which they formerly belonged. The effect of this section read in connection with it is to render the Municipality to which the annexation is made liable to compensate the former Municipality a reasonable proportion of the pre-existing debts. See note *a* to sec. 13.

paid, or as to the time of payment thereof, the matter shall be settled by arbitration under this Act. (*n*) 36. V. c. 48, s. 54.

Debentures to issue for debts, and to bind the old and new municipalities.

54. After the formation of a new Corporation by the dissolution of a Union of Counties or Townships, the Council of the Senior or remaining County or Township shall issue its debentures or other obligations for any part of any debt contracted by the Union for which debentures or other obligations might have been, but had not been, issued before the dissolution; and the debentures or other obligations shall recite or state the liability of the Junior County or Township therefor under this Act; and the Junior County or Township shall be liable therefor as if the same had been issued by the Union before the dissolution. (*o*) 36 V. c. 48, s. 55.

Assessments for year preceding dissolution.

55. All assessments imposed by the Council of the then Corporation for the year next before the year in which the new Corporation is formed by separation therefrom, shall belong to the then Corporation, and shall be collected and paid over accordingly, and after the separation all special rates for the payment of debts theretofore imposed upon the locality by any by-law of the former Corporation shall continue to be levied by the new Corporation; and the Treasurer of the new Corporation shall pay over the amount as received to the Treasurer of the Senior or remaining Municipality, and the latter shall apply the money so received in the same manner as the money raised under the same by-law in the Senior or remaining Municipality. (*p*) 36 V. c. 48, s. 56.

Special rates for debts continued and to be paid over by treasurer of junior county.

(*n*) See sec. 367 *et seq.*

(*o*) In the reading of this section there are three points to be noted: 1. That after the dissolution, the Council of the remaining County or Township shall issue its debentures or other obligations; but, to be effectual under this section, only "for any part of any debt contracted by the Union"; 2. That such debentures, &c., shall recite or state the liability of the Junior County or Township therefor, under this Act; and 3. That the Junior County or Township shall be liable thereon as if the same had been issued by the Junior County or Township. See note *l* to sec. 52.

(*p*) The right to rates for the year next preceding the separation is here determined. The special rates mentioned are to be levied in each respective Municipality, after separation, and be collected by each respective collector, as if the By-law imposing the rates had been made after the separation by each County or Township separately. Such is the effect of the By-law of the Union having force in each Municipality severally after the dissolution of the Union. The duties of the Treasurers require careful attention.

56. In case the amount so paid over as in the last preceding section provided, or to any creditor of the Senior or remaining Municipality, in respect of a liability of the former Corporation, exceeds the sum which, by the agreement or award between the Councils, the new Corporation ought to pay, the excess may be recovered against the Senior or remaining Municipality as for money paid or as for money had and received, as the case may be. (*q*) 36 V. c. 48, s. 57.

If the sum paid over exceeds the just amount, the excess may be recovered.

Form of action.

57. In case any Village is incorporated, or any Village or Town is erected into a Town or City, or any Township or County becomes separated, the Council and the members thereof having authority in the locality or Municipality immediately previous, shall, until the Council for the Corporation is organized, continue to have the same powers as before; (*r*) and all other officers and servants of the locality or Municipality shall, until dismissed, or until successors are appointed, continue in their respective offices, with the same powers, duties and liabilities as before. (*s*) 36 V. c. 48, s. 58.

Former council and officers to exercise jurisdiction over new municipalities, etc., until new councils are organized.

58. The separation of a Junior County or Township from a Union of Counties or Townships shall not in any case or in any manner whatever affect the office, duty, power or responsibility of any public officer of the Union who continues a public officer of the Senior County or Township or remaining Counties or Townships after such separation, or the sureties of any such officer or their liability, further than by limiting such office, duty, power, responsibility, suretyship and liability to the Senior County or Township, or remaining Counties or Townships. (*t*) 36 V. c. 48, s. 59.

Effect of separation upon public officers and their sureties.

(*q*) The liability of the Junior County or Township respectively, notwithstanding separation, is explained in the note to sec. 54. The right of the Senior County or Township to rates imposed before the separation is also explained in the note to sec. 55. The section under consideration provides for the reimbursement to the Junior Municipality of any sum which the Junior may have paid, exceeding the proportion which it, according to the adjustment with the Senior, was bound to contribute.

(*r*) It is necessary that there should not be any period of time without a proper governing body. When the new Council is organized, it supersedes the previous Council; but, until such organization, the Council and the members thereof having authority immediately previous to the change, shall have continued authority.

(*s*) See note *d* to s. 37.

(*t*) The necessity for such a provision as this will be manifest upon reading *Thompson et al.* v. *McLean et al.*, 17 U. C. Q. B. 495. In that

Further as to officers, and

59. All such public officers shall, after the separation, be the officers of the Senior County or Township, or remaining Counties or Townships, as if they had originally been respectively appointed public officers for such Senior County or Township or for such remaining Counties or Townships only. (*u*) 36 V. c. 48, s. 60.

Their sureties.

60. All sureties for such public officers shall be, and remain liable, as if they had become the sureties for such public officers in respect only of such Senior County or Township, or of such remaining Counties or Townships, and all securities which have been given shall, after the separation, be read and construed as if they had been given only for the Senior or remaining County or Counties, or Township or Townships; but nothing herein contained shall affect the right of new securities being required to be given by any Sheriff or by any Clerk or Bailiff, or other public officer, under any statute, or otherwise howsoever. (*v*) 36 V. c. 48, s. 61.

Right to new sureties not affected.

PART II.

MUNICIPAL COUNCILS, HOW COMPOSED.

TITLE I.—THE MEMBERS.
TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

TITLE I.—THE MEMBERS.

DIV. I.—IN COUNTIES.
DIV. II.—IN CITIES.
DIV. III.—IN TOWNS.
DIV. IV.—IN VILLAGES.
DIV. V.—IN TOWNSHIPS.
DIV. VI.—IN PROVISIONAL CORPORATIONS.

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case it was held, Burns, J., *dissentiente*, that without such a provision the sureties of a Sheriff were relieved from liability by reason of the change in the office.

(*u*) This is a consequence of the preceding section. The declaration is not only that the public officers of the Union shall, after the separation, be the officers of the Senior County or Township or remaining Counties or Townships, but be so "as if they had originally been respectively appointed public officers for such Senior County or Township or for such remaining Counties or Townships only."

(*v*) This section only relates to existing securities, and so is not

DIVISION I.—IN COUNTIES.

Councils. *Sec.* 61.
Certificate of Qualification. *Secs.* 62–64.

Counties.

61. The Council (*a*) of every County shall consist of the Reeves and Deputy Reeves of the Townships and Villages within the County, and of any Towns within the County, which have not withdrawn from the jurisdiction of the Council of the County, and one of the Reeves or Deputy Reeves shall be the Warden. (*b*) 36 V. c. 48, s. 62.

County Councils.

62. No Reeve or Deputy Reeve shall take his seat in the County Council until he has filed with the Clerk of the County Council a certificate of the Township, Village or Town Clerk, under his hand, and the seal of the Municipal Corporation, (*c*) that such Reeve or Deputy Reeve was duly elected, and has made and subscribed the declarations of office and qualification as such Reeve or Deputy Reeve; nor in case of a Deputy Reeve, until he has also filed with the Clerk of the County an affirmation or declaration of the Clerk or other person having the legal custody of the last revised assessment rolls for the

Certificates as to election and number of freeholders and householders

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to be read as affecting the right to require new sureties when new sureties may in any case be properly demanded. See note *t* to sec. 58.

(*a*) The Council is not the Corporation, but only the governing body, and in some cases the legislative body of the Corporation. See note *k* to sec. 8, note *l* to sec. 9.

(*b*) Towns, Villages, and Townships, are entitled to a certain number of Reeves and Deputy Reeves, in proportion to their population. See secs. 66, 68. The Reeves and Deputy Reeves are the representatives of the local Municipalities in the County Council. The Council of the County is composed of them. They are authorized and required to elect one of their number to be the Warden or head of the County Council. The offices of Reeve and Mayor of a Town have been held to be incompatible. *Regina ex rel. Doran* v. *Haggart*, 1 U. C. L. J. N. S. 74.

(*c*) The Clerk may reject the certificate if not in the form required. The section is positive that no Reeve, &c., shall take his seat, &c., until he has filed, &c. The certificate made necessary is the evidence of the right of the person presenting it to a seat in the County Council. The County Clerk is in the first instance made the judge of its legal sufficiency. But no Clerk should, according to his own caprice or preference of any kind, decide in favour of and allow certain persons with defective certificates to take their seats, and disallow other certificates quite as good. In such a case the Clerk, if made a party to a contested election proceedings, would be, in all probability, made to pay costs. But it does not follow that a Reeve or Deputy Reeve, whose certificate is defective, if once admitted by

to be filed by Reeves and Deputy Reeves.

Municipality which he represents, that there appear (*d*) upon such rolls the names of at least five hundred freeholders and householders in the Municipality, possessing the same property qualifications as voters, for the first Deputy Reeve elected for such Municipality, and that no alteration reducing the limits of the Municipality, and the number of persons possessing the same property qualification as voters, below five hundred for each additional Deputy Reeve, has taken place since the said rolls were last revised. 36 V. c. 48, s. 63.

Form of certificate as to election, &c.

63. The certificate firstly above-mentioned may be in the following form :— (*e*)

I, *A. B.*, of , Clerk of the Corporation of the Township (Town *or* Village, *as the case may be*) of , in the County of , do hereby, under my hand and the seal of the said Corporation, certify that *C. D.*, of , Esquire, was duly elected Reeve (*or* Deputy Reeve, *as the case may be*) of the said Township (Town *or* Village, *as the case may be*), and

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the Clerk to sit and vote, has not the right to do so when in truth qualified. Nor does it follow that a certificate in all respects regular entitles the Reeve or Deputy Reeve to sit and vote in the Council if not really qualified. The certificate is only evidence that what is contained in it was done. If it has not been done, or the Reeve or Deputy Reeve had not been duly elected, the mere certificate would not give the party holding it the right to sit and vote in the Council. That right comes from his being the Reeve or Deputy Reeve, and having made the required declarations. If the certificate were the essence of his qualification, and not merely the evidence of it, then it might be held that the acts done by the Reeve or Deputy Reeve who did not possess it, or only possessed a defective one, were void. But the certificate merely being evidence of his qualification, if it turn out that he is really qualified, it cannot be held that his acts as a member of the County Council are void. Nor can they be in any way impugned on account of the imperfect certificate. The statute does not declare that the votes of any Reeve or Deputy Reeve taking his seat without the certificate shall be void, nor say that the proceedings supported and carried by such votes shall not be binding. The section in this respect may be properly considered directory, and so construed. See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.

(*d*) See note *i* to sec. 66.

(*e*) It is to be hoped that, as the Legislature has seen fit to give a form of certificate, that the form will be closely followed. In the earlier Acts no form was given. The consequence was, a variety of forms in use that were often incorrect. See the forms held bad in *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19. Mr. Harrison, in the notes to the second edition of this work, prepared and published a form. The Legislature, in this Act, has adopted the form so prepared.

has made and subscribed the declarations of office and qualification as such Reeve (*or* Deputy Reeve, *as the case may be*).

Given under my hand and the seal of the said Corporation of , at , in the said Township (Town or Village, *as the case may be*), this day of A. D. 18

{ Seal of the Municipal Corporation. }

A. B.,
Township (Town *or* Village) *Clerk*.

36 V. c. 48, s. 64.

Form of certificate as to number of freeholders and householders.

64. The certificate secondly above-mentioned may be in the following form. (*f*)

I, *A. B.*, of , *Gentleman*, Clerk of the Township, (Town *or* Village, *as the case may be*) of , in the County of , do hereby declare and affirm as follows:

(1.) That I am the person having the legal custody of the last revised assessment roll for the said Township (Town *or* Village) *as the case may be*).

(2.) That there appear upon the said roll the names of at least hundred (*five hundred for each Deputy Reeve*) freeholders and householders in the said Township (Town *or* Village, *as the case may be*), possessing the same property qualification as voters.

(3.) That no alteration reducing the limits of the said Municipality, and the number of persons possessing the same property qualification as voters below hundred (*five hundred for each Deputy Reeve*), has taken place since the said roll was last revised.

A. B.

36 V. c. 48 s. 65.

Division II.—In Cities.

Councils.—Sec. 65.

Cities.

65. The Council of every City (*g*) shall consist of the Mayor, who shall be the head thereof, and three Aldermen for every Ward, to be elected in accordance with the provisions of this Act. (*h*) 36 V. c. 48, s. 66.

(*f*) See note *e* to s. 63.

(*g*) The Council is not the Corporation, but simply the governing body, and in some cases the legislative body of the Corporation. See note *k* to sec. 8, note *l* to sec. 9.

(*h*) At one time the Council of a City was composed of two Aldermen and two Councilmen; the latter needing less property qualification than the former, but having equal power of voting from each Ward. The office of Councilman in Cities no longer exists.

DIVISION III.—IN TOWNS.

Councils.—Sec. 66.

Towns.

66. The Council of every Town shall consist of the Mayor who shall be the head thereof, and of three Councillors for every Ward where there are less than five Wards, and of two Councillors for each Ward where there are five or more Wards; and if the Town has not withdrawn from the jurisdiction of the Council of the County in which it lies, then a Reeve shall be added, and if the Town had the names of five hundred freeholders and householders on the last revised assessment roll, possessing the same property qualification as voters (notwithstanding that such persons may not be entitled to be voters), then a Deputy Reeve shall be added, (*i*) and for every additional five hundred names of persons possessing the same property qualification as voters on such roll, there shall be elected an additional Deputy Reeve. 36 V. c. 48, s. 67.

DIVISION IV.—IN INCORPORATED VILLAGES.

Councils.—Sec. 67.

Incorporated villages.

67. The Council of every incorporated Village (*j*) shall consist of one Reeve, who shall be the head thereof, and four Councillors, and if the Village had the names of five hundred freeholders and householders on the last revised assessment roll, possessing the same property qualification as voters (notwithstanding that such persons may not be entitled to vote), then of a Reeve, Deputy Reeve and three Councillors, and for every additional five hundred names of persons possessing the same property qualification as voters on such roll (*k*) (notwithstanding that such persons may not be entitled to be voters),

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The Town of Sandwich, incorporated under 20 Vict. c. 94, was held entitled to elect only three Councillors in addition to a Mayor and Reeve, to be elected by the people. *Regina ex rel. Arnold* v. *Wilkinson*, 5 U. C. P. R. 20.

(*i*) It is apprehended that if the names were fraudulently inserted on the Roll, for the purpose of enabling the particular Municipality to obtain a Deputy Reeve, the roll would not be conclusive. See *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.

(*j*) See note *g* to sec. 65.

(*k*) See note *i* to sec. 66.

(*l*) there shall be elected an additional Deputy Reeve instead of a Councillor. 36 V. c. 48, s. 69; 39 V. c. 7, s. 18.

DIVISION V.—IN TOWNSHIPS.

Councils.—Sec. 68.

Townships.

68. The Council of every Township (*m*) shall consist of a Reeve, who shall be the head thereof, and four Councillors, one Councillor being elected for each Ward where the Township is divided into Wards, and the Reeve to be elected by a general vote; but if the Township had the names of five hundred freeholders and householders on the last revised assessment roll, possessing the same property qualification as voters (*n*) (notwithstanding that such persons may not be entitled to vote), (*o*) then the Council shall consist of a Reeve, Deputy Reeve, and three Councillors, and for every additional five hundred names of persons possessing the same property qualification as voters on such roll (notwithstanding that such persons may not be entitled to be voters), there shall be elected an additional Deputy Reeve instead of a Councillor. 36 V. c. 48, s. 69; 39 V. c. 7, s. 18.

DIVISION VI.—IN PROVISIONAL CORPORATIONS.

Councils.—Sec. 69.

Provisional council, how composed.

69. The Reeves and Deputy Reeves of the Municipalities within a Junior County for which a Provisional Council is established, shall *ex officio* be the members of the Provisional Council. (*p*) 36 V. c. 48, s. 70.

TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

DIV. I.—QUALIFICATION.
DIV. II.—DISQUALIFICATION.
DIV. III.—EXEMPTIONS.

(*l*) The words in brackets are new, and are designed to remove a difficulty pointed out by Mr. Harrison in the third Edition of this work.

(*m*) See note *g* to sec. 65.

(*n*) See note *i* to sec. 66.

(*o*) See note *l* to sec. 67.

(*p*) See sec. 35 *et seq.* as to Provisional Councils.

DIV. I.—QUALIFICATION.

In each Municipality. Sec. 70.
Nature of Estate to be possessed. Sec. 71.
Where no Assessment Roll. Sec. 72.
Where only one qualified person. Sec. 73.

Qualification of officers, &c.

70. The persons qualified to be elected Mayors, Aldermen, Reeves, Deputy Reeves, and Councillors of any Municipality shall be such persons as reside within the Municipality, or within two miles thereof, (*a*) and are natural-born or naturalized subjects of Her Majesty, (*b*) and males of the full age of twenty-one years, (*c*) and are not disqualified under this Act, (*d*) and

(*a*) Before this enactment it was held that a person rated on the Assessment Roll of a City, but at the time of an election resident in an adjoining Township of the County in which the City was territorially situate, though almost in the boundary between the two Municipalities, was not qualified to be elected a member of the Council of the City. *The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J., 101; *The Queen ex rel. Fleming* v. *Smith*, 7 U. C. L. J. 66. But this section extends the privileges beyond residents of the particular Municipality to residents within two miles of which the Municipality is situate.

(*b*) It is to be presumed that resident and assessed inhabitants of this Province are British subjects till something is shown to the contrary, from which it can be determined that they are aliens. *The Queen ex rel. Carroll* v. *Beckwith et al*, 1 U. C. P. R. 284. It is not sufficient for a relator to swear that certain voters are aliens, without giving particular facts to show that they are aliens, and how aliens, as by having been born in a certain place named, out of the allegiance of the British Crown. *Ib.* A person born in New York in 1830, the son of a British subject, who had emigrated from Ireland a short time previously, and a year or two after his birth came to Upper Canada, and ever since resided here, held to be a British subject within the meaning of the Act. *The Queen ex rel. Mc Vean* v. *Graham*, 7 U. C. L. J. 125. But a person born in the United States before the Revolution, who continued to reside there afterwards, was held to be an alien. *Doe d. Patterson* v. *Davis*, 5 O. S. 494. The son of a British subject who was married to an alien residing out of British possessions at the time of his birth, was held to be an alien *Doe Robinson* v. *Clarke*, 1 U. C. Q. B. 37. But the son of an alien once naturalized continues a British subject notwithstanding the residence of his father beyond British allegiance. *Doe d. Hay* v. *Hunt*, 11 U. C. Q. B. 367. See further, *Montgomery* v. *Graham*, 31 U. C. Q. B. 57. Where the voter was born in the United States, both his parents being British-born subjects, his father and grandfather being U. E. Loyalists, and the voter residing nearly all his life in Canada, *Held* entitled to vote. *The Stormont Case* 7 U. C. L. J. N. S. 213. Indians being British subjects may be either electors or candidates for Municipal office, *Regina ex rel. Gibb* v. *White*, 5 U. C. P. R. 315.

(*c*) See note *b* to sec. 76.

(*d*) See sec. 74.

have at the time of the election, in their own right, (*e*) or in right of their wives, as proprietors or tenants, (*f*) a legal or equitable freehold or leasehold, or partly freehold and partly leasehold, or partly legal and partly equitable, (*g*) rated in their own names on the last revised assessment roll of the Municipality (*h*) to at least the value following :—

(*e*) B. and A. were partners, occupying premises as co-tenants under a yearly tenancy on the terms of an expired lease. Before the nomination day they dissolved partnership, B. leaving the business and premises and leaving A. in possession. A. shortly afterwards went into partnership with S. The new firm then took a fresh lease of the premises from the landlord : *Held*, that B. was not at the time of the election the co-tenant of A., so as to entitle him to become a candidate for alderman. *The Queen ex rel. Adamson* v. *Boyd*, 4 U. C. P. R. 204. See section 265 as to declaration of office.

(*f*) A person having the mere possession of a parcel of land vested in the Crown, determinable by the Crown at any moment, was held not to have such an interest in the land, either as proprietor or tenant, as to enable him to qualify under this section. *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. There can be no qualification on personal property. *The Queen ex rel. Fluett* v. *Semandie*, 5 U. C. P. R. 19. Nor can the assessment on realty be supplemented by the assessment on personalty. *Ib.* A landlord is sufficiently possessed where his tenant is assessed. *The Queen ex rel. Shaw* v. *Mackenzie*, 2 C. L. Chamb. R. 36. So a landlord may put together properties, some occupied by his tenant and some by himself, to make up the assessed value required by the statute. *The Queen ex rel Dexter* v. *Gowan*, 1 U. C. P. R. 104.

(*g*) The qualification may be of an estate legal or equitable. The estate, whether legal or equitable, need not be free from all encumbrances. If encumbered, and after deducting the gross amount of the encumbrances from the assessed value of the premises, there be still left a sufficient value in respect of which to qualify, the qualification, notwithstanding the encumbrances, is sufficient. *The Queen ex rel. Blakeley* v. *Canavan*, 1 U. C. L. J. N. S. 188. Where defendant, in November, 1858 conveyed the real estate, which formed the subject matter of his qualification, to his father for a consideration of £300, for which he took his father's notes payable at distant dates, and in February, 1860, purchased the property back, returning to his father all the notes, though the father did not re-convey the property to the son till the 3rd October, 1860 ; yet the son was held to have had at the time of the assessment an equitable estate within the meaning of the Act. *The Queen ex rel. Tilt* v. *Cheyne*, 7 U. C. L. J. 99 ; See further *Rolleston* v. *Cope*, L. R. 6 C. P. 292 ; *Simey* v. *Marshall*, L. R. 8 C. P. 269 ; *Heelis* v. *Blain*, 18 C. B. N. S. 90 ; *Webster* v. *Overseers of Ashton-under-Lyne, Orme's Case*, L. R. 8 C. P. 281 ; *Hadfield's Case*, *Ib.* 306.

(*h*) Both the property qualification and the rating are necessary to give a qualification for office under the section. *The Queen ex rel.*

In incorporated villages,

(1) In incorporated Villages—Freehold to six hundred dollars, or leasehold to twelve hundred dollars;

In towns;

(2) In Town—Freehold to eight hundred dollars, or leasehold to sixteen hundred dollars;

In cities;

(3) In Cities—Freehold to one thousand five hundred dollars or leasehold to three thousand dollars;

Metcalfe v. *Smart*, 10 U. C. Q. B. 89. "When land is assessed against both the owner and occupant, or owner and tenant, the assessor shall place both names within brackets on the roll, and shall write opposite the name of the owner the letter "F.." and opposite the name of the occupant or tenant the letter "H." or "T;" and both names shall be numbered on the roll." R. S. O. c. 180 s. 18. The omission to number them, however does not invalidate the assessment. See *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. The rating should be by name on the Roll. *The Queen ex rel. Metcalf* v. *Smart*, 2 C. L. Chamb. R. 114; but see *The Queen ex rel. Laughton* v. *Baby*, *Ib.* 130. Where on the Assessment Roll, under the general heading, "Names of taxable parties," were entered the names of "Ker, William and Henry," for two separate parcels of land, and in the proper columns were the letters "F." and "H.," and in the column headed "Owners and address," was entered opposite to the parcels of land, "Wm. Ker & Bros.;" *Held*, that "William Ker & Henry Ker," and not "William Ker & Brothers," were the persons in whose names the properties were rated, and that they were sufficiently rated. *The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67; See, however, *Applegarth et al.* v. *Graham*, 7 U. C. C. P. 171, and *Little* v. *Overseers of Penrith*, L. R. 8 C. P. 259. Judges are in general disposed to go as far as the facts will allow for the purpose of reconciling the mode of rating with the facts, if the person elected has really a legal qualification. *The Queen ex rel. Northwood* v. *Askin*, 7 U. C. L. J. 130. *The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214; *The Queen ex rel. Chambers* v. *Alison*, *Ib.*, 244; *The Oldham Case*, 1 O'M. & H. 153; See further note *d* to sec. 76. Where a person elected as alderman of a city made a declaration of office, inadvertently qualifying upon property in respect of which he was not entitled to qualify, but was qualified in respect of other property, his election was sustained. *The Queen ex rel. Hartrey* v. *Dickey*, 1 U. C. L. J. N. S. 190. Property owned by a candidate, but not mentioned on the Assessment Roll, cannot be made available. *The Queen ex rel. Carroll* v. *Beckwith et al.*, 1 U.C. P. R. 278. An administrator, though rated in his own name for real estate belonging to the deceased, is not entitled to qualify upon such real estate. *The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128. But the roll, as to property qualification. is in general binding and conclusive. *The Queen ex rel. Fluett* v. *Semandie*, 5 U. C. P. R. 19. In the case of electors there is an express declaration to that effect. See sec. 76. The amount of property rated on the Roll is at all events so far conclusive, that encumbrances cannot be taken into consideration to reduce it. *The Queen ex rel. Flater* v. *Van Velsor*, 5 U. C. P. R. 319; *The Queen ex rel. Philbrick* v. *Smart*, *Ib.*, 323. See further, *The Queen ex rel. Bole* v. *McLean*, 6 U. C. P. R. 249.

(4) In Townships—Freehold to four hundred dollars, or leasehold to eight hundred dollars; In townships;

And so in the same proportions in all Municipalities, in case the property is partly freehold and partly leasehold. (*i*) 36 V. c. 48 s. 71. Property of different kinds.

71. The term "Leasehold" in the foregoing section shall not include a term less than a tenancy for a year, (*j*) or from year to year; and the qualification of all persons, where a qualification is required under this Act, may be of an estate either legal or equitable, or may be composed partly of each. (*k*) 36 V. c. 48, s. 72. "Leasehold" defined. Nature of estate.

72. In case of a new Township erected by proclamation, for which there has been no assessment roll, every person who, at the time of the first election, has such an interest in real property, and to such an amount as hereinbefore mentioned, shall be deemed to be possessed of a sufficient property qualification. (*l*) 36 V. c. 48, s. 73. In new township not having assessment roll.

73. In case in a Municipality there are not at least two persons qualified to be elected for each seat in the Council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected. (*m*) 36 V. c. 48, s. 74. If only one person be qualified.

(*i*) See foregoing note.

(*j*) A person having the mere possession of a Crown lot, determinable at any moment, though rightly assessed under the Assessment Act, has no such estate in the land as will qualify him for office. *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27; see further, *Mayhew* v. *Suttle et al.*, 4 E. & B. 347, 357; *White* v. *Bayley et al.*, 10 C. B. N. S. 227.

(*k*) The latter part of this section is a repetition of a portion of sec. 70; see note *g* to that section.

(*l*) Both the possession of property and the rating of it are in general necessary to give a qualification for office under this Act. See sec. 70. But in the case of the first election in a new Township, there can be no rating of property, as there is no Assessment Roll for such new Township. In such case the property qualification, without the rating, is all that is made necessary. If more were necessary, there could be no qualification at all. As to the property qualification, see sec. 70 and notes thereto.

(*m*) In what manner is this section to be construed? Is it only to come into operation when the number is below two persons qualified to be elected for each seat as applied simply to qualification in respect to property, or after deducting all those who are disqualified to be electing from other causes? It is apprehended the expression, "quali-

DIVISION II.—DISQUALIFICATION.

Persons disqualified. Sec. 74.

Persons disqualified from being councillors, &c.

74. No Judge of any Court of civil jurisdiction, no Gaoler or Keeper of a House of Correction, no Sheriff, Deputy Sheriff, Sheriff's Bailiff, High Bailiff or Chief Constable of any City or Town, Assessor, Collector, Treasurer, or Clerk of any Municipality, no Bailiff of any Division Court, no County Crown Attorney, no Registrar, no Deputy Clerk of the Crown, no Clerk of the County Court, no Clerk of the Peace, (*n*) no Innkeeper or Saloonkeeper, or Shopkeeper, licensed to sell spirituous liquors by retail, (*o*) and no person having by himself or his partner an interest in any contract

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fied to be elected," must be construed in the larger sense, that is, for the benefit and advantage of the whole body of electors; for if it should happen, from some cause or other, that all those who might be elected as respects property yet were disqualified as respects interest or otherwise, the Municipality could have no Council if the inhabitants could not resort to the general body of electors for Councillors. *Per* Burns, J., in *The Queen ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100. It has been held, for the purposes of this section, that the roll is not conclusive as to the "persons qualified to be elected." *The Queen ex rel. Telfer* v. *Allen*, 1 U. C. P. R. 214.

(*n*) Officers not named would, it is presumed, be qualified. All persons having the necessary qualifications are made eligible under section 70. The exceptions are persons by this section expresssly declared to be disqualified. A local superintendent of schools was held not to be disqualified under the old law. *Regina ex rel. Arnott et al.* v. *Marchant*, 2 C. L. Chamb. R. 189. But an overseer of highways was held disqualified under the general words, "any officer of the Municipality." *The Queen ex rel. Richmond* v. *Tegart*, 7 U. C. L. J. 128. So the Clerk of a County Co[illegible]l. *The Queen ex rel. Boyes* v. *Detlor*, 4 U. C. P. R. 197. As to the Corporation Solicitor, see *Peterborough* v. *Burnham*, 12 U. C. C. P. 103; see further, *In re Sawyers* v. *Stevenson*, 5 U. C. L. J. 42. It is not in express terms declared that an insolvent shall be disqualified. See *The King* v. *Chitty*, 5 A. & E. 609; see also sec. 170 of this Act; see further, sec. 201 *et seq.* of this Act as to other disqualifications. By the English Act 5 & 6 Will. IV. cap. 76, s. 28, no person being in holy orders, or being the regular minister of a dissenting congregation, is qualified to be a Councillor of a Borough. But it was held that a minister appointed to officiate occasionally or temporarily to a dissenting congregation was not disqualified. *The Queen* v. *Oldham*, 10 B. & S. 193. An Indian who is a British subject and otherwise qualified is not disqualified to hold office. *Regina ex rel. Gibb* v. *White*, 5 U. C. P. R. 315.

(*o*) An "innkeeper" is the owner of a house who holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the accommodation required. See *Thomson* v.

with or on behalf of the Corporation, (*p*) shall be qualified to be a member of the Council of any Municipal Corporation:

Proviso: as to shareholders in companies

2. But no person shall be held to be disqualified from being elected a member of the Council of any Municipal Corpora-

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Lacy, 3 B. & A. 283; *Dansey* v. *Richardson*, 3 E. & B. 144; *Holder* v. *Soulby*, 8 C. B. N. S. 254; *Allen* v. *Smith*, 12 C. B. N. S. 638; *Threfall* v. *Borwick*, L. R. 7 Q. B. 711. The disqualification under this section is not, however, restricted to innkeepers. It extends to all saloonkeepers and shopkeepers who are licensed to sell spirituous liquors by retail. See *Regina* v. *Rymer*, 13 Cox, C. C. 378. A man may be an innkeeper under this section, though without a license. *The Queen ex rel. Flanagan* v. *McMahon*, 7 U. C. L. J. 155, and though he take out the license in the name of another. *McKay* v. *Brown*, 5 U. C. L. J. 91; but if a man, being an innkeper, in good faith transfers his license, he ceases to be disqualified under the Act. *The Queen ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60; see further *Dixon* v. *Birch*, L. R. 8 Ex. 135.

(*p*) The object of this part of the section, like that of section 28 of the English Municipal Corporation Act 5 & 6 Will. IV. cap. 76, is clearly to prevent all dealings on the part of the Council with any of its members in their private capacity, or, in other words, to prevent a member of the Council, who stands in the situation of a trustee for the public, from taking any share or benefit out of the trust fund, or in any contract in the making of which he, as one of the Council, ought to exercise a superintendence. *The Queen* v. *Francis*, 18 Q. B. 526. The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the words. The words of our enactment are that "no person having by himself or his partner an interest in any contract with or on behalf of the Corporation shall be qualified," &c.; and the words of the English Act are that "no person shall be qualified, &c., who shall have, directly or indirectly, by himself or his partner, any share or interest in any contract *or employment* with, by or on behalf of such Council," &c. The difference deserves to be noticed. See *Nicholson* v. *Fields* 7 H. & N. 810. *Lewis* v. *Carr*, L. R. 1 Ex. Div. 484. Under an old Act, of which the section here annotated is a re-enactment, it was held that a person who had executed a mortgage to the Corporation, containing covenants for payment of money, was disqualified. *The Queen ex rel Lutz* v. *Williamson*, 1 U. C. P. R. 94. It is not necessary that the contract should be a contract binding on the Corporation. *The Queen* v. *Francis*, 18 Q. B. 526. Where defendant, before the election, had tendered for some painting and glazing required for the city hospital, and, his tender having been accepted, he had done a portion of the work, for which he had not been paid, but afterwards refused to execute a written contract prepared by the City Solicitor, and informed the Mayor of the city that he did not intend to go on with the work, he was notwithstanding held to be disqualified. *The Queen ex rel Moore* v. *Miller*, 11 U. C. Q. B. 465. So where the person elected

having dealings with corporations

tion by reason of his being a shareholder in any incorporated Company having dealings or contracts with the Council of

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had tendered for the supply of wood and coal to the Corporation. *The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126. The trustees of a common school in the town of Sandwich being about to erect a schoolhouse, one Gauthier offered to supply a certain quantity of brick to them for the purpose. They told him that if the Town Council would agree to pay him for the bricks, they would take them. He then said he would take payment for them by letting the amount go against his taxes in each year, with interest at eight per cent. on the whole amount unpaid. This proposition was accepted, and the bricks were furnished. Gauthier was held disqualified to be a member of the Council. *The Queen ex rel. Fleutt* v. *Gauthier*, 5 U. C. P. R. 24. So where a member of the Council, being a baker supplied bread to fulfil a gaol contract held by another person in his own name, but which was looked upon as really the contract of the former, he was held to be disqualified. *The Queen ex rel. Piddington* v. *Riddell*, 4 U. C. P. R. 80. Whether the contract is in the name of the party himself or another, is immaterial. See *Collins* v. *Swindle*, 6 Grant, 282; *City of Toronto* v. *Bowes*, 4 Grant, 489; *S. C.* 6 Grant, 1. A person who had entered into a contract with the Corporation of the City of Dublin, was held disqualified, even though he had, before the election (but without the privity of the Corporation), assigned his contract to a third person. *The Queen* v. *Franklin*, 6 Ir. C. L. R. 239. Where a Municipal Council by by-law granted to defendant, upon certain conditions, a right to build a dam and bridge across a river, in consideration of which he promised to keep it in repair at his own expense for forty years, he was held to be disqualified. *The Queen ex rel. Patterson* v. *Clarke*, 5 U. C. P. R. 337. So where it was shown that the candidate elected was a surety for the treasurer of the town, and acting as solicitor for the town. *The Queen ex rel. Coleman* v. *O'Hare*, 2 U. C. P. R. 18. So a surety in any sense to the Corporation. *The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71. But a surety was held not disqualified under the following facts: The treasurer of a township was appointed by annual by-laws, which were silent as to time in 1859, 1860 and 1861. In 1861 the defendant became his surety, by bond, which bond did not state the duration of liability. In 1863 the same treasurer was also appointed by a similar by-law. In 1864 the by-law limited his liability to the year 1864. From that year to 1869, no time was specified. In 1869 he was appointed for one year. His accounts were audited, and found correct. *Held*, that defendant, his surety, was not disqualified. *The Queen ex rel. Ford* v. *McRae*, 5 U. C. P. R. 309. At one time it was held that where work was done under a contract, and nothing remained but payment, that the contractor was disqualified. *The Queen ex rel. Davis* v. *Carruthers*, 1 U. C. P. R. 114; *The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126. But recent English authority is against that position. See *Royse* v. *Birley*, L. R. 4 C. P. 296. If, however, at the time of the election, there be a dispute in good faith between the candidate and the Municipality, arising out of a matter of contract, the candidate is disqualified. *The Queen ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44; *The Queen ex rel. McMullen* v. *De Lisle*. 8 U. C. L. J. 291. A

such Municipal Corporation, or by having a lease of twenty-

different rule prevails where all transactions have been *bona fide* closed. *The Queen ex rel. Armor* v. *Coste*, *Ib.* 290. It is not enough to disqualify a person to show that he is the agent of the person who is really the contractor. Thus, an agent of an insurance company, paid by salary or commission, who, both before and since the election, had, on behalf of his company, effected insurances on several public buildings, the property of the Corporation, and who at the time of the election had rented two tenements of his own to the Board of School Trustees for Common School purposes, was held not to be disqualified. *The Queen ex rel. Bugg* v. *Smith*, 1 U. C. L. J. N. S. 129. The words "interest in any contract, are not to be construed as including all possible advantage or gain flowing from a contract which somebody else, not being a partner, has with the Corporation. See *The Queen ex rel. Armor* v. *Coste*, 8 U. C. L. J. 290; *The Queen ex rel. Pildington* v. *Riddell*, 4 U. C. P. R. 80. It is doubtful if they can be held to include sub-contracts. See *Le Feuvre* v. *Lankester*, 3 E. & B. 543; see also *Proctor* v. *Manwaring*, 3 B. & A. 145; *Henderson* v. *Sherborne*, 2 M. & W. 237; *Barber* v. *Waite*, 1 A. & E. 514. Had the words been "have any share or interest in, or be in any manner, directly or indirectly, concerned in any contract or bargain," a wider interpretation would have to be given to the section. See *Towsey* v. *White*, 5 B. & C. 125; *Pope* v. *Backhouse*, 8 Taunt. 239; *Foster* v. *The Oxford, &c., Railway Co.*, 13 C. B. 200; see also Con. Stat. Can. cap. 66, sec. 46. There is no disqualification where the person is acquitted in equity from the contract, and a sealed instrument is all that is necessary to discharge it: *The Queen ex rel. Hill* v. *Betts*, 4 U. C. P. R. 113. The disqualification does not merely relate to the time of acceptance of office, but to the time of the election. *Ib. The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126. To refer the qualification to the time when the person elected might actually take his seat at the Council board would be wholly at variance with the spirit of the Act, and fatal to this very wholesome provision of the Act as to disqualification. *Per* Hagarty, J., *Ib.* 128. The objection to the qualification should be taken at the nomination. *The Queen ex rel. Tinning* v. *Edgar*, 4 U. C. P. R. 36; *The Queen ex rel. Adamsom* v. *Boyd*, *Ib.* 204; *The Queen ex rel. Ford* v. *McRae*, 5 U. C. P. R. 309. Where after notice of disqualification, voters perversely throw away their votes, the candidate of the minority is entitled to the seat. *The King* v. *Hawkins*, 10 East. 211. *The King* v. *Parry*, 14 East. 548. But the notice should in such case be made to appear clear and satisfactory. *The Queen ex rel. Clarke* v. *McMullen*, 9 U. C. Q. B. 467; *The Queen ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89; *The Queen ex rel. Forward* v. *Detlor*, 4 U. C. P. R. 197; *The Queen ex rel. Adamson* v. *Boyd*, *Ib.* 204; *Ex rel. Mackley* v. *Coaks*, 3 E. & B. 248. The notice must be such as to bring home knowledge to the voters, apparently, not only of the fact constituting disqualification, but the law that such fact does disqualify. *The Queen* v. *Tewkesbury*, 18 L. T. N. S. 851; *S. C.* L. R. 3 Q. B. 629; see also, *The Queen ex rel. Dexter* v. *Gowan*, 1 U. C. P. R. 104; *The Queen ex rel. Davis* v. *Carruthers*, *Ib.* 114; *The Queen ex rel. Ford* v. *McRae*, 5 U. C. P. R. 309; *In re Essex Election*, 9 U. C. L. J. 247; *Trench* v. *Nolan*, L.

and lessees for 21 years from corporation.

one years or upwards, of any property from the Corporation, (*q*) but no such leaseholder shall vote in the Council on any question affecting any lease from the Corporation, and no such shareholder on any question affecting the Company. (*r*) 36 V. c. 48, s. 75.

DIVISION III.—EXEMPTIONS.

Officials and Persons exempted. Sec. 75.

Exemptions.

75. All persons over sixty years of age, all Members and officers of the Legislative Assembly of Ontario, and of the Senate or House of Commons of Canada, all persons in the civil service of the Crown, all Judges not disqualified by the last preceding section, all Coroners, all persons in Priests' orders, Clergymen and Ministers of the Gospel of every denomination, all members of the Law Society of Ontario, whether Barristers or Students, all Attorneys and Solicitors in actual practice, all officers of Courts of Justice, all members of the medical profession, whether Physicians or Surgeons, all Professors, Masters, Teachers and other members of any University, College, or School in Ontario, and all officers and servants thereof, all Millers and all Fireman belonging to an authorized Fire Company—are exempt from being elected or appointed members of a Municipal Council, or to any other municipal office. (*s*) 36 V. c. 48, s. 76. *See also as to Firemen Rev. Stat. c.* 178, ss. 2-4.

R. 6 Ir. C. L. 464; *In re Launceston Election—Drinkwater v. Dakin*, L. R. 9 C. P. 626; *In re Tipperary Election Petition*, L. R. 9 Ir. C. L. 217. See further, *Sublett* v. *Bedwell*, 12 Am. 338, note .

(*q*) The law was formerly different on both points. See *Regina ex rel. Ranton* v. *Counter*, 1 U. C. L. J. 68; *The Queen ex rel. Padwell* v. *Stewart et al.*, 2 U. C. P. R. 18; *The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; *The Queen* v. *York*, 2 Q. B. 847; *Simpson* v. *Ready*, 12 M. & W. 736; *The Queen* v. *Francis*, 21 L. J. Q. B. 304; *The Queen ex rel. Mack* v. *Manning*, 4 U. C. P. R. 73; *The Queen ex rel. Patterson* v. *Clarke*, 5 U. C. P. R. 337. The lessor of the Corporation so long as the reversion is not assigned is still disqualified. *Regina ex rel. Ross* v. *Rastill*, 2 U. C. L. J. N. S. 160.

(*r*) Where four out of five of the members of a Village Council were shareholders in an incorporated trading company in the village, and notwithstanding their interest these members voted for the submission of a by-law to the electors for a bonus to the company, and after the vote of the electors passed the by-law, the by-law was set aside. *In re Laird and the village of Almonte*, 41 Q. B. 415.

(*s*) The last section contains the disqualifications, and this the

PART III.

OF MUNICIPAL ELECTIONS.

TITLE I.—ELECTORS.
TITLE II.—ELECTIONS.

TITLE I.—ELECTORS.

DIVISION I.—QUALIFICATION.

Freehold, Household, Income, or Farmers' Son. *Sec.* 76.
Amount of rating requisite. *Sec.* 77.
Persons in default for non-payment of taxes. *Sec.* 78.
Voter must be named on list of electors. *Sec.* 79.
Where no Assessment Roll. *Sec.* 80.
Case of new Territory added. *Sec.* 81.
Joint or several rating on same property provided for. *Secs.* 82, 83.
Householder, definition of. *Sec.* 84.

76. Subject to the provisions of the next eight sections the right of voting at municipal elections shall belong to the following persons, being males (*a*) of the full age of twenty-one years, (*b*) and subjects of Her Majesty by birth or naturalization, (*c*) being rated to the amount hereinafter provided on

Qualification of electors.

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exemptions. The difference between a disqualification and an exemption as regards an individual, is this, that a person disqualified cannot hold office, but a person exempt, even though qualified is not bound to accept office. The one is an incapacity or disability; the other a privilege. It is an offence at common law for a person, without some legal ground of objection, to refuse to take upon himself an office to which he has been duly elected. So a qualified person duly elected refusing to accept office, may be summarily convicted and punished. See sec. 272.

(*a*) Women are not here, as in England, entitled to the Municipal franchise. See *The Queen* v. *Harrald*, L. R. 7 Q. B. 361.

(*b*) Full age in male or female is twenty-one years, and is completed on the day preceding the anniversary of a person's birth. *Anon*, 1 Salk. 44; *Yoder* v. *Sansam*, 1 Brown P. C. 468. If therefore one is born on 1st January, he is of age to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by nearly 48 hours. Tomlin "Infant," I. Upon a question of age of a voter, the written memorandum of the clergyman who married his parents was held better evidence than the memory of individuals, unaccompanied by such memorandum. *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533.

(*c*) See note *b* to sec. 70.

the revised assessment roll upon which the voters' list used at the election is based, of the Municipality, (*d*) for real property held in their own right (*e*) or in the right of their wives, or for income, (*f*) and having received no reward and having no expectation of reward for voting : (*g*)

Firstly. All persons, whether resident or not, who are at

(*d*) The franchise is not to be lost to any one who is really entitled to vote, if his right can be sustained in a reasonable view of the requirements of the Act. *The Queen ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244. See also per Richards C. J. in *Re McCulloch* 35 U. C. Q. B. 452. The inclination of the Courts is in every way to favour the franchise. *The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214. The rating has been held sufficient where the surnames were correct, though the Christian names were erroneous. *The Queen ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244. Thus "Wilson Wilson" for "William Wilson." So "Simond Faulkner," for "Alexander Faulkner." *Ib.* And "Thomas Sanderson," held *idem sonans* with "Thomas Anderson," so as to entitle the person bearing the latter name to vote. *Ib.* Any error in assessing as owner, tenant or occupant, is immaterial if the voter be qualified in any of these characters. *The Stormont Case*, 7 U. C. L. J. N. S. 213; *The Brockville Case*, *Ib.* 221. If a man be duly assessed for a named property on the Roll, even though there was a clerical error in describing such property in the voters' list, or erroneously setting down another property on the voters' list, if no question or difficulty arose at the poll as to the taking the oath, the vote will not be struck off on a scrutiny. *Ib.* When a voter, properly assessed, who was accidentally omitted from the voters' list for polling sub-division No. 1, where his property lay, and entered in the voters' list for sub-division No. 2, voted without question in No. 1, though not on the list, vote held good. *Ib.* It is not only necessary that the freeholder or householder should be rated as such, but at the time of the election hold the property in respect of which he is rated *The Queen ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152; *Anon.* 8 U. C. L. J. 76, and the property must be held in the right of the elector or that of his wife, and not simply in a representative capacity as executor, administrator or agent. *The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; see further note *h* to sec. 70. A Municipal Council, has not, of course, any power to declare a qualification of voters different from this Act. *In re Bell and Manvers*, 3 U. C. C. P. 399; see further, *The King* v. *Spencer*, 3 Burr. 1827; *Newling* v. *Francis*, 3 T. R. 189; *The King* v. *Bumstead*, 2 B. & Ad. 699; *The King* v. *Chitty*, 5 A. & E. 609; *Commonwealth* v. *Woelper, et al*, 3 S. & R. 29; *Petty et al* v. *Tooker*, 21 N. Y. 267.

(*e*) See note *e* to sec. 72.

(*f*) This is a new franchise first created in this Province by Stat. 37 Vict. cap. 3 Ont.

(*g*) See sec. 201 *et seq.*

the date of the election freeholders of the Municipality *(h)* either in their own right or in the right of their wives; Freeholders

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(h) It is to be observed that residence is not essential to the right of a freeholder to vote. Residence for a month next before the election is, however, expressly made necessary in the case of a householder. Nice questions arise as to when a party can or cannot be said to be a *resident* of a Municipality. See *Attorney General* v. *Parker*, 3 Atk. 576, *Etherington* v. *Wilson*, L. R. 1 Chy. Div. 160, *King* v. *Foxwell*, L. R. 3 Chy. Div. 518. A man, cannot, within the meaning of the Municipal laws, be said to be resident in *two* Municipalities at the same time. *Marr* v. *Vienna*, 10 U. C. L. J. 275. A man's residence is where his home is situate—where his family live. *The King* v. *The Inhabitants of North Curry*, 4 B. & C. 959. An occasional absence from his home to attend to business in another Municipality, does not make his home less his residence. *Withorn* v. *Thomas*, 7 M. & G. 1. Where A. had a dwelling-house at Bowmanville, where his wife and family lived, but had a saw-mill and store and was postmaster in the township of Cartwright, which occasioned him frequently to visit that place, and who, while there, used to board with one of his men in a house owned by himself. *Held*, that after voting in Bowmanville he had no right to vote in Cartwright. *The Queen ex rel. Taylor* v. *Cæsar*, 11 U. C. Q. B. 461. Mere colourable residence is in no case sufficient. *The King* v. *Duke of Richmond*, 6 T. R. 560. There is no absolute rule for ascertaining when a party is a resident; it is a question to be determined in each case according to its circumstances. As to what is sufficient, see *The King* v. *Sergent*, 5 T. R. 466; *Bruce* v. *Bruce*, 2 B. & P. 229, note; *The King* v. *Mitchell*, 10 East. 511; *Withorn* v. *Thomas*, 7 M. & G. 1; *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533; *The Queen* v. *Boycott*, 14 L. T. N. S. 599; *The Queen* v. *Exeter*, L. R. 4 Q. B. 110; *Manning* v. *Manning*, L. R. 2 P. & D. 223; *Taylor* v. *The Overseers of the Parish of St. Mary Abbot*, L. R. 6 C. P. 309; *Bond* v. *The Overseers of the Parish of St. George, Hanover Square*, *Ib.* 312; *The Queen* v. *The Guardians of St. Ives Union*, L. R. 7 Q. B. 467, *Durant* v. *Carter*, L. R. 9 C. P. 261, *Ford* v. *Pye*, *Ib.* 269; *Ford* v. *Hart*, *Ib.* 273, *Wilton* v. *Falmouth*, 3 Shepley, 479; *State* v. *Frest*, 4 Harring. 558; *State* v. *De Casinova*, 1 Texas, 401; *Fry's Election*, 10 Am. 698.

Questions often arise between father and son, or other relatives, as to the position they hold to each other in respect to the homestead. Sons in this country often live with their fathers to a ripe age, on the promise or in the expectation of receiving the homestead "when the old man dies." After the "old man," through lapse of years or bodily infirmity, is disabled from doing much, if anything, in the tillage of the farm, he surrenders control to the son, "as the place is to be his." When these things happen nice questions present themselves as to "ownership" and "occupancy." In three cases tried under the Election Law for Ontario, several such questions were presented for decision, and, after much deliberation, decided. Only one of these cases, *The Stormont Case*, 7 U. C. L. J. N. S. 213, has been reported in full. Of the second case, *The Brockville Case*, we have some brief head notes published, 7 U. C. L. J. N. S. 221. Of the third case,

House-holders and tenants.

Secondly. All residents of the Municipality, who have re-

The South Grenville Case, which was as fruitful as either of the other two, we have no published report whatever.

The general rule is, that a person living with his father, having no interest of any kind in the house or land, is not entitled to be assessed either as owner, tenant or occupant. *The Queen ex rel. McVeon* v. *Graham*, 7 U. C. L. J. 125. But when it is proved that an agreement exists (verbal or otherwise), that the son should have one-third or one-half the crops as his own, and such agreement is *bona fide* acted on, the son is entitled to be on the roll. *The Brockville Case*, 7 U. C. L. J. N. S. 221. So where it is proved that for some time past the owner has given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use. *Ib.* A clearly established course of dealing or conduct for years as to management and disposition of crops and acts done by the son in the management of the farm, held sufficient to establish an interest in the crops in the son, though the evidence of any original agreement or bargain be not clear. *Ib.* If the evidence would warrant the jury finding the crops (say in the year preceding the last assessment), to be the property of the voter, the son is rightly placed on the roll, *Ib.* Occupancy to the use and benefit of the occupant is sufficient. *Ib.* In a milling business, where the agreement between the father and the son was, that if the son would take charge of the mill and manage the business, he should have a share of the profits, and the son in fact solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use, it was held that the son had such an interest in the business, and, while the business lasted, such an interest in the land as entitled him to be on the roll. *The Stormont Case*, 7 U. C. L. J. N. S. 213. So, where the voter had been originally before 1865 or 1866 put upon the Assessment Roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support, it was held that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad, but being continued several years after he really became the occupant for his own benefit, he was entitled to be on the roll, though, originally the assessment began in his name merely to qualify him. *Ib.* Where the voter was the equitable owner, the deed being taken in the father's name, but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided, it was held, that being the equitable owner, notwithstanding the deed to the father, he had the right to be on the roll. *Ib.* So where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following. *Ib.* But the rule is different where father and son live together on the father's farm, and the father is in fact the principal, to whom money is paid, and who distributes it, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of jus-

sided therein for one month next before the election, and

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tice dictates. *Ib.* Or where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit. *Ib.* So where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it. *Ib.* Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy, the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870, held, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th March, 1870, and that to entitle him to vote, he must have the qualification at the time of the final revision of the Assessment Roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division. *Ib.* Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but not owning it; held, that not possessing the qualification at the time he was assessed, or at the final revision of the Roll, he was not entitled to vote. *Ib.* Where the father had made a will in his son's favour, and told the son if he would work the place and support the family, he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names, the profits to be applied to pay the debts due on the place, it was held that, as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, he did not hold immediately to his own use and benefit, and was not entitled to vote. *Ib.* Where the owner died intestate, and the estate descended to several children, only the interest of the actual occupants is generally to be considered. *The Brockville Case*, 7 U. C. L. J. N. S. 221. Unless the occupant be shewn to be receiving the rents and profits, and on account of a party interested, though not in actual possession, a mere liability to account is not to be considered. *Ib.* The widow of an intestate owner continuing to live on the property with her children, who own the estate, and work and manage it, should not, till her dower be assigned, be assessed, nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate. *Ib.* Where on the trial of an election petition, the objection taken was, that the voter was not at the time of the final revision of the Assessment Roll the *bona fide* owner, occupant or tenant of the property in respect of which he voted, and the evidence shewed a *joint* occupancy on the part of the voter and his father on land rated at $240, it was held that the notice given did not point to the objection that if the parties were joint occupants, they were insufficiently rated. *The Stormont Case*, 7 U. C. L. J. N. S. 213.

who are, or whose wives are, at the date of the election, householders or tenants in the Municipality; (*i*)

Income voters.

Thirdly. All residents of the Municipality (*j*) at the date of the election, who have continuously resided therein since the completion of the last revised assessment roll therefor, and who are in receipt of an income from some trade, office, calling or profession, of not less than four hundred dollars. 36 V. c. 48, s. 77; 37 V. c. 3, s. 1.

Farmers' Sons.

Fourthly. All residents of the Municipality at the date of the election who are farmers' sons, and have resided in the Municipality on the farm of their father or mother for twelve months next prior to the return by the Assessors of the assessment roll on which the voters' list used at the election is based. (*k*) 40 V. c. 9, s. 3.

(*i*) The occupant of any separate portion of a house having a distinct communication with a road or street by an outer door, is a householder (sec. 84); and it seems to be now settled in England, where a house is let out in separate portions to different tenants, and the owner or landlord does not reside on the premises, though there is but one outer door common to all the tenants, that each distinct portion so let is the house of such occupier. See *The King* v. *Trapshaw*, 1 Leach. 427; *The King* v. *Carrell*, *Ib.* 237; *The King* v. *Bailey*, 1 Moody C. C. 23; and Littledale, J., in *The King* v. *Eye*, 9 A. & E. 680; see also *Wright and Stockport*, 7 M. & G. 95; *Toms* v. *Endell*, 5 C. B. 23; *Boon* v. *Howard*, L. R. 9 C. P. 277; *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533; *In re Cook and Humber*, 11 C. B. N. S. 33; *In re Thompson and Ward*, L. R. 6 C. P. 327; *In re Stamper* v. *The Overseers of Sunderland*, L. R. 3 C. P. 388; *In re Townshend and Overseers of St. Mary-le-bone*, L. R. 7 C. P. 143; *In re Ford* v. *Boon*, *Ib.* 150; *In re Moger* v. *Escott*, *Ib.* 158; *In re Bendle* v. *Watson*, *Ib.* 163. A person is not the less a householder because he lets a portion of his house to lodgers. *Phillip's Case*, Alcock's Registration Cases, 20; *Duigenan's Case*, *Ib.* 114; *The Queen* v. *Deighton*, 5 Q. B. 896. No lodger, though occupying the principal part of the house, is ever rated. The owner, however small the part may be which is reserved to himself, is in such case deemed the occupier of the whole. *The King* v. *Eyles*, Cald. 414. A person occupying apartments in a jail held not to be a householder. *In re Charles* v. *Lewis, et al.*, 2 C. L. Chamb. R. 171. See further, *The Queen* v. *St. George's Union*, L. R. 7 Q. B. 90; *Attorney General* v. *The Mutual Tontine Westminster Chambers Association*, L. R. 1 Ex. Div. 469.

(*j*) See note *a* to this section.

(*k*) This franchise was first created by the Legislature in 1877, by 40 Vict. cap. 9.

It is necessary to the enjoyment of the franchise.

1. That the person be a farmers' son.

2. That he have resided in the Municipality on the farm of his

When more than one son so resident.

2. If there are more sons than one so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote to the father and all the sons, where the father is living, or to the sons alone where the father is dead and the mother is a widow, then the right to vote under this Act shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the amount at which the farm is rated and assessed will, when equally divided between them, give the qualification to vote. (*l*) 40 V. c. 9, s. 2.

3. If the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father, if living, and one son, to give to each a qualification to vote, then the father shall be the only person entitled to vote in respect of such farm. (*m*) 40 V. c. 9, s. 2.

Temporary absence.

4. Occasional or temporary absence from the farm for a time or times not exceeding in the whole four months of the twelve hereinbefore mentioned, shall not operate to disentitle a farmer's son to vote. (*n*) 40 V. c. 9, s. 3.

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father or mother for twelve months, next prior to the return of the assessment roll.

If either of these conditions be wanting there is no vote.

(*l*) The value of the farm is made the foundation of the right of one or more persons to vote in respect of the farm.

The father may have more than one son. The father may be dead and one or more sons survive him. Provision is made for these cases as follows :

1. If the farm be rated and assessed at an amount sufficient to give the father and his only son or all his sons if equally divided between them a vote, then each is entitled to vote.

2. If the father be dead and the farm be of sufficient rated and assessed value to give a vote to all the sons if equally divided between them, then all entitled to vote.

3. Otherwise the right to vote shall be the right only of the father if living, and such of the elder sons as will represent the assessed and rated value of the farm when equally divided between them.

(*m*) This follows from what precedes it. The foundation of the right being the rated and assessed value of the farm, if that value be not sufficient, if divided between the father and a son, to give a vote to each, the father alone being the owner of the land is entitled to the vote.

(*n*) A man cannot be a resident in two places at one time, see note *h* to this section. But a man may have his residence in one place and

5. In this and the four next preceding clauses:

Interpretation.

"Farm" shall mean land actually occupied by the owner thereof and not less in quantity than twenty acres;

"Son" or "Sons" or "Farmers' Son" or "Farmers' Sons" shall mean any male person or persons not otherwise qualified to vote, and being the son or sons of an owner and actual occupant of a farm;

"Father" shall include stepfather;

"Election" shall mean an election for a member to a Municipal Council;

"To vote" shall mean to vote at an election; and

"Owner" shall mean proprietor in his own right or in the right of his wife of an estate for life or any greater estate either legal or equitable, except where the owner is a widow and in such latter case the word "owner" shall mean proprietor in her own right of any such estate. (o) 40 V. c. 9. s. 1.

Amount of rating necessary.

77. In order to entitle any person to vote as aforesaid in respect of real property, such property whether freehold or household or partly each, (p) must be rated at an actual value of not less than the following; (q)

In Townships—One hundred dollars.
In Incorporated Villages—Two hundred dollars.
In Towns—Three hundred dollars.
In Cities—Four hundred dollars. 36 V. c. 48, s. 78.

Persons in default for non-payment of taxes not to vote.

78. No person who has been returned by the Treasurer or Collector under section one hundred and fifteen as in default for non-payment of his taxes on or before the fourteenth day of December next preceding any election, shall be entitled to vote in respect of income in any Municipality or in respect of real property in Municipalities which have passed by-laws

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be temporarily absent at another, where the absence being an occasional or temporary one is real and not for more than four months of the twelve required as a residence under sub. s. 4. Such occasional or temporary absence is not to deprive the farmers' son of his vote.

(o) As to the meaning and effect of an interpretation clause such as this, see note c to s. 2, of this Act.

(p) See note g to s. 70.

(q) Formerly, for Municipal purposes, real property was rated at

under sections four hundred and sixty-one, sub-section two. (*r*) 36 V. c. 48, s. 77; *See* 38 V. c. 28, s. 8; *and* 39 V. c. 5, s. 9.

Elector must be named in voter's list.

79. Except in the case of a new Municipality, for which there is no assessment roll, no person shall be entitled to vote at any election, unless he is one of the persons named or purporting to be named in the proper list of voters; and no question of qualification shall be raised at any election, except to ascertain whether the person tendering his vote is the same person as is intended to be designated in the said list of voters. (*s*) 36 V. c. 48, s. 77; 40 V. c. 12, s. 20; *See* 37 V. c. 3, s. 1.

No question of qualification to be raised.

In newly erected municipalities not having any assessment roll.

80. At the first election of a new Municipality for which there is no separate assessment roll, every resident male inhabitant, though not previously assessed, shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property. (*t*) *See* 36 V. c. 48, s. 79.

The case of new territory added to city, town or village, or a new city,

81. Where any territory is added for municipal purposes to any City, Town or Village, or where a Town with additional territory is erected into a City, or a Village with additional territory is erected into a Town, or in case a new

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annual value in Cities, Towns, and Incorporated Villages, and at actual value in Townships. Since 1866 the distinction has been abolished. Actual value is now the rule in all local Municipalities for all purposes. See *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584; *S. C.* 32 U. C. Q. B. 348.

(*r*) The object of such a provision as the present is, in the case of intending voters, to enforce payment of taxes in the year in which they accrue, and under any circumstances before the election of the ensuing year. In the 29-30 Vict. cap. 51, sec. 75, the provision was absolute, making it essential to the qualification of a voter that he should have paid on or before the sixteenth day of December next preceding the election, all Municipal taxes due by him. That portion of the section was dropped when the section was amended and re-enacted by Stat. Ont. 31 Vict. cap. 30, s. 9. It was in 36 Vict. cap. 48, s. 77, restored in a modified form. It is still dependent on the passing of a by-law by the Council of the Municipality. See s. 461, sub-s. 2.

(*s*) See note *d* to s. 76.

(*t*) In the case of a newly erected Township there can be no Assessment Roll for such Township, qualification in fact, without rating on any Roll, is, therefore, all that is required in such a case. See sec. 76 and notes thereto, as to the qualification of electors.

town or village, erected with added territory, and no voters' lists including such new territory.

Village is formed, and an election takes place before voters' lists including the names of persons entitled to vote in such territory are made out for such new or enlarged City, Town or Village, or before such lists are certified by the County Judge, then all persons who would have been qualified as electors in such territory if the same had remained separate from the City, Town or Village, or if such Town or Village had not been erected into a City or Town, or if such Village had not been formed, shall be entitled to vote in the City, Town or Village at such election. (*u*) 38 V. c. 3, s. 16.

When owner and occupant severally assessed both rated.

82. In case both the owner and occupant of any real property are rated severally but not jointly therefor, both shall be deemed rated within this Act. (*v*) 36 V. c. 48, s. 82.

When joint owners or occupants rated, rating to be equally divided.

83. Where any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated. (*w*) 36 V. c. 48, s. 83.

"Householder" defined.

84. Every occupant of a separate portion of a house, such portion having a distinct communication with a public road

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(*u*) The necessity for such a provision as contained in this section will be made apparent on reference to the language of Robinson, C. J., in *Regina ex rel. Carroll* v. *Beckwith*, 1 U. C. P. R. 278. There was no such provision in the 36 Vict. cap. 48. Mr. Harrison, in his notes to sec. 79 of that Act, pointed out its omission. It was afterwards supplied by 38 Vict. cap. 3, sec. 16, Ont., and is now retained here.

(*v*) Each may vote in respect of his interest, when rated severally, the one as proprietor if a freeholder, and the other as tenant if a resident householder. See sec. 76. It is not necessary that the property should be assessed exclusively in the name of the person possessed to his own use. A landlord is so assessed where tenants occupy the premises; and he may, for purposes of qualification as a candidate, put together real properties, some occupied by himself and some by his tenants, to make up the assessed value required by the statute. *The Queen ex rel. Shaw* v. *Mackenzie*, 2 C. L. Chamb. R. 36.

(*w*) This applies to the case of joint owners or joint tenants. If each be rated for an amount sufficient to give a qualification, then each is to be deemed rated within the meaning of the section. The section apparently applies as much to candidates as electors, though placed under the head of "Electors." *The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67. Where one of two partners, jointly interested in a property as co-tenants under a yearly tenancy, left the partnership before the day of nomination, and a new lease was afterwards

or street by an outer door, shall be deemed a householder within this Act. (*x*) 36 V. c. 48, s. 84.

TITLE II.—ELECTIONS.

Div. I.—Time and Place of Holding.
Div. II.—Returning Officers and Deputy-Returning Officers.
Div. III.—Oaths to be Taken.
Div. IV.—Proceedings Preliminary to the Poll.
Div. V.—The Poll.
Div. VI.—Miscellaneous Provisions.
Div. VII.—Vacancies in Council.
Div. VIII.—Controverted Elections.
Div. IX.—Prevention of Corrupt Practices.

Division I.—Time and Place of Holding.

Time in the respective Municipalities, Sec. 85.
In New or Altered Municipalities. Sec. 86.
Place, how Fixed. Sec. 87.
In case of Separated Townships. Secs. 88, 89.
Election Divisions. Secs. 90, 91.
Election to be held in Municipality. Sec. 92.
Where Elections may not be held. Sec. 93.

85. The electors of every Municipality (except a County) shall elect annually, on the first Monday in January, (*a*) the members of the Council of the Municipality, except such members as have been elected at the nomination; (*b*) and the persons so elected shall hold office until their successors

Elections to be held annually for members of council of municipalities (except

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granted to the remaining partner and a new partner, the retiring partner was held not to be qualified in respect of property under this Act. *The Queen ex rel. Adamson* v. *Boyd*, 4 U. C. P. R. 204.

(*x*) See note 1 to s. 76.

(*a*) The time deserves attention. Where time is fixed for the holding of an election it is in general essential, though many of the details as to the conduct of elections may be looked upon as only directory. See *Pennsylvania District Election*, 2 Par. (Pa.) 526; *Clarke's Case*, *Ib.* 521; *Commonwealth* v. *Commissioners*, 5 Rawle. 75; see also *People* v. *Brenham*, 3 Cal. 477; *People* v. *Fairbury*, 51 Ill. 149; *Haynes* v. *Washington County*, 19 Ill. 66; *Coles County* v. *Allison*, 23 Ill. 437.

(*b*) See sec. 112.

counties). Terms of office.

are elected or appointed and sworn into office, and the new Council is organized. (c) 36 V. c. 48, s. 85.

First elections where corporations are newly erected or extended.

86. In case of the incorporation of a new Township or Union of Townships; or of the separation of a Junior Township from a Union of Townships; or of the erection of a locality into an Incorporated Village; or of the erection of a Village into a Town or of a Town into a City; or of an additional tract of land being added to an Incorporated Village, Town or City, (d) or in case of a new division into Wards of a Town or City, the first election under the proclamation or by-law by which the change was effected, shall take place on the first Monday in January next after the end of three months from the date of the proclamation, or from the passing of the by-law by which the change is made, and until such day the change shall not go into effect; but the nomination of candidates and the election of such officers as are unopposed, may, and shall be proceeded with at the same time and in the same manner as if such change had gone into effect on the last Monday of the month of December preceding such first election, or on such other day as the nominations may lawfully be held upon. (e) 36 V. c. 48, s. 86; 40 V. c. 8, s. 49.

Times of elections.

(c) Where in the charter or organic law of a Corporation there is an express or implied restriction upon the time of holding office, as that the officers shall be annually elected on a particular day * * * in such case they cannot hold over beyond the next election day. * * * But where by the constitution of the Corporation they are elected for a term and until their successors are elected, "they may continue to hold and exercise their offices after the expiration of the year until they are superseded by the election of other persons in their places." *Per* Perkins, J., in *Tuley* v. *State*, 1 Ind. Cart. 501, 502; See further, *The King* v. *Tregenny*, 6 Ven. Abr. 296; *Corporation of Banbury*, 10 Mod. 346; *The King* v. *Pasmore*, 3 T. R. 199; *Foot* v. *Prowse*, Str. 625; *The King* v. *Poole*, Cas. Temp. Hardw. 23; *Louisville* v. *Higdon*, 2 Met. (Ky.) 526; *King* v. *Lisle*, Andrews 163; *McCall* v. *Manufacturing Company*, 6 Conn. 428; *Kelsey* v. *Wright*, 1 Root. 83; *Weir* v. *Bush*, 4 Litt. (Ky.) 429; *People* v. *Runkle*, 9 Johns. 147; *Vernon Society* v. *Hills*, 6 Cow. 23; *Slee* v. *Bloom*, 5 Johns. Ch. 366; *Bank* v. *Petway*, 3 Humph. (Tenn.) 522; *Stewart* v. *State*, 4 Ind. 396; *Beck* v. *Hanscom*, 9 Fost. (N. H.) 213; *Cocke* v. *Halsey*, 16 Pet. 71; *Chandler* v. *Bradish*, 23 Vt. 416; *School District* v. *Atherton*, 12 Met. 105; *Dow* v. *Bullock*, 13 Gray 136; *People* v. *Fairbury*, 51 Ill. 149; See further, *The Queen* v. *Owens*, 9 E. & E. 86; *Frost* v. *Chester*, 5 E. & B. 531.

(d) See sec. 81 as to voters lists.

(e) The whole three months must expire. The day of the issue of the proclamation or passing of the By-law as well as the day of the

Place to be fixed by by-law of municipalities.

87. The Council of every City, Town and Village Municipality (including a Village newly erected into a Town, and a Town newly erected into a City,) shall from time to time, by by-law, (*f*) appoint the place or places for holding the next ensuing Municipal election, otherwise the election shall be held at the place or places at which the last election for the Municipality or Wards or polling subdivisions was held. (*g*) 36 V. c. 48, s. 87.

First election in junior townships after separation.

88. When in any year a Junior Township of a Union has one hundred resident freeholders and householders on the then last revised assesement roll, the Council of the County shall, by a by-law to be passed before the thirty-first day of October, in the same year, (*h*) fix the place for holding the first annual election of Councillors in the Township, and appoint a Returning Officer for holding the same, and otherwise provide for the due holding of the election according to law. (*i*) 36 V. c. 48, s. 88.

Existing ward divisions in united townships to

89. In case of the separation of a Union of Townships, the existing division into Wards, if any, shall cease, as if the same had been duly abolished by by-law, and the elections of

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election, must be excluded from the computation of time. See *Blunt* v. *Heslop*, 8 A. & E. 577.

(*f*) The appointment of the place by resolution would be a nullity. *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. P. R. 219.

(*g*) One Robert Gillis had a farm through which ran the division line between Wards Nos. 2 and 3. His house stood on that part of the farm included in Ward No. 2, but his barn on the part in Ward No. 3. The Township Council passed a by-law that the election of Township Councillors, for "Ward No. 3," should be held at "Robert Gillis's:" *Held*, that the by-law must be read as meaning some part of his property in Ward No. 3, and that as the election was shown to have taken place in the house without the limits of the Ward, it was void. *The Queen ex rel. Preston* v. *Preston*, 2 C. L. Chamb. R. 178.

(*h*) The time for doing the act authorized being limited, the act cannot be done after the day named, unless the language used is to be construed as directory only. *Davison et al.* v. *Gill*, 1 East. 64. This would appear to be a continuing provision, liable to be brought into play in any year by By-law passed before 31st October.

(*i*) The by-law ought to—

1. Fix a place for holding the first annual election;

2. Appoint a Returning Officer for holding the same;

3. And otherwise provide for the due holding of the election according to law.

cease on dissolution of union.

Councillors shall be by general vote, until the Township or Townships are divided into polling subdivisions or Wards under the provisions of this Act. (*j*) 36 V. c. 48, s. 89.

Election of Reeves, &c., in townships and incorporated villages to be by general vote.

90. The election in Townships and incorporated Villages of Reeves, Deputy-Reeves and Councillors, shall be by general vote, except in the case of Deputy-Reeves and Councillors in Townships divided into Wards, and shall be held at the place or places where the last meeting of the Council was held, or in such other place or places as may be from time to time fixed by by-law. (*k*) 36 V. c. 48, s. 90.

Upon petition the council may, by by-law, divide townships into wards, &c.

91. In case a majority of the qualified electors of a Township on the last revised assessment roll petition the Council of the Township to divide the Township into Wards, or to abolished or alter any then existing division into Wards, the Council shall, within one month thereafter, pass a by-law to give effect to such petition ; (*l*) and if such petition is for division into Wards, shall divide such Township into Wards, having regard to the numbers of electors in each Ward, being as nearly equal as may be, and the number of Wards for municipal purposes shall be four in all cases ; (*m*) and where the

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(*j*) See sec. 91, see also note to sec. 133.

(*k*) In the first place, it will be observed that Reeves and Deputy Reeves, as well as Councillors, are to be elected by the people, and in the second place, that the election is to be by general vote. Before 1866, Councillors only were elected by the people, and the Councillors then elected the Reeve and Deputy Reeve. Before 1866 also, where there was an existing division of a Township or incorporated Village into Wards, the election was had for a particular Councillor in each Ward, and not by general vote. The intention of having Reeves and Deputy Reeves elected by the people, is to prevent men by combining in small bodies, in effect, to elect themselves to these offices. The intention of having a general vote is to destroy the sectional strife about the expenditure of money, which often arises where each Councillor looks upon himself as a representative of a particular ward and not of the whole Township. This section is in effect a re-enactment of the Act of 1866 (29-30 Vict. cap. 51, s. 92.)

(*l*) This provides for direct legislation by the electors themselves in the matter to which the section has reference. It is not in the discretion of the Council to pass or refuse to pass a By-law dividing a Township into Wards, or abolishing that division, provided a majority of the qualified electors petition that a particular course be adopted. In the event of such a petition being presented, it is made the duty of the Council not merely to pass the required By-law, but to do so "within one month" after the presentation of the petition.

(*m*) The power is limited. There must be in all cases at least four Wards. The number of electors in each Ward should be as nearly

Township is divided into Wards, and is entitled to one or more Deputy Reeves, the Councillors shall, at their first meeting, elect from among themselves such Deputy Reeve or Reeves. (*n*) 36 V. c. 48, s. 91. Election of Deputy-Reeves, &c., in such case.

92. Every election shall be held in the Municipality to which the same relates. (*o*) 36 V. c. 48, s. 92. Election, where to be held.

93. No election of Township Councillors shall be held within any City, Town or incorporated Village, (*p*) nor shall any election for a Municipality, or any Ward thereof, be held in a tavern or in a house of public entertainment licensed to sell spirituous or fermented liquors. (*q*) 36 V. c. 48. s. 93. Not to be held in taverns, etc.

DIVISION II.—RETURNING OFFICERS AND DEPUTY RETURNING OFFICERS.

Appointment when election by polling subdivisions. *Sec.* 94.
When not, Who ex officio. *Sec.* 95.
Absence, provision for. *Sec.* 96.
Authority of. *Secs.* 97, 98.
Special Constables. *Sec.* 98.

94. The Council of every Municipality in which the election is to be made by Wards or polling subdivisions, shall, from time to time, by by-law appoint: (*r*) By-law for an election.

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as possible equal. Population rather than geographical situation is to be regarded.

(*n*) The rule is different where one Township is not divided into Wards. In such case the Reeves and Deputy Reeves, as well as Councillors, are elected by the people. See sec. 90.

(*o*) It is only proper that the election for each Municipality should, for the convenience of voters, be held within the limits of that Municipality. Cities, Towns and Incorporated Villages are quite distinct from and independent of the Townships in which situate. It is therefore provided by the next section that no election of Township Councillors shall be held within any City, Town or Incorporated Village. See note *g* to sec. 87.

(*p*) See the last note.

(*q*) There may be a tavern where spirituous liquors are sold, which is not licensed to sell spirituous liquors. Contravention of the statute would, it is believed invalidate the election. See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. P. R. 219; *The Queen ex rel. Preston* v. *Preston*, 2 C. L. Chamb. R. 178.

(*r*) An appointment by resolution not sufficient. *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. P. R. 219.

(*a*) The places for holding the nominations for each Ward;

(*b*) The Returning Officers who shall respectively hold the nominations for each Ward;

(*c*) The places at which the polls will be opened in the Municipality in case a poll is required;

(*d*) The Deputy Returning Officers who shall preside at the respective polling places. 36 V. c. 48, s. 94; 37 V. c. 16, s. 4.

2. The Clerk of the Municipality shall be the Returning Officer for the whole Municipality, and in the case of a poll being required, the Deputy Returning Officers shall make to him the returns for their respective Wards or polling subdivisions. *See* 40 V. c. 12. s. 13.

Returning Officer for elections not by wards or polling subdivisions.

95. In the case of a Municipality in which the election is not to be by Wards or polling subdivisions, the Clerk shall be the Returning Officer to hold the nomination of candidates at all elections after the first, (*s*) and shall also perform all the duties hereinafter assigned to Deputy Returning Officers. 36 V. c. 48, s. 95: *See* 40 V. c. 12, s. 13.

The absence of the returning officer or deputy returning officer provided for.

96. In case, at the time appointed for holding a nomination or poll, the person appointed to be Returning Officer or Deputy Returning Officer has died, or does not attend to hold the nomination or poll within an hour after the time appointed, or in case no Returning Officer or Deputy Returning [Officer,] has been appointed, the electors present at the place for holding the nomination or poll may choose from amongst themselves a Returning Officer or Deputy Returning Officer, (*t*) and such Returning Officer or Deputy Returning Officer shall have all the powers, and shall forthwith proceed to hold the nomination or poll, and perform all the other duties of

(*s*) Where the election is to be by Wards or polling subdivisions, the Councils appoint Returning Officers to hold the nominations and the Deputy Returning Officers to preside at the polling places (sec. 94); but where there are no Wards or Electoral Divisions, it is here provided that the Clerk shall be the Returning Officer to hold the nomination, and shall also perform all the duties assigned to Deputy Returning Officers.

(*t*) The cases in which the electors may, under this section, appoint a Returning Officer, or Deputy Returning Officer, are:

1. Where the Returning Officer or Deputy Returning Officer has died.
2. Does not attend within an hour after the time appointed.
3. Or where no Returning Officer or Deputy Returning Officer has been appointed.

a Returning Officer or Deputy Returning Officer. (*u*) 36 V. c. 48, s. 96.

Returning Officer and Deputy Returning Officers to be conservators of the peace their powers.

97. Every Returning Officer and Deputy Returning Officer shall, during the days of the election, or of the voting of electors upon a by-law, act as a conservator of the peace for the City or County in which the election or voting is held; and he, or any Justice of the Peace having jurisdiction in the Municipality in which the election or voting is held, may cause to be arrested, and may summarily try and punish by fine or imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person, who assaults, beats, molests or threatens any voter coming to, or remaining at, or going from the election or voting; (*v*) and, when thereto required, all constables and persons present at the election or voting, shall assist the Returning Officer, or Deputy Returning Officer, or Justice of of the Peace. 36 V. c. 48, s. 97.

Special constables may be sworn in.

98. Every Returning Officer, or Deputy Returning Officer, or Justice of the Peace may appoint and swear in any number of special constables to assist in the preservation of the peace and of order at an election or at the voting of electors upon a by-law; and any person liable to serve as constable, and required to be sworn in as a special constable by a Returning Officer or Deputy Returning Officer, or Justice, shall, if he refuses to be sworn in or to serve, be liable to a penalty of

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(*u*) A Returning Officer, so appointed, should not be a partizan. It is the duty of a Returning Officer to stand indifferent between the contending parties; to have no interests to serve for either, or for himself; to approach his duty with the simple desire to do strict justice; to be ready and willing to give reasonable information as to the state of his proceedings; to conceal nothing; to evade no proper enquiry; to mislead no one by silence, or exhibit anything calculated to deceive; and he ought not to make a pretence of strictly following the letter of the law, to defeat it. *Per* Wilson, J., in *The Queen ex rel. Corbett* v. *Jull*, 5 U. C. P. R. 48.

(*v*) In general, the Returning Officer will act under this section upon his own view. But when, instead of acting on facts observed by himself, or within his own knowledge, he acts on the information of others, it is suggested he should take a regular information, and proceed as any other Magistrate would be required to do under like circumstances. An example would be, when the complaint is an assault upon a voter coming to or returning from the election, committed at a distance from the poll. The main object of the section is to empower the Returning Officer to act promptly on the spot in the hearing and determining of offences occurring at the poll; but in point of authority he is not so restricted.

twenty dollars, to be recovered to the use of any one who will sue therefor. (*w*) 36 V. c. 48, s. 98.

DIVISION III.—OATHS.

In case of freeholders. *Sec.* 99.
In case of householder or tenant. *Sec.* 100.
In case of a person voting on income. *Sec.* 101.
In case of a person voting as a farmer's son. *Sec.* 102.
Administering. *Sec.* 103.

Oaths, etc., that may be put to person claiming to vote as a freeholder.

99. The only oaths or affirmations to be required of any person claiming to vote in respect of a freehold, shall be as follows, or to the like effect :— (*x*)

You swear (*or* solemnly affirm) that you are the person named, or purporting to be named, in the list (*or* supplementary list) of voters now shown to you (*a*) (*showing the list to the voter*) ;

That you are a freeholder in your own right, (*b*) (*or* right of your wife, *as the case may require*) ;

That you are a natural-born (*or* naturalized) subject of Her Majesty, (*c*) and of the full age of twenty-one years ; (*d*)

(*In the case of Municipalities not divided into Wards.*) That you have not voted before at this election, either at this or any other polling place.

(*In the case of Municipalities divided into wards.*) That you have not voted before at this election either at this or any other polling place in this Ward, and (*if the elector is tendering his vote for Mayor, Reeve or Deputy Reeve*) that you have not voted before or

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(*w*) The penalty may, it is apprehended, though not so expressed, be sued for in any Court of competent jurisdiction, for instance, in a Division Court. See *Brash q. t.* v. *Taggart*, 16 U. C. C. P. 415.

(*x*) It was at one time held that the swearing falsely at an election of Alderman, for the City of Toronto by a person that he is the person described in the list of voters entitled to vote, was not perjury, *Thomas* v. *Platt*, 1 U. C. Q. B.. 217.

(*a*) A Returning Officer who receives illegal votes, not on his list, may be made to pay costs. *The Queen ex rel. Johnson* v. *Murney*, 5 U. C. L. J. 87, see further *Regina ex rel. Totten* v. *Benn*, 4 U. C. L. J. 162. Where a voter has parted with the property in respect to which he votes, though on the list, he has no legal right to to vote. *The Queen ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152. If a Returning Officer, upon discovering an error in the entry of a vote, has the power to make the necessary correction, he must make it promptly, and only in a case where the mistake in making the entry is beyond doubt. *Ib.*

(*b*) See note *h* to s. 76.

(*c*) See note *b* to sec. 70.

(*d*) See note *b* to sec. 76.

elsewhere in this Municipality at this election for Mayor, (Reeve *or* Deputy Reeve *as the case may be*) ;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election ;

That you have not received anything, nor has anything been promised to you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not directly or indirectly paid or promised any thing to any person either to induce him to vote or refrain from voting at this election : So help you God.

(*In the case of a new Municipality in which there has not been any assessment roll, then instead of referring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote.*)

In new Municipality where no assessment roll.

36 V. c. 48, s. 99 ; 40 V. c. 8, s. 50.

100. The oath of affirmation to be required of any person claiming to vote as householder or tenant, (*e*) shall be as follows, or to the like effect :—

Oath of householders or tenants.

You swear (*or* solemnly affirm) that you are the person named or purporting to be named on the list (*or* supplementary list) of voters now shown to you (*showing the list to the voter*) ; (*f*)

That on the day of 18 (*the day certified by the Clerk of the Municipality as the date of the return, or of the final revision and correction, of the assessment roll upon which the voters' list used at the election is based*) you were actually, truly, and in good faith, possessed to your own use and benefit, as tenant or occupant, of the real estate in respect of which your name is entered on the said list ; (*g*)

That you are (*or* your wife is) a householder or tenant within this Municipality ;

That you have been resident within this Municipality for one month next before this election ; (*gg*)

That you are a natural-born (*or* naturalized subject) of Her Majesty (*h*) and of the full age of twenty-one years ; (*i*)

(*In the case of Municipalities not divided into Wards.*) That you have not voted before at this election, either at this or any other polling place ;

(*In the case of Municipalities divided into Wards.*) That you have not voted before at this election, either at this or any other polling place in this Ward, and (*if the elector is tendering his vote for Mayor, Reeve or Deputy Reeve*) that you have not voted before or elsewhere

(*e*) See note *i* to s. 76.

(*f*) See note *a* to s. 99.

(*g*) See note *i* to s. 76.

(*gg*) See note *h* to s. 76.

(*h*) See note *b* to s. 70.

(*i*) See note *b* to s. 76.

in this municipality at this election for Mayor, (Reeve *or* Deputy Reeve *as the case may be*) ;

That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election ;

That you have not received anything nor has anything been promised to you directly or indirectly either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not directly or indirectly paid or promised anything to any person either to induce him to vote or refrain from voting at this election : So help you God.

In new Municipality where no assessment roll

(*In the case of a new Municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the election, and referring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of such Municipality.*)

37 V. c. 16, s. 2 ; 40 V. c. 8, s. 50 ; 40 V. c. 12, s. 15.

Oath of voters on income.

101. The oath or affirmation to be required of any person claiming to vote in respect of income shall be as follows :

"You swear (*or* solemnly affirm) that you are the person named (*or* purporting to be named by the name of) on the list (*or* supplemental list) of voters now shown to you (*showing the list to voter*) ; (*j*)

That on the day 18 (*the day certified by the Clerk of the Municipality as the date of the final revision and correction of the assessment roll upon which the voters' list used at the election is based*), you were, and thenceforward have been continuously, and still are, a resident of this Township (City, Town *or* Village, *as the case may be*) ; (*k*)

That at the said date, and for twelve months previously, you were in receipt of an income from your trade (office, calling *or* profession, *as the case may be*) of a sum of not less than four hundred dollars ;

That you are a subject of Her Majesty by birth (*or* naturalization, *as the case may be* ;) (*l*) and are of the full age of twenty-one years ; (*m*)

(*In the case of Municipalities not divided into Wards.*) That you have not voted before at this election, either at this or any other polling place ;

(*In the case of Municipalities divided into Wards.*) That you have not voted before at this election, either at this or any other polling place in this Ward, and (*if the elector is tendering his vote for Mayor, Reeve or Deputy Reeve*) that you have not voted before or elsewhere in this Municipality at this election of Mayor (Reeve *or* Deputy Reeve, *as the case may be*) ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to

(*j*) See note *a* to s. 99.

(*k*) See note *h* to s. 76.

(*l*) See note *b* to s. 70.

(*m*) See note *b* to s. 76.

vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or refrain from voting at this election : So help you God.

37 V. c. 3, s. 4 ; 39 V. c. 5, s. 7 ; 40 V. c. 12, s. 16.

102. The oath or affirmation to be required from a farmer's son claiming to be entitled to vote (*n*) shall be as follows :— **Form of oath of farmer's son.**

You swear (*or solemnly affirm*) that you are the person named (*or* purporting to be named by the name of ,) in the list (*or* supplementary list) of voters now shown to you (*showing the list to voter*) ; (*o*)

That on the day of 18 (*the day certified by the Clerk of the Municipality, as the date of the return, or of the final revision and correction, of the assessment roll upon which the voters' list used at the election is based, as the case requires,*) A. B. (*naming him or her*), was actually, truly, and in good faith possessed to his (*or* her) own use and benefit as owner, as you verily believe, of the real estate in respect of which your name is so as aforesaid entered on said list of voters ;

That you are a son of the said A. B. ;

That you resided on the said property for twelve months next before the said day, not having been absent during that period, except temporarily, and not more than four months in all ;

That you are still a resident of this Municipality, and entitled to vote at this election ;

That you are a subject of Her Majesty by birth (*or* naturalization *as the case may be*) ; and are of the full age of twenty-one years ;

(*In the case of Municipalities not divided into Wards.*) That you have not voted before at this election, either at this or any other polling place ;

(*In the case of Municipalities divided into Wards.*) That you have not voted before at this election, either at this or any other polling place in this Ward, and (*if the elector is tendering his vote for Mayor, Reeve or Deputy Reeve*) that you have not voted before or elsewhere in this Municipality at this election for Mayor, (Reeve *or* Deputy Reeve *as the case may be*) ;

That you have not received anything, nor has anything been promised you directly or indirectly either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not directly or indirectly paid or promised anything to any person either to induce him to vote or refrain from voting at this election :

So help you God.

40 V. c. 9, s. 9.

(*n*) See sec. 77.

(*o*) See note *a* to sec. 99.

When and how oaths are to be administered.

103. Such oaths or affirmations shall be administered by the Returning Officer or Deputy Returning Officer as the case may be, at the request of any candidate or his authorized agent, and no inquiries shall be made of any voter, except with respect to the facts specified in such oaths or affirmations. (*p*) 36 V. c. 48, s. 101.

DIVISION IV.—PROCEEDINGS PRELIMINARY TO THE POLL.

Nomination Meetings. *Secs.* 104, 106, 107.
Presiding Officer. *Secs.* 105, 107, 110.
Provision for Christmas Day. *Sec.* 108.
Interval between Nomination and Election in case of remote Townships. *Sec.* 109.
Notice of Nomination. *Sec.* 111.
Proceedings at Nomination. *Sec.* 112
Resignations – Notification as to Candidates. *Sec.* 113.
Poll, when and where to take place. *Sec.* 112.
Votes to be given by Ballot. *Sec.* 114.
List of Defaulters in payment of Taxes. *Sec.* 115.
Ballot Boxes. *Sec.* 116.
Ballot Papers. *Secs.* 117, 118, 119, 120.
Polling Places. *Sec.* 121.
What to be furnished to Deputy Returning Officers. *Secs.* 120, 122, 125, 127, 128, 132.
Placards to be posted. *Sec.* 123.
Voters' and Defaulters' Lists. *Secs.* 124–130.
Certificates as to the Assessment Roll. *Sec.* 131.
Where Electors to vote. *Secs.* 133-137.

Annual meeting for

104. A meeting of the electors shall take place for the nomination of candidates for the office of Mayor in Cities,

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(*p*) The Returning Officer should, on request of either of the candidates, or his agent (whether such agent be or be not a duly qualified elector), administer the necessary oaths or affirmations. *Per* Hagarty, J., in *The Queen ex rel. Gardener* v. *Perry*, 3 U. C. L. J., 90: see also *The Queen* v. *Spalding*, Car & M. 568. The refusal of an elector to take the oath is, if the relator would otherwise have had a majority, a good ground for setting aside the election. *The Queen ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137. See as to prosecutions for false oaths, under enactments corresponding to the above, the following cases: *The Queen* v. *Dodsworth*, 2 Moo. & R. 72; *S. C.*, 8 C. & P. 218, where form of indictment is given. See further, *The Queen* v. *Ellis*, Car. & M. 564; *The Queen* v. *Thompson*, 2 Moo. &. R. 355, as to the evidence.

and for Mayor, Reeve and Deputy Reeves in Towns, (*q*) at the hall of the Municipality, (*r*) on the last Monday in the month of December, annually, at ten of the clock in the forenoon, (*s*) and the Deputy Reeves shall be designated as first, second, third, &c., according to the number to be elected. 36 V. c. 48, s. 102. nomination of mayor, reeve, deputy reeve, etc.

105. The Clerk of the Municipality shall be the Returning Officer to preside at such meeting, or in case of his absence, the Council shall appoint a person to preside in his place; and if the Clerk or the person so appointed does not attend, the electors present shall choose a chairman or person to officiate from among themselves, and such Clerk or chairman shall have all the powers of a Returning Officer. (*t*) 36 V. c. 48, s. 103. The clerk to preside. Chairman.

(*q*) A nomination is a resolution submitted to the electors that the party named is a candidate for their suffrage for an office named. *Per* Wilson, J. in *The Queen ex rel. Corbett* v. *Jull*, 5 U. C. P. R. 47. See further, note *b* to sec. 112. A popular impression exists that the Returning Officer ought, when there are more than the necessary number of candidates, to take a show of hands, and that the omission to do so is an irregularity. The modern practice is no doubt to take a show of hands. But formerly there were several modes of expressing the opinion of the electors, which constituted an election by the view, either holding up of the hands, calling out the names of the candidates, or by dividing into separate bodies. When, however, a poll was demanded, these forms were unnecessary. Clark on Elections, 160.

(*r*) The sessions of the County of St. John had persuant to act of the assembly appointed a certain school-house in the parish of L. as, the place of meeting for the nomination of candidates for parish officers, but the Poll Clerk gave a notice for the meeting to be held at the house of one C, in the same settlement and not more than seventeen rods distant from the school-house. The parishioners met at the place named in the notice, organized the meeting, and then adjourned to meet at the school-house where the election afterward took place. The election was held to be void. *Ex parte Robinson*, 3 Pugs. N. B. 389.

(*s*) If, through some blunder, the majority of the electors were to mistake the day of election, and abstain from voting, it might be held that an election by the minority would not be a valid election. *The Queen* v. *Bradford*, 2 L. M. & P. 35.

(*t*) The Council should provide for the absence of the Clerk, if at all apprehended or expected. Should they fail to do so, the electors present may choose a Chairman. Should the electors do so, it is submitted the Chairman so chosen would have a right to conduct the nomination to its termination, notwithstanding the presence in the meantime of the Clerk, or a person appointed by the Council as his substitute. The proceedings at the meeting, if not presided over by

Nomination meetings in cities, towns, etc.

106. A meeting of the electors (*u*) shall take place for the nomination of candidates for the offices of Aldermen in Cities, Councillors in Towns, and of Reeves, Deputy Reeves and Councillors in Townships not divided into Wards, and incorporated Villages at noon, on the last Monday in December annually, at such place therein, and in Cities and Towns, at such places in each Ward thereof, as may from time to time be fixed by by-law, and the Deputy Reeves shall be designated as first, second, third or fourth, according to the number to be elected. 37 V. c. 16, s. 3.

In townships divided into wards.

107. In Townships divided into Wards, the nomination of candidates for the office of Reeve (*v*) shall be held at ten of the clock in the forenoon (*w*) on the last Monday in December, at such place in the Township as may from time to time be fixed by by-law, (*x*) and the Township Clerk shall preside; (*y*) the nomination of candidates for the office of Councillor, to be elected for each Ward, shall take place at noon, at such place in the Township or in each Ward as may be fixed by by-law. (*z*) 37 V. c. 16, s. 3.

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the officer or person assigned, would in all probability be held absolutely void. "It cannot be a mere matter of procedure or form, that there should be no person presiding at the meeting in whom is vested the authority for conducting the election and for maintaining peace and order, to whom the Legislature has entrusted the counting of votes and certifying the result. In the absence of any such person, I do not see how a poll can be taken, or the result legally ascertained." *Per* Draper, C. J., *In re Hartley and Emily*, 25 U. C. Q. B. 15. "The Legislature says, and I must take it, for very good reasons, that the election is to be conducted by a particular officer, and then another person goes and conducts it. Even if I had a discretion, I should not exercise it in supporting such a practice. It is very much the same as if a cause was referred to a barrister, and he were to go away for his own pleasure and leave it to his clerk, and then it was said that the award was good because it was made just as well as if it had been made by the barrister. Or if a cause was to be heard by a Judge, and he left it to one of the masters, he might conduct it just as well as the Judge, but that would not do." *Per* Crompton, J., in *The Queen* v. *Backhouse et al.*, 12 L. T. N. S. 579; see further *Pickering* v. *James*, L. R. 8 C. P. 489.

(*u*) A meeting of the electors means a coming together of the electors. The attendance of one person only could not be a meeting. See *Sharp* v. *Dawes*, L. R. 2 Q. B. Div. 26.

(*v*) See note *q* to s. 104.

(*w*) See note *s* to s. 104.

(*x*) See note *r* to s. 104.

(*y*) See note *t* to s. 105.

(*z*) Formerly persons to fill the office of Reeve and Councillors were

If nomination day falls on Christmas Day.

108. When the last Monday in December happens to be Christmas Day, the nomination of candidates for the offices of Mayor and Aldermen in Cities, and of Mayor, Reeve, Deputy Reeve and Councillors in other Municipalities, shall take place on the preceding Friday, at the times and places and in the manner prescribed by law. 39 V. c. 7, s. 20.

County council may by by-law, lengthen time between nomination and polling in remote townships.

109. Every County Council may, by by-law, made on or before the first day of July in any year provide that the day for the nomination of candidates for Reeve, Deputy Reeves, and Councillors in Townships situate in remote parts of the County shall be upon the last Monday but one in December, but all the other provisions of law relating to municipal elections shall apply to the elections in such Townships.

Copy of by-law to be sent to townships affected.

2. Forthwith, after the passing of such by-law, the County Clerk shall transmit a copy thereof to the Clerks of the Townships to which the same relates. 40 V. c. 8, s. 48.

Presiding officer.

110. The Returning Officer appointed for each Ward, as in the ninety-fourth section mentioned or the Clerk as the case may be shall respectively preside at the meeting for the nomination of candidates, and in case of the absence of such presiding officer, the meeting may choose a chairman. (*zz*) 36 V. c. 48, s. 105, *part*.

Notice of nomination meeting.

111. The Clerk or other Returning Officer whose duty it is to preside at the meeting for the nomination of candidates shall give at least six days' notice (*a*) of such meeting. 36 V. c. 48, s. 105, *part*.

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nominated at the same time and place. The result was that there was some confusion as to the different persons to fill the different offices, the design of this section by providing that nominations for Reeve shall be at 10 o'clock in the forenoon, and the nomination for Councillors at noon is to avoid such confusion.

(*zz*) See note *t* to sec. 105.

(*a*) This means six full days. *In re Sims* v. *Toronto*, 9 U. C. Q. B. 181. Where a statute says a thing shall be done so many days, or so many days at least, before a given event, the day of the thing done and that of the event must both be excluded. *The Queen* v. *Shropshire*, 8 A & E. 173; *Mitchell* v. *Foster*, 9 Dowl. 527. A notice of "ten days at least" for a hearing, means that there shall elapse at least ten periods of twenty-four hours each between the day of it delivery and the day of hearing. *Per* Maule J., in *Norton* v. *Salisbury*, 4 C. B. 37. It means ten clear, full and complete days, and

Nomination and proceedings incident thereto.

112. At the said meetings, the person or persons to fill each office, shall be proposed and seconded *seriatim;* (*b*) and if no other candidate but one for any particular office is proposed, the Clerk or other Returning Officer or chairman shall, after the lapse of one hour from the time fixed for holding the meeting, declare such candidate duly elected for such office. (*c*) But if two or more candidates are proposed for any particular office, and if a poll is required by them respectively, or by any elector, the Clerk or other Returning Officer or chairman shall adjourn the proceedings for filling such office until the first Monday in January next thereafter, when a poll or polls shall be opened in each Ward or polling subdivision, at such place or places respectively as may be fixed by the by-law of the said Councils for the election, at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer. (*d*) 36 V. c. 48, s. 106.

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not nine days and fractions of other two days. *Per* Wilde, C. J., in *Adey* v. *Hill*, *Ib.* 40. See further *Howes* v. *Peirce*, L. R. 1 C. P. Div. 670.

(*b*) It would seem that where more persons are proposed and seconded than necessary, and, after polling commenced, all except the necessary number retire, the Returning Officer could not close the poll unless under the circumstances mentioned in this section. See *The Queen ex rel. Horne* v. *Clarke*, 6 U. C. L. J. 114. The election is commenced when the Returning Officer receives the nomination of candidates. *The Queen* v. *Cowan*, 24 U. C. Q. B. 606.

(*c*) By allowing an hour to elapse between the nomination and the proceeding to close the election in case of no further nominations, the Legislature means to protect the electors against haste and surprise. *Per* Wilson, J., in *The Queen ex rel. Corbett* v. *Jull*, 5 U. C. P. R. 48. Unless an opportunity be given to the electors present to express their assent or dissent, there cannot be said to be an election by acclamation. *Ib.*

(*d*) Where a poll is demanded the election commences with it as being the regular mode of popular election, the shew of hands being only a rude and imperfect declaration of the sentiments of the electors. In the nature of things the demand of a poll never is, nor can reasonably be expected to be made until the necessity for such demand arises, that is until one of the contending parties is dissatisfied with the decision of the chairman upon the show of hands. *Per* Tindall, C. J. in *Campbell* v. *Maund*, 5 A. & E. 881. The polling is a continuation of the proceedings initiated by the nomination. See *The King* v. *Archdeacon of Chester*, 1 A. & E. 342. Where a poll is granted a poll must be had even although all the candidates except one after the nomination and before the polling decline the

113. At the nomination meeting, (*e*) any person proposed for one or more offices may resign, or elect for which office he is to remain nominated; and in default, he shall be taken as nominated for the office in respect of which he was first proposed and seconded; (*f*) the Clerk or other Returning Officer or chairman shall, on the day following that of the nomination, post up in the office of the Clerk of the Municipality the names of the persons proposed for the respective offices. (*g*) 36 V. 48, s. 108.

Any person proposed may resign, etc.; in default to be taken as nominated.

Notices of person proposed.

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contest. *Wexford Election*, L. R. 3 Ir. C. L. 612; *The Queen* v. *Cooper*, L. R. 5 Q. B. 457. At a Township election after the nomination of several candidates the Returning Officer adjourned to another room to receive votes, but none were tendered. He then closed the poll. *Held*, the election was void. *The Queen ex rel. Smith* v. *Brouse*, 1 U. C. P. R. 180. It is necessary that during the hours for polling the electors should have free access to the polling places. The fact that a large number of duly qualified electors could not cast their votes, is a sufficient reason for setting aside an election, if the result would have been affected by the unpolled votes. *Per* Richards C. J., in *The Queen ex rel. Davis et al.* v. *Wilson et al.*, 3 U. C. L. J. 165; See further, *The Queen ex rel. Kirk* v. *Asselstine*, 1 U. C. L. J. 49; *The Queen ex rel. Gibbs* v. *Branighan et al.*, 3 U. C. L. J. 127, *Anon.* 8 U. C. L. J. 76.

(*e*) See note *q* to s. 104.

(*f*) It may be that the same person is qualified to fill incompatible offices, such as Reeve, Deputy Reeve, and Councillor, and has been nominated for more than one of these offices. A person so nominated must elect for which office he is to remain nominated. If he fail to do so, he is to be considered as nominated only for the office for which he was first proposed and seconded. This provision is absolutely necessary to avoid entanglement. A candidate proposed for only one office may also resign, with the consent of his proposer and seconder and of the electors present. *The Queen ex rel. Coyne* v. *Chisholm*, 5 U. C. P. R. 328.

(*g*) Duties are cast as well on the Chairman of the meeting as on the Clerk of the Municipality, the performance of which is necessary to to the proper conduct of the election. It is essential that each Returning Officer should have a list of the candidates; but where there was an omission of the name of one of the candidates, and the question to be decided was not the mere abstract ground of the omission of the name, but only what effect it had upon the final result of the election; and it did not appear that the result would have been different if the name omitted had been properly entered on the list, the election was upheld. *The Queen ex rel. Walker* v. *Mitchell*, 4 U. C. P. R. 218. A voter who permits one candidate to retire without expressing objection of any kind, and after his retirement nominates another candidate for the office, will not be allowed afterwards to insist upon having the name of his first nominee entered on the poll books. *The Queen ex rel. Coyne* v. *Chisholm*, 5. U. C. P. R. 328.

Votes to be by ballot.

114. In case of a poll at an election of persons to serve in Municipal Councils, the votes shall be given by ballot. (*h*) 38 V. c. 28, s. 1.

Preparation of Defaulters Lists.

List of defaulters in payment of taxes.

115. On or before the day of nomination of candidates, if the Collector's roll has been returned to the Treasurer of the Municipality, the Treasurer shall prepare and verify on oath, or if the Collector's roll has not been so returned, the Collector shall prepare and verify on oath, a correct alphabetical list of—

(*a*) All persons who, being on the voters' list (that is to say the first and second parts thereof) by reason of their income only, have not paid their municipal taxes on such income on or before the fourteenth day of December preceding the election; and

(*b*) In Municipalities which have passed by-laws under sub-section two of section four hundred and sixty-one of this Act, all persons on the voters' list (that is to say the first and second parts thereof), who have been assessed for real property, but have not paid their municipal taxes on such property on or before the fourteenth day of December preceding the election. 40 V. c. 12, s. 6.

List to be made for each polling division.

2. Where a municipality is divided into polling sub-divisions, such a list of defaulters shall be made for each polling sub-division. 40 V. c. 12, s. 7.

Certified copies to be furnished.

3. The person preparing the said defaulters' lists, shall furnish to all persons applying for the same, certified copies thereof, and of the affidavit verifying the same, in the same manner and for the same compensation as copies of the voters' list are to be furnished. 40 V. c. 12, s. 8.

(*h*) The ballot was first applied to Municipal Elections in 1874, by the Act 38 Vict. cap. 28, Ont. There have as yet not been many decisions under it. The great characteristic of vote by ballot is secrecy, its design is to secure the largest possible freedom of election. It is impossible to destroy all the influences which may be said to effect the freedom of the voter but it is the desire of the Legislature to reduce these influences to the smallest possible compass.

Ballot Boxes.

116. Wherever a poll is required, the Clerk of the Municipality (*m*) shall procure or cause to be procured as many boxes (hereinafter called ballot boxes) as there are Wards or polling sub-divisions within the Municipality. Ballot boxes to be furnished.

2. The ballot boxes shall be made of some durable material, shall be provided with a lock and key, and shall be so constructed that the ballot paper can be introduced therein, and cannot be withdrawn therefrom unless the box be unlocked. How made.

3. When it becomes necessary for the purposes of an election to use the ballot boxes, it shall be the duty of the Clerk of the Municipality, two days at least before the polling day, to deliver one of the ballot boxes to every Deputy-Returning Officer appointed for the purposes of the election. Delivery of to Deputy Returning Officers.

4. The ballot boxes, when returned to the Clerk after the election, shall be preserved by him for use at elections for the Municipality; and it shall be the duty of the Clerk to have ready for use, at all times, as many ballot boxes as there are Wards or polling sub-divisions in the Municipality. Delivery to clerk for future elections.

5. If the Clerk fails to furnish ballot boxes in the manner herein provided, he shall incur a penalty of one hundred dollars in respect of every ballot box which he has failed to furnish in the manner prescribed. Penalty on failure to furnish boxes.

6. It shall be the duty of the Deputy-Returning Officer in every Ward or polling sub-division not supplied with a ballot box within the time prescribed, forthwith to procure one to be made, and he may issue his order upon the Treasurer of the Municipality in which such Ward or polling sub-division is situate for the cost of the ballot box, and the Treasurer Deputy returning officers may procure boxes.

(*m*) The Clerk upon whom the duties are cast by this section cannot be himself a candidate for office. He cannot properly act as Clerk and be a candidate, see *The Queen* v. *White*, L. R. 2 Q. B. 557. See further *The Queen* v. *Ward*, L. R. 8 Q. B. 210. The duties by this section cast upon the Clerk are essential to the success of voting by ballot. Ballot boxes are the machinery made necessary for the purpose. So important do the Legislature deem the performance of the duties by the Clerk that a penalty of $100 is recoverable in respect of every ballot box which the Clerk fails to furnish. See sub-sec. 5 of this section.

shall pay to the Deputy-Returning Officer the amount of the order. (*n*) 38 V. c. 28, s. 2.

Ballot Papers.

Ballot papers to be printed.

117. Where a poll is required, the Clerk of the Municipality shall forthwith cause to be printed, at the expense of the Municipality, such a number of ballot papers as will be sufficient for the purposes of the election. (*o*)

Contents and form of ballot papers.

2. Every ballot paper shall contain the names of the duly nominated candidates, arranged alphabetically in the order of their surnames; or if there are two or more candidates with the same surname, then in the order of their other names. (*p*) 38 V. c. 28, s. 3.

Different sets of ballot

118. The names of the candidates for Mayor in Cities, and for Mayor, Reeve and Deputy-Reeve in Towns, shall not

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(*n*) The amount of the order is as it were a debt due by the Corporation. The Deputy Returning Officer not supplied with a ballot box within the time prescribed, is authorized to bind the Corporation in the contraction of the debt. It is made the imperative duty of the Treasurer to pay the debt.

(*o*) It is not enough for the setting aside of an election held under this Act that there should appear to be a mere irregularity in the mode of proceedure. See sec. 168.

(*p*) The ballot papers must contain the names of the duly qualified candidates. It is not said expressly that they must contain the Christian as well as the surnames. The provision on the subject is that if there be two or more candidates with the same surname, then there must be their other names. From this it might without more be inferred that the Christian names are not necessary except where two or more of the candidates have the same surname. But the forms of ballots given in the Schedule contain both Christian and surnames of candidates, see s. 119. Whether the inaccuracies in these particulars would be a ground for setting aside an election apart from the result is a question. See *The Queen* v. *Coward* 16 Q. B. 819; *The Queen* v. *Bradley*, 3 E. & E. 634; *The Queen* v. *Plenty*, L. R. 4 Q. B. 346; *Mather* v. *Brown*, L. R. 1 C. P. Div. 596 See further s. 168. A candidate was twice nominated one nomination being good and the other bad. His name appeared in the ballot papers twice in respect of such nomination. Seventy-one voters made their marks to his name under one nomination and three hundred and one to the other. All the voters so voting intended to vote for the candidate and if both classes of voters could be added together be had a majority and was entitled to be returned. Held he was entitled to be returned *Northcote* v. *Pulsford* L. R. 10 C. P., 476. The names of the candidates must be arranged alphabetically in the order of their surnames, see *Mather* v. *Brown*, L. R. 1 C. P. Div. 596.

be included in the same ballot paper with the names of the candidates for Aldermen and Councillors respectively; (*q*) but

Papers to be prepared.

2. In Cities one kind or set of ballot papers shall be prepared for all the Wards or polling sub-divisions, containing the names of the candidates for Mayor, and another kind or set shall be prepared for each Ward or polling sub-division containing the names of the candidates for Aldermen in the Ward; and

In cities.

3. In Towns one kind or set of ballot papers shall be prepared for all the Wards or polling sub-divisions, containing the names of the candidates for Mayor and Reeve and Deputy Reeve, and another kind or set shall be prepared for each Ward or polling sub-division, containing the names of the candidates for Councillors in the Ward; and

In towns.

4. In Townships divided into Wards, one kind or set of ballot papers shall be prepared for all the Wards, containing the names of the candidates for Reeve, and another kind or set shall be prepared for each Ward, containing the names of the candidates for Councillors in the Ward. 39 V. c. 5, s. 1.

Townships divided into wards.

119. The ballot papers shall be in the form of Schedule A. to this Act. (*r*) 39 V. c. 5, s. 2.

Form of ballot papers.

Polling Places.

120. In case of Municipalities which are divided into Wards or polling sub-divisions, the Clerk of the Municipality shall, before the opening of the poll, deliver or cause to be delivered to every Deputy-Returning Officer the ballot papers which have been prepared for use in the Ward or polling sub-division for which such Deputy-Returning Officer has been appointed to act, and shall also furnish to the Deputy-Returning Officer or see that he is furnished with the necessary materials for voters to mark the ballot papers; and such materials shall be kept at the polling place by the Deputy-Returning Officer for the convenient use of voters. (*s*) 38 V. c. 28, s. 5.

Clerk to furnish deputy returning officers with ballot papers, etc.

(*q*) See note *o* to s. 117.

(*r*) See note *p* to s. 117.

(*s*) These duties are ministerial. The neglect of them except so far as the neglect has the effect of making an election impossible would not nullify the election. See s. 168 and notes thereto.

Compartments wherein voters may mark votes.

121. Every polling place shall be furnished with a compartment in which the voters can mark their votes screened from observation; and it shall be the duty of the Clerk of the Municipality and Deputy-Returning Officers respectively, to see that a proper compartment for that purpose is provided at each polling place. (*t*) 38 V. c. 28, s. 4.

Directions to Voters.

Clerk to furnish deputy returning officer with directions for voter's guidance.

122. In case of Municipalities divided into Wards or polling sub-divisions, the Clerk of the Municipality shall, before the opening of the poll, deliver or cause to be delivered to every Deputy Returning Officer such a number of printed directions, for the guidance of voters in voting, as he may deem sufficient, and shall so deliver or cause to be so delivered at least ten copies of such printed directions; such directions shall be printed in conspicuous characters, and may be according to the form in Schedule B. to this Act. (*u*) 38 V. c. 28, s. 6.

Deputy returning officers to placard the directions.

123. Every Deputy-Returning Officer shall before the opening of the poll, or immediately after he has received such printed directions from the Clerk of the Municipality, if he did not receive the same before the opening of the poll, cause such printed directions to be placarded outside the polling place for which he is appointed to act, and also in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. (*v*) 38 V. c. 28, s. 7.

Voters' and Defaulters' Lists.

Proper voter's list to be used at an election.

Rev. Stat. c. 9.

124. Subject to the provisions of the three next sections, the proper list of voters to be used at an election shall be the first and second parts of the last list of voters certified by the Judge and delivered or transmitted to the Clerk of the Peace under "*The Voters' Lists Act.*" 40 V. c. 12, s. 20.

(*t*) There can be no efficient system of voting by ballot without secrecy. Hence provision is to be made to enable voters to "mark their votes screened from observation." Disregard of this duty when the neglect is not total but partial is not *per se* a ground for setting aside an election. *The Queen ex rel. Preston* v. *Touchburn*, 6 U. C. P. R. 344; See further, s. 168 and notes.

(*u*) See note *s* to s. 120.

(*v*) See note *s* to s. 120.

125. For the fir
which there is no se
Municipality shall
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C. to this Act instea
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vote, and at the requ
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his name. *See* 36
39 V. c. 5, s. 9.

126. Where any te
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Village is formed, an
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names of the several
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the City, Town, or
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or certified voters' list
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tory, and shall place su
(as the case may be).

2. Such lists or supp
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the Clerk, and delivere
turning Officers for t
named in such lists to
16, 17; *See* 35 V. c.

127. In any Munic
assessment roll, but for
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by the County Judge
Clerk of the Municipa
prepare and deliver to
every or any Ward or
of Schedule C to this

125. For the first election of a new Municipality for which there is no separate assessment roll, the Clerk of the Municipality shall provide each Deputy Returning Officer with a poll book, prepared according to the form of Schedule C. to this Act instead of a voter's list, and either the Deputy Returning Officer or his sworn Poll Clerk shall therein enter, in the proper column, the names of each person offering to vote, and at the request of any candidate or voter, shall note the property on which the person claims to vote opposite his name. *See* 36 V. c. 48, s. 79; 38 V. c. 28, s. 8; *and* 39 V. c. 5, s. 9. For first election in new municipality.

126. Where any territory is added for municipal purposes, to any City, Town, or Village, or where a Town with additional territory is erected into a City, or a Village with additional territory is erected into a Town, or where a new Village is formed, and an election takes place before voters' lists including the names of the persons entitled to vote in such territory are made out, or before such lists are certified by the County Judge—in all such cases, the Clerk of the new or enlarged City, Town, or Village, shall extract the names of the several persons who would be entitled to vote in the territory composing or added to (as the case may be) the City, Town, or Village if such territory had remained separate from the City, Town, or Village, from the last filed or certified voters' list of the Municipality or Municipalities to which such territory formerly belonged, containing the names of the persons entitled to vote in respect of such territory, and shall place such names in lists or supplementary lists (as the case may be). Voter's lists in cases under section 81.

2. Such lists or supplementary lists shall shall be made in the form of Schedule C to this Act, and shall be signed by the Clerk, and delivered by him to the proper Deputy Returning Officers for the purpose of enabling the persons named in such lists to vote at the election. 38 V. c. 3, ss. 16, 17; *See* 35 V. c. 48, s. 79.

127. In any Municipality for which there is a separate assessment roll, but for which no voters' lists for the Municipality has been filed with the Clerk of the Peace or certified by the County Judge under "*The Voters' Lists Act*," the Clerk of the Municipality shall, before the poll it opened, prepare and deliver to the Deputy Returning Officer for every or any Ward or polling sub-division, a list in the form of Schedule C to this Act, containing the names, arranged List of voters. Rev. Stat. c. 9.

alphabetically, of all male persons appearing by the then last revised assessment roll to be entitled to vote in that Ward or polling sub-division, (*w*) and shall attest the said list by his solemn declaration in writing under his hand; (*x*)

2. In case of

(*a.*) Income voters, and

(*b.*) Persons assessed for real property, if the Municipality has passed a by-law under sub-section two of section four hundred and sixty-one of this Act,

Persons in arrears for taxes shall be excluded from list.

the Clerk shall exclude from such list such persons as may be returned to him by the Treasurer as being in default for

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(*w*) The purpose of furnishing the list is not to enable the Returning Officer himself to judge of the sufficiency or insufficiency of votes taken, but that all persons interested in the election may have a check at hand at the time of polling the votes. *The Queen ex rel. Dundas* v. *Niles*, 1 C. L. Chamb. R. 198; see also section 76. Persons whose names are on the original roll, though omitted by accident from the list, may, it seems, claim a right to vote: but not persons whose names are on the list, though not on the original roll. *The Queen ex rel. Helliwell* v. *Stephenson*, 1 C. L. Chamb. R. 270; See further, *North Victoria Election*, 11 U. C. L. J. N. S. 163. The list furnished to the Returning Officer ought to be alphabetical, and if not so the Returning Officer should himself make it alphabetical. *The Queen ex rel. Davis et al.* v. *Wilson et al.*, 3 U. C. L. J. 165, *per* Richards, J. Where the Returning Officer was not furnished with the list and notwithstanding proceeded with the election, *held*, that it was an irregularity which subjected the election to be avoided if the objection were taken by one qualified to urge it, although it might not *ipso facto* render the election void. *In re Charles* v. *Lewis et al.*, 2 C.L. Chamb. R. 171. The acquiescence of the candidates in the election being proceeded with under these circumstances, though it might preclude *them* from disputing the validity of the election on that ground, could not affect the right of a voter who was no party to such arrangement. *Ib.* In such a case, however, it would seem to be necessary to shew that the absence or inaccuracy of the list prejudiced the election, or that some candidate or voter refused on that ground to proceed, and relied upon the objection. *The Queen ex rel. Ritson* v. *Perry et al.*, 1 U. C. P. R. 237; *The Queen ex rel. Walker* v. *Mitchell*, 4 U. C. P. R. 218. Where the Returning Officer used the original roll instead of the list, having first announced that he concluded to do so, and no one objected, the election was supported. *The Queen ex rel. Hall* v. *Grey et al.* 15 U. C. Q. B. 257.

(*x*) It would also seem that it is no objection to the list that it was not verified as the statute requires, unless some objection be taken before or during the election. *The Queen ex rel. Ritson* v. *Perry et al.* 1 U. C. P. R. 237.

not having paid their municipal taxes respectively on or before the fourteenth day of December preceding the election; and every list of voters so prepared shall be the proper voters list to be used at the election. (*y*) 38 V. c. 28, s. 8; 39 V. c. 5, s. 6 (1) & s. 9.

Delivery of copies of voters' list and defaulters' list to deputy returning officers.

128. In the case of Municipalities which are divided into Wards or polling sub-divisions, the Clerk of the Municipality shall, before the poll is opened, deliver to the Deputy Returning Officer for each Ward or polling sub-division, a copy, according to the form of Schedule C to this Act, certified to be correct, of the proper list of voters for the Ward or polling sub-division under the one hundred and twenty-fourth and following sections; and also a copy of the proper defaulters' list for the polling sub-division, certified by the Treasurer or Collector pursuant to section one hundred and fifteen of this Act. 40 V. c. 12, s. 9. *See* 39 V. c. 5, s. 5 (2).

Copies may be obtained from clerk of peace.

129. The copies of the voters' lists in the last section mentioned, may be prepared by the Clerk of the Municipality, or may be procured from the Clerk of the Peace, if filed under "*The Voters' Lists Act*," and in the latter case the Clerk of the Peace shall be entitled to receive the sum of six cents for every ten voters whose names are on the list. 40 V. c. 12, s. 10.

Defaulters' list to be evidence for deputy returning officer as to payment of taxes.

130. The defaulters' lists furnished and verified by the Treasurer or Collector as aforesaid, shall be the evidence on which the Deputy Returning Officers shall act in ascertaining the payment or non-payment of taxes by persons claiming to vote in respect of income, or in respect of real property, in the cases mentioned in section one hundred and fifteen of this Act. 40 V. c. 12, s. 11.

Certificates as to Assessment Roll.

Clerk to give certificate of dates of return and final revision of assessment roll.

131. The Clerk of the Municipality shall before the opening of the poll, deliver or cause to be delivered to every Deputy Returning Officer a certificate (which may be in the form of Schedule D to this Act), of (1) the day when the assessment roll upon which the voters' list to be used at the election is based, was returned by the Assessor, and also (2) of the day when the said assessment roll was finally revised and corrected.

(*y*) See s. 115.

Fee.

2. The Clerk shall also give such certificate upon payment of the sum of twenty-five cents, to any person applying for the same, under a penalty of two hundred dollars in case of neglect or refusal.

3. Such certificate, when delivered to the Deputy Returning Officer, shall be the evidence upon which he shall act in inserting in the oath to be administered to voters the date of the return or final revision and correction of the assessment roll as the case may be.

To be evidence of such date at the poll.

4. An assessment roll shall be understood to be finally revised and corrected when it has been so revised and corrected by the Court of Revision for the Municipality, or by the Judge of the County Court in case of an appeal, as provided by "*The Assessment Act*," or when the time during which such appeal may be made has elapsed, and not before. 40 V. c. 12 s. 12.

Rev. Stat c. 180.

Municipalities not divided into wards or polling subdivitions, clerk to perform duties of deputy returning officers.

132. In case of Municipalities which are not divided into Wards or polling sub-divisions, the Clerk shall perform the duties which in other cases are performed by Deputy Returning Officers, and shall provide himself with the necessary ballot papers, and also with the materials for marking ballot papers, printed directions before mentioned, copies of the voters' list and defaulters' list, and certificate of the dates of the return and final revision of the assessment roll, similar to those required to be furnished to Deputy Returning Officers; and the Clerk shall perform the like duties with respect to the whole Municipality as are imposed upon a Deputy Returning Officer in respect of a Ward or polling sub-division. (*z*) 38 V. c. 28, s. 9; 40 V. c. 12, s. 14 (2).

Where Electors to vote.

When electors shall vote in towns and cities.

133. In Towns and Cities, every elector may vote in each Ward in which he has been rated for the necessary property qualification, but in case of Mayor of Cities, Mayor, Reeve or Deputy Reeve of Towns, the elector is limited to one vote. (*a*) 36 V. c. 48, s. 80.

(*z*) See s. 117 *et seq.* and notes thereto.

(*a*) Before the Act of 1866, it was held that a voter entitled to vote in the ward in which he resided, could not vote in any other ward. *Anon* 8 U. C. L. J. 76. That Act enabled every elector in a *Town* or *Village* to vote in *each* ward in which he had been rated for the

When electors may vote in townships and villages.

134. In Townships and Incorporated Villages divided into Wards or polling sub-divisions, no elector shall vote in more than one Ward or polling sub-division for the same candidate. (*b*) 36 V. c. 48, s. 81.

Where persons are to vote for mayor, reeve or deputy reeve.

135. Every elector who is entitled to a vote in more than one Ward or polling sub-division shall vote for Mayor, in Cities, and for Mayor, Reeve and Deputy Reeve in Towns, and for Reeve in Townships divided into Wards, at the polling place of the Ward or polling sub-division in which he is resident, if qualified to vote therein; or otherwise where he first votes, and there only. (*c*) 39 V. c. 5, s. 3.

Penalty for voting twice for mayor, reeve or deputy reeve.

136. Any person who votes for Mayor, Reeve, or in Towns or Townships for Deputy Reeve, after having already voted for Mayor, Reeve or Deputy Reeve at some other polling place at that election, shall incur a penalty of fifty dollars, to be recovered, with full costs of suit, by any person who will sue for the same by action of debt in the Division Court having jurisdiction where the offence was committed; and any person against whom judgment is rendered shall be ineligible either as a candidate or elector at the next annual elections. (*d*) 39 V. c. 5, s. 4.

Deputy returning officers and agents may vote at polling place

137. The Clerk of the Municipality, on the request of any elector entitled to vote at one of the polling places, who has been appointed Deputy Returning Officer or Poll Clerk, or who has been named as an agent of a candidate to attend

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necessary property qualification. This section is a re-enactment of it. The meaning is, that a voter is no longer restricted to one vote, but, if qualified, in several wards, may vote in each of such wards, except in the case of the election of Mayor of Cities, Reeves or Deputy Reeves of Towns, who are elected by the entire vote of the Municipality. In England, voters have still to select the Ward in which they intend to vote, and are restricted to that Ward. See *The Queen* v. *Tugwell*, L. R. 3 Q. B. 704.

(*b*) This is a restriction on the right of a voter to vote in each Ward in which he is rated. See note *a* to s. 133.

(*c*) There is only one vote in for each of the officers named (sec. 123) that vote must be given in the Ward in which the voter resides if qualified to vote therein, otherwise where he first votes and *there* only.

(*d*) The penalty for violation of the provisions of this section are two fold:

1. Payment of $50 to be recovered by suit.
2. The incapacity to be either a candidate or elector at the next annual election.

where they are employed.

at any polling place other than the one where he is entitled to vote, shall give to such elector a certificate that he is entitled to vote at the polling place where he is to be stationed during the polling day; and such certificate shall also state the property or other qualification in respect of which he is entitled to vote.

2. On the production of such certificate, such Deputy Returning Officer, Poll Clerk or agent shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling station where he would otherwise have been entitled to vote; and the Deputy Returning Officer shall attach the certificate to the voters' list; but no such certificate shall entitle any such elector to vote at such polling place unless he has been actually engaged as such Deputy Returning Officer, Poll Clerk or agent during the day of polling; nor to vote for Aldermen in Cities, or Councillors in Municipalities divided into Wards, except in the Ward where he would otherwise be entitled so to vote. (*e*)

Who to administer oath.

3. In case of a Deputy Returning Officer voting at the polling station where he has been appointed, the Poll Clerk appointed to act at such polling place, or in the absence of the Poll Clerk any elector authorized to be present, may administer to such Deputy Returning Officer the oath required by law to be taken by voters. (*f*) 39 V. c. 5, s. 10.

DIVISION V.—THE POLL.

Ballot box to be exhibited. *Sec.* 138.
How votes to be received. *Secs.* 139, 140.
How ballot paper to be marked. *Sec.* 141.

(*e*) The obligation of a voter is to vote in the Ward in which he resides. s. 135. This section creates an exception in favour of a voter "appointed Deputy Returning Officer or Poll Clerk or who has been named as the agent of a candidate to attend at any polling place other than the one where he is entitled to vote." And this is made subject to the procurement and production of such a certificate as in the section prescribed.

(*f*) The duty under ordinary circumstances is cast on the Deputy Returning Officer to administer the oath to a voter when the administration of the oath is necessary. But where the Deputy Returning Officer is himself a voter, and if required to take the oath, provision is made for the administration of the oath to him by the Poll Clerk, or in his absence by any elector.

Exclusion from balloting compartment. *Sec.* 142.
Ballot papers not to be taken away. *Sec.* 143.
Proceedings in case of incapacity to mark ballot. *Sec.* 144.
Ballot paper inadvertently spoiled. *Sec.* 145.
Who may be present in polling places. *Sec.* 146.
Counting the votes—Objections—Statement. *Sec.* 147.
Who may be present at the counting of the votes. *Sec.* 148.
Certificates of state of Poll to be given. *Sec.* 149.
Packets to be made up and returned—Ballot Paper Account —Returns, etc. *Sec.* 150.
Clerk to cast up votes. *Sec.* 151.
And may vote in case of tie. *Sec.* 152.
Provision in case of riot, etc. *Secs.* 153, 154.
Declaration by Clerk. *Sec.* 155.
Oaths of office to be taken. *Sec.* 156.

Deputy returning officer to shew box empty, lock and seal it.

138. The Deputy Returning Officer shall, immediately before the commencement of the poll, show the ballot box to such persons as are present in the polling place, so that they may see that it is empty, and he shall then lock the box and place his seal upon it in such manner as to prevent its being opened without breaking the seal; and he shall then place the box in his view for the receipt of ballot papers, and shall keep it so locked and sealed. (*g*) 38 V. c. 28, s. 10.

Conduct of deputy returning officer on tender of vote.

139. Where any person claiming to be entitled to vote presents himself for the purpose of voting, the Deputy Returning Officer shall proceed as follows: (*h*)

Name.

1. He shall ascertain that the name of such person is entered, or purports to be entered upon the voters' list for

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(*g*) The duties of the Deputy Returning Officer under this section are as follows:—

1. To shew the ballot box to such persons as are present in the polling place;

2. To lock the box and place his seal upon it;

3. To place the box in his view for the receipt of ballot papers;

4. To keep it locked and sealed.

All these are made necessary to prevent what in the United States is known as "Stuffing the Ballot Box."

(*h*) The duties of the Deputy Returning Officer are in this section most clearly set forth. They are stated as nearly as possible in consecutive order. See sec. 147 and notes. The omission of any of these

the Ward or polling sub-division for which such Deputy Returning Officer is appointed to act.

Recording. 2. He shall record or cause to be recorded in the proper column of the voters' list, the residence and the legal addition of such person.

Oath. 3. If such person shall take the oath or affirmation required to be taken by voters in the manner directed by sections ninety-nine to one hundred and two inclusive of this Act, the Deputy Returning Officer shall enter or cause to be entered opposite such person's name, in the proper column of the said voters' list, the word "*Sworn*," or "*Affirmed*," according to the fact.

Objection. 4. Where the vote is objected to by any candidate or his agent, the Deputy Returning Officer shall enter the objection, or cause the same to be entered in the voters' list, by writing opposite the name of such person, in the proper column, the words "*Objected to*," stating at the same time by which candidate or on behalf of which candidate the objection has been made, by adding after the words "*Objected to*" the name of only such candidate.

Refusal to take the oath. 5. Where such person as aforesaid has been required to take the oath or affirmation, and refuses to take the same, the Deputy Returning Officer shall enter or cause to be entered opposite the name of such person, in the proper column of the voter's list, the words "*Refused to be Sworn*," or "*Refused to Affirm*," according to the fact; and the vote of such person shall not be taken or received; and if the Deputy Returning Officer takes or receives such vote, or causes the same to be taken or received, he shall incur a penalty of two hundred dollars.

Deputy returning officer to sign name on ballot paper. 6. Where the proper entries respecting the person so claiming to vote have been made in the voters' list in the manner prescribed, the Deputy Returning Officer shall sign his name or initials upon the back of the ballot paper.

Delivery of paper to voter. 7. The ballot paper shall be delivered to such person,

Deputy returning officer to ex- 8. The Deputy Returning Officer may, and upon request shall, either personally or through his sworn Poll Clerk, ex-

duties would not do more than effect, on a scrutiny, one particular vote concerned. See s. 168.

plain to the voter,
38 V. c. 28, s. 11.

140. The Depu
to be placed, in
"*Mayor*," "*Reeve*
and "*Councillor*,"
name of every vote
the voter has recei
derman or Council
5 (2).

141. Upon recei
the ballot paper so
the same shall forth
vided for the purpos
ballot paper in the
tained in Schedule
right-hand side, oppo
he desires to vote, th
paper across, so a
dates, and the marks
to expose the initials
leaving the compartm
showing the front to
as to make known to
for or against whom
ballot paper so folded

(*i*) Whether a partic
means of the operation o
and ought to remain a m
enable the Returning
be illegal. *Woodward* v

(*j*) The duties of the
as follows :—

1. To proceed into the
2. To mark there and
3. To fold the ballot p
candidates and marks an
Returning Officer.
4. To deliver the ballo
Officer.
5. To leave the Polling

The mode of marking
right hand side opposite
desires to vote, thus ✕."
pose, easy of execution b

plain to the voter, as concisely as possible, the mode of voting. 38 V. c. 28, s. 11. plain mode of voting.

140. The Deputy Returning Officer shall place, or cause to be placed, in the columns of the voters' list, headed "*Mayor*," "*Reeve*" (or "*Mayor and Reeve*"), "*Alderman*," and "*Councillor*," as the case may be, a mark opposite the name of every voter receiving a ballot paper, to denote that the voter has received a ballot paper for Mayor, Reeve, Alderman or Councillor, as the case may be. (*i*) 39 V. c. 5, s. 5 (2). Deputy returning officer to state in list that a ballot paper given.

141. Upon receiving from the Deputy Returning Officer the ballot paper so prepared as aforesaid, the person receiving the same shall forthwith proceed into the compartment provided for the purpose, and shall then and therein mark his ballot paper in the manner mentioned in the directions contained in Schedule B to this Act, by placing a cross on the right-hand side, opposite the name of any candidate for whom he desires to vote, thus ×; and he shall then fold the ballot paper across, so as to conceal the names of the candidates, and the marks upon the face of such paper, and so as to expose the initials of the Deputy Returning Officer, and leaving the compartment, shall, without delay, and without showing the front to any one or so displaying the ballot paper as to make known to any person the names of the candidates for or against whom he has marked his vote, deliver such ballot paper so folded to the Deputy Returning Officer, (*j*) who Voting, marking ballot paper.

(*i*) Whether a particular voter did vote may be ascertained by means of the operation of this section, but for whom he voted must and ought to remain a matter of secrecy. Any marking that would enable the Returning Officer to say for whom he voted would be illegal. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

(*j*) The duties of the voter, having received his ballot paper, are as follows :—

1. To proceed into the compartment provided for the purpose ;
2. To mark there and therein the ballot paper as indicated ;
3. To fold the ballot paper across so as to *conceal* the names of the candidates and marks and so as to *expose* the initials of the Deputy Returning Officer.
4. To deliver the ballot paper so folded to the Deputy Returning Officer.
5. To leave the Polling Place.

The mode of marking the ballot is "by placing a cross on the right hand side opposite the name of any candidate for whom he desires to vote, thus ×." This is a mark well devized for the purpose, easy of execution by men of the most moderate intelligence,

shall, without unfolding the same, or in any way disclosing the names of the candidates, or the marks made by such elector, verify his own initials, and at once deposit the same in the ballot box in the presence of all persons entitled to be present and then present in the polling place; and the voter shall forthwith leave the polling place. (*k*) 38 V. c. 28, s. 12.

Exclusion from balloting compartment.

142. While any voter is in any balloting compartment for the purpose of making his *(sic.)* ballot paper, no other person shall be allowed to enter the compartment, or to be in any position from which he can observe the mode in which the voter marks his ballot paper. (*l*) 38 V. c. 28, s. 13.

Voter not to take his paper from polling place.

143. No person who has received a ballot paper from the Deputy Returning Officer shall take the same out of the polling place; and any person having so received a ballot paper, who leaves the polling place without first delivering the same to the Deputy Returning Officer in the manner prescribed, shall thereby forfeit his right to vote; and the Deputy Returning Officer shall make an entry in the voters' list, in the column for remarks, to the effect that such person

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and at the same time perfectly neutral in its character, so as to be practically incapable of betraying its authorship by its appearance. *Per* Lord Neaves in *The Wigtown Case*, 2 O'M. & H. 215, 220

(*k*) The duties of the Deputy Returning Officer, under this section, are—

1. To give to the voter the ballot paper;
2. To verify his own initials on the redelivery of the paper by the voter;
3. To deposit the same in the ballot box in the presence of all persons entitled to be present and then present.

The Deputy Returning Officer must verify his initials without delay, and without showing the front to any one, or so displaying the ballot paper, as to make known to any person the names of the candidates for or against whom the voter has marked his vote.

The effect of non-compliance or imperfect compliance with these directions either on the part of the voter or of the Returning Officer will be hereafter considered. See s. 147 and notes.

(*l*) It is essential to secrecy for the purposes of this Act there shall be solitude. A compartment is provided for the purpose of enabling the voter in solitude to mark his ballot paper. Not only are all persons prohibited from entering the compartment while occupied by the voter but are prohibited from being in any position from which they can observe the mode of marking the ballot paper by the voter. But a partial disregard of the provisions of this section does not neccessarily avoid the election *Regina ex rel. Preston* v. *Touchburn*, 6 U. C. P. R. 344. See further s. 168 and notes.

received a ballot paper, but took the same out of the polling place, or returned the same, declining to vote, as the case may be; and in the latter case the Deputy Returning Officer shall immediately write the word "*Declined*" upon such ballot paper, and shall preserve the same; and in case the Clerk of the Municipality is not himself performing the duties of Deputy Returning Officer, the Deputy Returning Officer shall return said ballot paper to the Clerk of the Municipality, as hereinafter directed. (*m*) 38 V. c. 28, s. 14.

Proceedings in case of incapacity to mark paper.

144. In case of an application by any person claiming to be entitled to vote, who is incapacitated by blindness or other physical cause from marking his ballot paper, or in case of any person claiming to be entitled to vote who makes a declaration that he is unable to read, the proceedings (*n*) shall be as follows:—

1. The Deputy Returning Officer shall, in the presence of the agents of the candidates, cause the vote of such person to be marked on a ballot paper in manner directed by such person, and shall place the ballot paper in the ballot box.

2. The Deputy Returning Officer shall state or cause to be stated in the voters' list, by an entry opposite the name of such person in the proper column of the said voters' list, that the vote of such person is marked in pursuance of this section, and the reason why it is so marked.

3. The declaration of inability to read, or of incapacity to mark a ballot paper, may be in the form of Schedule E to this Act, and shall be made by the person claiming to be entitled to vote, at the time of the polling, before the Deputy Returning Officer, who shall attest the same as nearly as

(*m*) The marking of the ballot paper would not be of any avail as regards the result of the election unless the paper so marked is deposited in the ballot box for the purpose of being counted. The delivery of the ballot paper by the voter under s. 141 to the Returning Officer for the purpose of being deposited in the box is not only a duty on the part of the voter but one which he must perform on pain of forfeiting his vote.

(*n*) The ballot is in the first instance designed for persons having sufficient education to be able to read, sufficient sight to be able to see, and sufficient physical capacity to be able to mark the ballot paper. Where these conditions all exist there is not much difficulty in preserving all the secrecy deemed necessary to the free exercise of the ballot. But where these conditions do not exist, still the elector is to have the right to vote. That right, however, can only be exercised in the mode prescribed by this section.

may be according to the form given in Shedule F to this Act, and the said declaration shall be given to the Deputy Returning Officer at the time of voting. 38 V. c. 28, s. 15.

Proceedings in case ballot paper cannot be used.

145. A person claiming to be entitled to vote, who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the Deputy Returning Officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the Deputy Returning Officer, obtain another ballot paper in the place of the ballot paper so delivered up, and the Deputy Returning Officer shall immediately write the word "*Cancelled*" upon such ballot paper, and preserve the same; and in case the Clerk of the Municipality is not himself performing the duties of Deputy Returning Officer, the Deputy Returning Officer shall return said ballot paper to the Clerk of the Municipality, as hereinafter directed. (*o*) 38 V. c. 28, s. 16.

Who may be present at polling place.

146. During the time appointed for polling no person shall be entitled or permitted to be present in any polling place, other than the officers, candidates, clerks or agents authorized to attend at such polling place, and such voter as is for the time being actually engaged in voting: (*p*) it shall at all times be lawful for the Deputy Returning Officer to have present or to summon to his assistance in such polling place, any police constable or peace officer, for the purpose of maintaining order, or of preserving the public peace, or preventing any breach thereof, or of removing any person or persons who may, in the opinion of such Deputy Returning

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(*o*) The number of ballot papers given by the Deputy Returning Officer to voters, should correspond with the number of marked papers deposited in the ballot box. If this were not so there would not be much check as against dishonest practices on the part of a Returning Officer dishonestly inclined. But as a voter may by inadvertence so use his ballot paper as to render it useless for the purpose of his vote, he ought not for that cause to be deprived of his vote. Hence provision is made by this section for the issue in such a case of a second ballot paper to the voter, subject to the checks in the section declared.

(*p*) This section excludes from the polling place all persons except "the officers, candidates, clerks or agents authorized to attend at such polling place, and such voter as is for the time being actually engaged in voting." See section 165. The candidate has as much right to be present as an officer, clerk or agent authorized to attend the polling place, although the fact of his presence may produce some of the mischiefs which it was the design of the Legis-

Officer, be obstructing the polling or wilfully violating any of the provisions of this Act. (*q*) 38 V. c. 28, s. 17.

Counting the votes.

147. Immediatiately after the close of the poll in every polling place, the Deputy Returning Officer shall, in the presence of the Poll Clerk (if any) and of such of the candidates or of their agents as may then be present, open the ballot box, and proceed to count the votes (*r*) as follows :—

Rejected ballots.

1. He shall examine the ballot papers, (*s*) and any ballot paper which has not on its back the name or initials of the Deputy Returning Officer, (*t*) or on which more votes are given than the elector is entitled to give, (*u*) or on which anything, except the initials or name of the Deputy Returning Officer on the back, is written or marked, by which the voter can be

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leture when enacting vote by ballot, to remove. See *Clementson* v. *Mason*, L. R. 10 C. P. 209.

(*q*) If the Deputy Returning Officer, without justification, forcibly remove a person who has a right to be present, he may be sued for the trespass. *Clementson* v. *Mason*, L. R. 10 C. P. 209.

(*r*) There can be no question as to the right of the candidates to be present when the ballots are being examined and counted by the Deputy Returning Officer. See note *p* to s. 146 and s. 165.

(*s*) The ballots not to be counted are the following :—

1. Those not having on their back the name or initials of the Deputy Returning Officer.

2. Those on which more votes are given than the elector is entitled to give.

3. Those on which anything except the initials or name of the Deputy Returning Officer on the back is written or marked by which the voter can be identified.

(*t*) It is the duty of the Deputy Returning Officer under s. 139 where the proper entries respecting the person claiming to vote have been made in the voters' list to sign his, the Deputy Returning Officer's name, or initials upon the back of the ballot paper. This is for the purpose of identifying it and preventing the use of fraudulent ballots. When the Deputy Returning Officer has done his duty in identifying the ballots, as the statute directs, he must reject ballots not having on their back the name or initials of the Deputy Returning Officer. But where the Deputy Returning Officer has himself neglected his duty in omitting to write his name or initials on the back of the ballot papers, it would not be right on a scrutiny in the absence of some imputation of fraud, to reject all ballots not having on the back the name or initials of the Deputy Returning Officer. *The Monck Case*, 12 U. C. L. J. N. S. 113.

(*u*) When more votes are by the ballot paper given than the elector is entitled to give, it cannot be decided which, if any of them, are the proper votes. So that in such case the ballot paper is rejected. See *North Victoria Case*, 11 U. C. L. J. N. S. 163.

identified, shall be void, and shall not be counted; (*v*) and any ballot paper on which votes are given for a greater number of candidates for any office than the voter is entitled to vote

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(*v*) It is not declared that all ballots having on them anything except the name or initials of the Deputy Returning Officer shall be rejected, but all such as have marks *by which the voter can be identified.* These words have, in similar acts to the present caused much difficulty and some judicial conflict.

In the *Athlone Case*, 2 O'M. & H. 186, it was held that ballots having the cross on the *right* hand side of the name of the candidate, but in the same compartment with his name, ought not to be rejected. This was also held in the *Monck Case.*

In the *Wigtown Case*, 2 O'M. & H. 215, and the *Monck Case*, 12 U. C. L. J. N. S. 113, it was held that ballots having the cross on the *left* hand side of the name of the candidate, should be rejected, but the contrary was intimated in the *North Victoria Election Case*, 11 U. C. L. J. N. S. 163, and decided in *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

In the *Wigtown Case*, 2 O'M. & H. 215; *The North Victoria Election Case*, 11 U. C. L. J.N. S. 163, and the *Monck Case*, 12 U. C. L. J. N. S. 113, it was held that ballots having the cross above or below the name ought not to be rejected.

In the *Wigtown Case*, 2 O'M. & H. 215, and the *Monck Case*, 12 U. C. L. J. N. S. 113, it was held that a paper having on it two or three crosses opposite the name of the candidates ought to be rejected, but the contrary was held in *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

In the *Wigtown Case*, 2 O'M. & H., 215 and the *North Victoria Election Case*, 11 U. C. L. J. N. S. 163, and the *Monck Case*, 12 U. C. L. J. N. S. 113 it was held that ballot papers having a single stroke instead of a cross ought to be rejected but the contrary was held in *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

In the *North Victoria Election Case*, 11 U. C. L. J. N. S. 163, and in *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, it was held that ballots having the cross with feet to it so as to make it look like the letter X ought not to be rejected.

In the *North Victoria Election Case*, 11 U. C. L. J. N. S. 163. It was held that ballots having a perfect cross and some additional mark ought to be rejected but the contrary was held in the *Monck Case*, 12 U. C. L. J. N. S. 113, and in *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

In the *North Victoria Election Case*, 11 U. C. L. J. N. S. 163, and in *Woodward* v. *Sarsons*, L. R 10 C. P. 733, it was held that ballots not having any cross but the name of the candidate or some letters or initials put in the place of the cross ought to be rejected.

In the *Wightown Case*, 2 O'M. & H. 215, the *North Victoria Election Case*, 11 U. C. L. J. N. S. 163 and in the *Monck Case*, 12 U. C. L. J. N. S. 113, it was held that crosses made with ink instead of with black lead pencil ought not to be rejected.

In *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, it was held that a ballot paper having a pencil line through the name of the candidate and a cross opposite to the name of the other on the right hand side ought not to be rejected.

for, shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for. 38 V. c. 28, s. 18, (1); 40 V. c. 7, Sched. A. (169.)

Deputy returning officer to note objections taken to ballot papers at the counting the same.

2. The Deputy Returning Officer shall take a note of any objection made by any candidate, his agent, or any elector authorized to be present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection. (*w*) 39 V. c. 5, s. 11.

And number both.

3. Each objection shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the Deputy Returning Officer. (*x*) 39 V. c. 5, s. 11 (2.)

Endorsing ballot papers.

4. The Deputy Returning Officer shall endorse, "*Rejected*" on any ballot paper which he rejects as invalid, and shall endorse "*Rejection objected to*," if any objection is made to his decision. 38 V. c. 28, s. 18 (2.)

It is very desirable that the Legislature should if possible set at rest the questions about which there is so much conflict of opinion. While some deviations from the strict letter of the Statute are looked upon as so trifling as to be immaterial, others are deemed so serious as to be fatal. It is as said by Lord Neaves in the *Wigtown Case*, 2 O'M. & H. 220, "the old puzzle as to how many grains of corn make a heap, or at what stage a little thing grows into a big one."

It is true that the declaration of nullity does not require that there should be absolute proof of a design or intention on the part of the voter to be identified but it would be manifestly wrong to reject the ballot where from the mark made no such intention can be reasonably inferred. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

The latter case was not decided till after the *North Victoria Election Case*, but although decided before the *Monck Election Case*, was not cited on the argument or referred to by the learned Judge who decided the case.

It is the decision of the full Court of Common Pleas in England, and is the most authoritative if not the most recent case as to the sufficiency or insufficiency of ballot papers. It is therefore recommended that where in conflict with the other decisions mentioned it be followed until doubted or overruled by some Court having had its attention particularly directed to it.

(*w*) The decision of the Returning Officer is not in express language made final. The decisions which have been had would appear to indicate that the decision of the Returning Officer is subject to review.

(*x*) The directions contained in this and the next sub-section are for the purpose of enabling the Court or a Judge afterwards on a scrutiny to identify the ballots and decide on the propriety of their rejection or otherwise.

Statement.

5. The Deputy Returning Officer shall then count up the votes given for each candidate upon the ballot papers not rejected, and make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him, which shall be made under the several heads—

(*a*) Name or number of Ward or polling sub-division and of the Municipality and the date of election;

(*b*) Number of votes for each candidate;

(*c*) Rejected ballot papers.

38 V. c. 28, s. 18 (3); 39 V. c. 5, s. 14.

To be signed.

6. Upon the completion of such written statement, it shall be forthwith signed by the Deputy Returning Officer, the Poll Clerk, if any, and such of the candidates or their agents as may be present, and desire to sign such statement. 38 V. c. 28, s. 18 (4.)

Agents entitled to be present.

148. No more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes. (*y*) 38 V. c. 28, s. 18 (5.)

Deputy returning officer to give certificate of state of poll.

149 Every Deputy Returning Officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place, (*z*) a certificate of the number of votes given at that polling place for each candidate, and of the number of rejected ballot papers. (*a*) 39 V. c. 5, s. 15.

Deputy returning officers' duties after votes are counted.

150. Every Deputy Returning Officer shall, at the close of the poll, certify under his signature on the voters' list in full words the total number of persons who have voted at the polling place at which he has been appointed to preside, (*b*) and

(*y*) This does not exclude the candidate himself, see note *p* to sec. 146 and sec. 165.

(*z*) This it is presumed means authorized to attend on behalf of a candidate at the election.

(*a*) No form of certificate is given. It need only state:

1. The number of votes given at the polling place.

2. The number of rejected ballot papers.

Although not in words required to be signed by the Returning Officer giving it, it would be well that it should be so signed.

(*b*) The certificate made necessary by this section is expressly re-

at the completion of the counting of votes after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets, sealed with his own seal, and the seals of such agents of the candidate as desire to fix their seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the election the the name of the Deputy Returning Officer, and of the Ward or polling sub-division and Municipality,(c)

(a) The statement of votes given for each candidate and of the rejected ballot papers;

(b) The used ballot papers which have not been objected to and have been counted;

(c) The bollot papers which have been objected to, but which have been counted by the Deputy Returning Officer;

(d) The rejected ballot papers;

(e) The spoiled ballot papers;

(f) The unused ballot papers;

(g) The voters' list, with the oath in the form of Schedule G. annexed thereto; a statement of the number of voters whose votes are marked by the Deputy Returning Officer under the heads, "Physical incapacity," and "Unable to read," with the declarations of inability; and the notes taken of objections made to ballot papers found in the ballot-box.

2. Before placing the voter's list in its proper packet, the Deputy Returning Officer shall make and subscribe before the Clerk of the Municipality, a Justice of the Peace or the

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required to be under the signature of the Deputy Returning Officer. It must be given by the Deputy Returning Officer at the particular polling place where he presided. The contents are, a statement in full words, not in figures, of the total number of persons who voted at the polling place. It is not said that the number polled for each candidate shall be stated. But there can be no objection to this being done.

(c) The duties of the Deputy Returning Officer under this section are,

1. To give the certificate mentioned in the previous note.

2. To make up into separate packets, the various papers described, in the manner described.

Poll Clerk, his declaration under oath that the voters' list was used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made; which declaration shall be in the form of Schedule G to this Act, and shall thereafter be annexed to the voters' list. (*d*)

Certain packets to be delivered to the clerk of municipality.

3. If the Clerk of the Municipality is not himself performing the Duties of Deputy Returning Officer, the Deputy Returning Officer shall forthwith deliver such packets personally to theClerk of the Municipality; and if he is unable to do so, owing to illness or other cause, he shall deliver such packets to a person chosen by him for the purpose of delivering the same to the Clerk; (*e*) and shall mention on the outside of the cover of each of the packets the name of the person to whom the same had been so delivered, and shall take a proper receipt therefor; he shall also forthwith return the ballot box to the Clerk of the Municipality.

Statement to be made by deputy returning officers on return of ballot papers, &c.

4. The packets shall be accompanied by a statement made by the Deputy Returning Officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of (1) Counted; (2) Rejected; (3) Unused; (4) Spoiled; (5) Ballot Papers given to voters who afterwards returned the same, declining to vote; and (6) Ballot Papers taken from the polling place; (*f*) which statement shall give the number of papers under each head, and is in this Act referred to as the "Ballot Paper Account."

If dispute as to result arise, how to be settled.

5. If the Deputy Returning Officer and one or more of the candidates or of the agents of the candidates present at the examination and counting of the ballot papers are unable to agree as to the written statement to be made by the Deputy Returning Officer, the packages of ballot papers shall

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(*d*) The declaration made necessary as a security for the good faith of the Deputy Returning Officer, must not only be made by him, but subscribed by him under oath.

(*e*) The person chosen ought not, if possible, to be a partizan of either of the candidates. There is no prohibition of the kind in the section. But good sense will suggest it to any Deputy Returning Officer acting under the section.

(*f*) The object of this account is to enable the Clerk of the Municipality who gave out the ballot papers to make a comparison between the ballots given out and the ballots returned so as to detect if possible the undue use if any made of any of the ballot papers.

be broken open by the Clerk of the Municipality, in the presence of the Deputy Returning Officer and such of the candidates or of their agents as may be present o[illegible] day succeeding the polling day, at an hour and place to be appointed, and of which they have been notified by the Deputy Returning Officer, unless the distance necessary to be travelled is such that the appointed place cannot be reached on the day following the poll, in which case a reasonable time shall be allowed, and no more, for the purpose of coming before the Clerk of the Municipality ; and the Clerk of the Municipality, after examining the ballot papers, shall finally determine the matter in dispute, and sign the written statement hereinbefore mentioned; (*g*) and the Clerk of the Municipality shall forthwith, in the presence of the Deputy Returning Officer and such of the candidates or of their agents as may then be present, securely seal up the ballot papers which have been examined by him into their several packages as before. 38 V. c. 28, ss. 19, 20; 39 V. c. 5 ss. 12, 13.

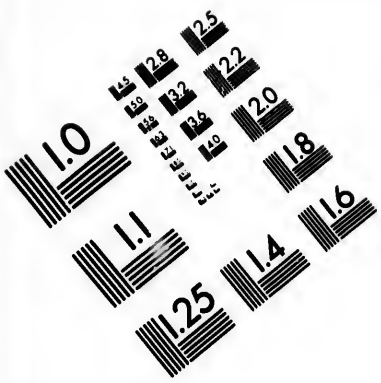
Clerk to cast up votes and declare who is elected, &c.

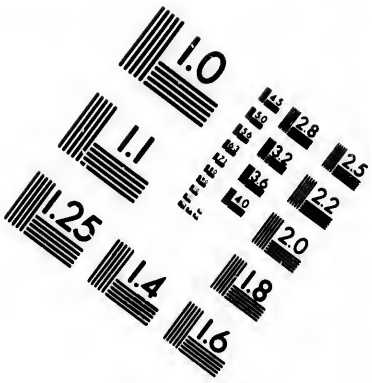
151. The Clerk of the Municipality, after he has received the ballot papers and statements before mentioned of the number of votes given in each polling place, shall, without opening any of the sealed packets of ballot papers, cast up the number of votes for each candidate from such statements ; and shall at the Town Hall, or, if there is no Town Hall, at some other public place, at noon, on the day following the return of such ballot papers and statements, publicly declare to be elected the candidate or candidates having the highest number of votes, (*h*) and shall also put up in some conspicuous place a statement under his hand showing the number of votes for each candidate. (*i*) 38 V. c. 28, s. 21.

(*g*) The clerk is to finally determine the matter of dispute mentioned, but this determination cannot bind any Court or Judge before whom the election may afterwards be contested and a scrutiny had for the purposes of the contest.

(*h*) The simple duty of the Clerk is to declare elected "the candidate or candidates having the highest number of votes." He has no power to decide as to the qualification of any candidates to be elected. This must be left for the decision of a competent tribunal, see *The Queen* v. *Ledgard*, 8 A. & E. 535.

(*i*) There is no power to amend the statement after it has been once put up or to put up an amended statement, see *The Queen* v. *Leeds*, 11 A. & E. 512. If he make a mistake as to the number of ballots, this mistake must be corrected by the Court or a Judge, see *The Queen ex rel. Andrews* v. *Collins*, L. R. 1 Q. B. Div. 336.





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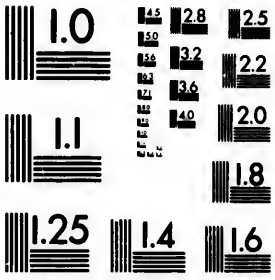

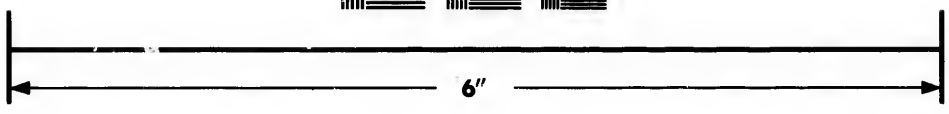

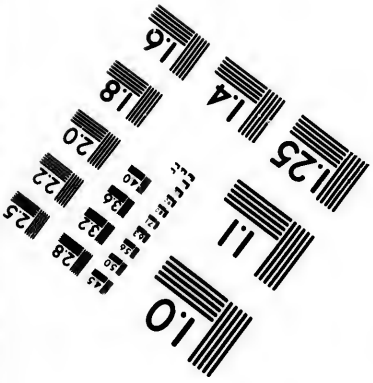

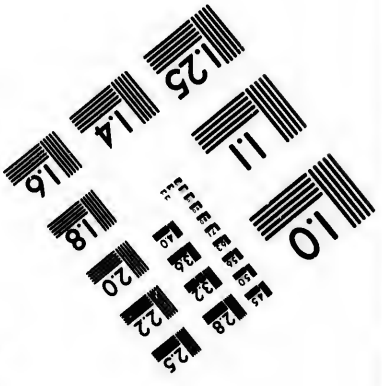

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In certain cases clerk to have a casting vote.

152. In case it appears, upon the casting up of the votes as aforesaid, that two or more candidates have an equal number of votes, the Clerk of the Muncipality or other person appointed by by-law to discharge his duties of Clerk in his absence or incapacity through illness, and whether otherwise qualified or not, shall, at the time he declares the result of the poll, give a vote for one or more of such candidates, so as to decide the election. (*j*)

2. Except in such case, no Clerk of the Municipality shall vote at any municipal election held in his Municipality.

3. All Deputy Returning Officers and persons employed as Deputy Returning Officers and Poll Clerks, if otherwise qualified, shall be entitled to vote. 38 V. c. 28, s. 22.

Election not commenced, or interrupted by riot, etc., to be resumed.

153. In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after being commenced and before the lawful closing thereof, the Returning Officer, or Deputy Returning Officer, as the case may be, shall hold or resume the election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day, if necessary, for four days, until the poll has been opened without interruption, and with free access to voters for twelve hours in all, or thereabouts, in order that all the electors so intending may have had a fair opportunity to vote. (*k*) 38 V. c. 28, s. 23.

If election is prevented for four days, poll book is to be returned, and a new election ordered.

154. But in case the election has not, by the end of the fourth day from the day the same commenced or should have commenced, been kept open for the said twelve hours, the Returning Officer or Deputy Returning Officer, as the case may be, shall not return any person as elected, but shall return his voters' list and ballot papers on the following day

(*j*) Where there is an office to be filled and two candidates have an equal number of votes neither can fill it without some provision being made for a casting vote. The general rule is to negative any question on which there is an equality of votes, see section 233. But for reasons stated an exception is here created in the case of an election see *The Queen ex rel. Bulger* v. *Smith*, 4 U. C. L. J. 18; *The Queen ex rel. Pollard* v. *Prosser*, 2 U. C. P. R. 330; *The Queen ex rel. Hume* v. *Lutz*, 7 U. C. L. J. 103.

(*k*) It is necessary that during the hours of polling the electors shall have free access to the polling place. *The Queen ex rel. Davis et al.* v. *Wilson et al.*, 3 U. C. L. J. 165. In case, by reason of riot, or other emergency, an election is not commenced on the proper day, or is interrupted after commencement, the election must be resumed

to the head of the Municipality, certifying the cause of there not having been an election ; (*l*) and a new election shall take place, and the head of the Municipality shall forthwith issue his warrant therefor. (*m*) 38 V. c. 28, s. 24. *See also section* 174.

Declaration of election—duty of the Clerk.

155. When a poll has been duly held in each of such Wards or polling sub-divisions, and the ballot papers and statements hereby directed to be returned to the Clerk have been so returned to him, the Clerk shall, without opening any of the sealed packets of ballot papers, cast up from said statements the number of votes given for each candidate for any office in respect whereof the election has not been previously declared, together with the votes appearing by the statements previously returned for other Wards to be given for the candidate, and shall at noon on the next day, at the

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the next day, and, *if necessary*, continued from day to day for four days, till the poll has been open without interruption and with free access to voters for the time mentioned, viz., twelve hours in all, or thereabouts. The object, of course, is, that all the electors intending to vote may, notwithstanding riot or other emergency, have a fair opportunity to vote. If it were shown that, notwithstanding the expiration of the four days allowed, there was not a fair opportunity of voting, in consequence of which votes were lost, it is apprehended a new election would be ordered.

(*l*) "If rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the common law, for the common law provides that an election should be free in the sense that all persons shall have an opportunity of coming to the poll and voting without fear or molestation." *Nottingham Case*, 1 O'M. & H. 245 ; see also *The Stafford Case*, *Ib.* 234, and *The Drogheda Case*, *Ib.* 252.

(*m*) The new election is to take place in case the election has not, within four days, been kept open twelve hours, and the Returning Officer has not returned any person as elected, but has certified the cause of the failure. If the Returning Officer should so far forget his duty as to return any ot the candidates elected, the election would no doubt be set aside. *The Queen ex rel. Davis et al.* v. *Wilson et al.* 3 U. C. L. J. 165. Where it was sworn that intending voters for an unsuccessful candidate were obstructed in approaching the polling place by a crowd controlled by one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election was set aside. *The Queen ex rel. Gibbs et al.* v. *Branighan et al.*, 3 U. C. L. J. 127. The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he really participated in the improper conduct for which the election is set aside. *The Queen ex rel. Davis et al.* v. *Wilson et al.*, 3 U. C. L. J. 165.

Town Hall, or if there is no Town Hall, at some other public place, publicly declare to be elected the candidate or candidates having the largest number of votes polled. (*n*) 38 V. c. 28, s. 26.

Declaration and assumption of office.

156. The person or persons so elected shall make the necessary declarations of office and qualification and assume office accordingly. (*o*) 36 V. c. 48, s. 119.

DIV. VI.—MISCELLANEOUS PROVISIONS.

Clerk to retain Ballot Papers. *Sec.* 157.
Inspection of Ballot Papers. *Sec.* 158.
Evidence. *Sec.* 159.
Offences. *Secs.* 160, 161.
Secrecy of Proceedings. *Secs.* 162-164.
Candidates may do Agents' duty. *Secs.* 165, 166.
Computation of time. *Sec.* 167.
Technical objections not to prevail. *Sec.* 168.
Expenses of Returning Officers, etc. *Sec.* 169.

When ballot papers shall be destroyed

157. The Clerk of the Municipality shall retain for one month all ballot papers received by him or forwarded to him in pursuance of this Act by Deputy Returning Officers, (*p*) and then, unless otherwise directed by an order of a Court or Judge of competent jurisdiction, shall cause them to be destroyed in the presence of two witnesses whose declaration that they have witnessed the destruction of such papers shall be taken before the head of the Municipality, and filed amongst the records of the Municipality by the said Clerk. (*q*) 38 V. c. 28, s. 27.

When ballot papers may be inspected.

158. No person shall be allowed to inspect any ballot papers in the custody of the Clerk of the Municipality except

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(*n*) See notes to sec. 151.

(*o*) Acceptance of office when the person elected is qualified to be elected is obligatory, see section 272.

(*p*) This is with a view to a contest, if any be intended as to the validity of the election.

(*q*) After a month, it may be said, if there be no order to the contrary from the Court or a Judge, that the ballot papers have served their purpose and that their further retention would serve no good purpose. The destruction of them must be in the presence of two witnesses whose declaration in writing that they have witnessed the destruction is to be filed among the records of the Municipality.

under the order of a Court or Judge of competent jurisdiction, to be granted by the Court or Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers shall be obeyed by the Clerk of the Municipality. (*r*)

2. Such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Court or Judge making the order thinks expedient. (*s*) 38 V. c. 28, s. 28.

Evidence as to documents, ballot papers, etc., in certain cases.

159. Where a rule or order is made for the production by the Clerk of the Municipality, of any document in his possession relating to any specified election, the production of the document by the Clerk, in such manner as may be directed by the rule or order, shall be conclusive evidence that the document relates to the specified election; (*t*) and any endorsement appearing on any packet of ballot papers produced by the Clerk, shall be evidence of such papers being what they are stated to be by the endorsement. 38 V. c. 28, s. 29.

(*r*) One object of the ballot is secrecy. But this is not the only object. Purity of election is another object. Where to attain purity of election it is necessary that an inspection of the ballot papers should be had, it may be had under the circumstances, mentioned in this section. These are when required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, see *Regina* v. *Beardsall*, 34 L. T. N. S. 661, or for the purpose of a petition questioning an election or return, see *In re Election of Reeve of Edwardsburg* 13 U. C. L. J. N. S. 44. In either of these cases the order for inspection may be made by the Court or a Judge of competent jurisdiction. It is doubtful if an order can be made under this Act, for the inspection of ballots for the purpose of a petition relating to a Parliamentary election. See *The Gloucester Case*, 2 O'M. & H. 59.

(*s*) A form of order for inspection will be found in *Regina* v. *Beardsall*, 34 L. T. N. S. 661.

(*t*) This section relates only to evidence. If an order were made on a Clerk for the production of a document supposed to relate to a particular election, it would never do to permit the Clerk to disobey the order on the alleged ground that the document in question does not relate to the particular election. Therefore the order so long as unreversed or unvaried is made conclusive as to the fact.

Offences.

160. No person shall—

(*a*) Without due authority supply any ballot paper to any person; or

(*b*) Fraudulently put into any ballot box any paper other than the ballot paper, which he is authorized by law to put in; or

(*c*) Fraudulently take out of the polling place any ballot paper; or

(*d*) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election.

2. No person shall attempt to commit any offence specified in this section.

Penalty by imprisonment.

3. Any person guilty of any violation of this section shall be liable, if he is the Clerk of the Municipality, to imprisonment for any term not exceeding two years, with or without hard labour; and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour. (*u*) 38 V. c. 28, s. 30; 39 V. c. 1, s. 4.

Money penalty for offences.

161. Every officer and clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of the one hundred and fifteenth to the one hundred and sixtieth sections, inclusive, of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act or

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(*u*) While the Local Legislature has no general power under the B. N. A. Act, to legislate as to crime or criminal procedure, it has power to punish by fine or imprisonment with a view of enforcing the laws within its jurisdiction. *Regina* v. *Boardman* 30 U. C. Q. B. 553. But the Local Legislature has not the power to override the general law as to evidence in criminal cases which protects persons from being compelled in criminal matters to testify against themselves, *The Queen* v. *Roddy*, 41 U. C. Q. B. 291. Any person violating the provisions of this section is made liable to imprisonment for any term not exceeding six months with or without hard labour. If the delinquent be the Clerk of the Municipality he is liable to imprisonment with or without hard labour, for any term not exceeding two years. It is not in the section declared whether procedure shall be by indictment or otherwise, see *Regina* v. *Snider*, 23 U. C. C. P. 330, *Wilde* v. *Bowen*, 37 U. C. Q. B. 504.

omission, a penal sum
28, s. 31.

162. Every officer
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and notes thereto.

(*w*) The secrecy of the
ballot. It is this which is
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should maintain and aid in
a duty the breach of which

omission, a penal sum of four hundred dollars. (*v*) 38 V. c. 28, s. 31.

162. Every officer, clerk and agent in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place. (*w*) **Maintaining secrecy of proceedings.**

2. No officer, clerk or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

3. No officer, clerk, agent or other person shall communicate at any time to any person any information obtained at a polling place as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

4. Every officer, clerk and agent in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting as to the candidate or candidates for whom any vote is given in any particular ballot paper.

5. No person shall, directly, or indirectly, induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the name of any candidate or candidates for or against whom he has marked his vote.

6. Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, **Penalty for contravening this section.**

(*v*) The liability to a penalty of $400 only arises in the case of an officer or clerk guilty of *wilful* misfeasance or of a wilful act or omission in contravention of the Act. The section is inapplicable to cases of mere neglect, see sec. 191, and 193 of the Assessment Act and notes thereto.

(*w*) The secrecy of the polling is one of the great objects of the ballot. It is this which is the principal recommendation of the mode of voting by ballot. To ensure the efficiency of the system it is necessary that all officers, clerks or agents, concerned in the election, should maintain and aid in maintaining secrecy. Hence this is made a duty the breach of which is punishable by imprisonment.

to imprisonment for any term not exceeding six months, with or without hard labour. (*x*) 38 V. c. 28, s. 32.

Statutory declaration of secrecy.

163. The Clerk of the Municipality, and every officer, clerk or agent, authorized to attend a polling place or at the counting of the votes, shall, before the opening of the poll, make a statuatory declaration of secrecy in the presence, if he is the Clerk of the Municipality, of a Justice of the Peace, and if he is any other officer, or clerk, in the presence of a Justice of the Peace or of the Clerk of the Municipality; and if he is an agent of a candidate, in the presence of a Justice of the Peace or of the Clerk of the Municipality, or of the Deputy Returning Officer at whose polling place he is appointed agent; and such statuatory declaration of secrecy shall be in the form mentioned in Schedule H to this Act, or to the like effect. (*xx*) 38 V. c. 28, s. 33; 40 V. c. 12, s. 19.

No one compellable to disclose his vote.

164. No person who has voted at an election shall in any legal proceeding to question the election or return, be required to state for whom he has voted. (*y*) 38 V. c. 28, s. 34.

Candidates may undertake duties of an agent.

165. A candidate may himself undertake the duties which any agent of his, if appointed, might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of this Act be authorized to attend. (*z*) 38 V. c. 28 s. 35.

Expressions in the Act referring to agents.

166. When in the sections of this Act numbered from one hundred and fifteen to one hundred and sixty-five inclusive any expressions are used, requiring or authorizing any act or thing to be done, or inferring that any act or thing is to be done in the presence of the agents of the candidate, such expressions shall be deemed to refer to the presence of such agents of the candidates as are authorized to attend,

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(*x*) See note *u* to sec. 160.

(*xx*) See note *w* to preceding section.

(*y*) Secrecy is the privilege of the voter. He cannot in any legal proceeding to question the election, be compelled to state for whom he has voted. But there is nothing to restrain him from stating for whom he voted if he see fit voluntarily to do so. His doing so voluntarily is certainly not made illegal by the Act.

(*z*) It would seem that a candidate whether acting in the place of his agent or not has a right to be present (see also sec. 146) and so long as he properly conduct himself cannot be ejected from the polling place, see *Clementson* v. *Mason*, L. R. 10 C. P. 209.

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and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of any agents or agent at such time and place shall not, if the act or thing is otherwise duly done, invalidate in anywise the act or thing done. (*a*) 38 V. c. 28, s. 36.

Non-attendance of agents.

167. In reckoning time for the purposes of the said sections, Sunday and any day set apart by any Act of lawful authority for a public holiday, fast or thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on such days, such things may be done on the next juridical day; but nothing in this section contained shall extend or apply to the days fixed by this Act for the nomination or election of candidates for the offices of Mayor and Aldermen in cities, and Mayor, Reeve, Deputy Reeves and Councillors in other Municipalities. (*b*) 38 V. c. 28, s. 37; 40 V. c. 7, *Sched.* A. (170).

Non-juridical days.

168. No election shall be declared invalid by reason of a non-compliance with the rules contained in this Act as to the taking of the poll or the counting of the votes, or by reason of any mistake in the use of the forms contained in the Schedules to this Act, or by reason of any irregularity, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, (*c*) and that such non-compliance or

No election to be invalid for want of compliance with rules if in compliance with principles of the Act.

(*a*) The attendance of agents of the candidates is for the purpose of satisfying the candidates of the good faith of the proceedings. But if candidates do not appoint agents or if their agents do not see fit to attend, it would be absurd, if a proceeding, in all respects honest and correct, were thereby invalidated. The object of this section is to prevent the drawing of any such inference from the omission of authorized agents to attend.

(*b*) The necessary effect of excluding Sunday, public holidays, fast or thanksgiving days from being reckoned as days for the purposes of the sections, is to enable the Act which would otherwise require to be done on such day to be lawfully done on the next juridical day. See *In re Poole Election Petition*, L. R. 9 C. P. 435. *In re West Toronto Election Petition*, 7 U. C. L. J. N. S., 179, *S. C.* 31 U. C. Q. B. 409.

(*c*) Nothing can be more difficult for a Judge or for a metaphysician or for any body to say what are the principles of a Statute comprehending together with the schedules over 600 clauses. The principle is that the voting should be secret. Another principle is that the electors should have a fair opportunity of recording their votes. See *per* Grove, J., in the *Hackney Case*, 31 L. T. N. S. 69, 71. An election should be declared void if the tribunal which is asked to

mistake or irregularity did not affect the result of the election. (*d*) 38 V. c. 28, s. 38; 39 V. c. 5, s. 16.

Expenses incurred by officers to be refunded.

169. The reasonable expenses incurred by the Clerk of the Municipality and by the other officers and clerks for printing, providing ballot boxes, ballot papers, materials for marking ballot papers, polling compartments, transmission of the packets required to be transmitted by this Act, and reasonable fees and allowances for services rendered under this Act, shall be paid to the Clerk of the Municipality by the Treasurer of the Municipality, and shall be distributed by the Clerk of the Municipality to the several persons entitled thereto. (*e*) 38 V. c. 28, s. 39.

DIVISION VII.—VACANCIES IN COUNCIL.

By Insolvency, etc. *Sec.* 170.
By Quo Warranto proceedings. *Sec.* 171.
By Resignation. *Secs.* 172, 173.
How filled. *Secs.* 174-178.
Seat held for residue of term. *Sec.* 175.
Not to prevent organization of Council. *Sec.* 176.
In certain cases Council to fill. *Sec.* 178.

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avoid it is satisfied that there was no real electing at all, or that the election was not really conducted under the subsisting election laws, see *per* Coleridge, J., *in Woodward* v. *Sarsons*, L. R. 10 C. P. 733, 743.

(*d*) It is now a canon of election law that an election is not to be set aside for a mere informality or irregularity which cannot be said in any manner to have affected the result of the election. *The Queen* v. *The Rector of St. Mary, Lambeth*, 8 A. & E., 356; *Regina ex rel. Walker* v. *Mitchell et al.*, 4 U. C. P. R. 218; *In re Monk Election*, 32 U. C. Q. B. 147; *The Queen* v. *Plenty*, L. R. 4 Q. B. 346; *The Queen* v. *Ward*, L. R. 8 Q. B. 210; *Regina* v. *Cousins*, 28 L. T. N. S. 116; *Regina ex rel. Harris* v. *Bradburn*, 6 U. C. P. R. 308; *Regina ex rel. Preston* v. *Touchburn*, *Ib.* 344; *Shaw* v. *Thompson*, L. R. 3 Chy. Div. 233. But where it appears that the irregularity is of such character and of such magnitude that it may have effected the result, the election ought to be set aside: *Hackney Election*, 31 L. T. N. S. 69; *Woodward* v. *Sarsons*, L. R. 10 C. P. 743; *Mather* v. *Brown*, L. R. 1 C. P. Div. 596; *In re Johnson* v. *Lambton*, 40 U. C. Q. B. 297.

(*e*) The Act does not contain any provision for the taxation of the amount of these services. Their reasonableness therefore must in the first instance be judged of by the Treasurer of the Municipality. In the event of a difference between him and the person who performed the services as to their value the amount can only be settled by action or arbitration.

Seats to become vacant by crime, insolvency, absence, etc.

170. If, after the election of any person as member of a Council, he is convicted of felony or infamous crime, or becomes insolvent within the meaning of the Insolvent Acts, or applies for relief as an indigent debtor, or remains in close custody, or assigns his property for the use of his creditors, or absents himself from the meetings of the Council for three months without being authorized so to do by a resolution of the Council entered in its minutes, his seat in the Council (*f*) shall thereby become vacant, (*g*) and the Council shall declare the seat vacant, and order a new election. (*h*) 36. V. c. 48, s. 123.

(*f*) The contingencies which, under this section, will have the effect of vacating a seat in the Council are :

1. Being convicted of felony or infamous crime.

2. Becoming insolvent under the meaning of the Insolvent Acts.

3. Applying for relief as an indigent debtor.

4. Remaining in close custody.

5. Assigning property for the use of creditors.

6. Absence for three months from the Council without leave by resolution entered in the minutes of the Council.

The Municipal Act of 1866, made the return of *nulla bona* against his goods, a good ground for vacating the seat of a member of a Municipal Council, see *In re Wood*, 26 U. C. Q. B. 513.

(*g*) As to the meaning of the words, "shall thereby become vacant," &c., see *The King* v. *Oxford*, 6 A. & E. 349; *The Queen* v. *Leeds*, 7 A. & E. 963 ; *Hardwick* v. *Brown*, L. R. 8 C. P. 406.

(*h*) There must be an actual vacancy before a new election can be ordered. *Price* v. *Baker*, 13 Am. 346. An anticipated vacancy, or a resignation to take effect at a future time, is no ground for ordering a new election. *Lindsay* v. *Luckett*, 20 Texas, 516 ; *Biddle* v. *Willard*, 10 Ind. 62; *People* v. *Wetherell*, 14 Mich. 48. See also *Colt et al.* v. *Bishop of Coventry*, Hob. 150 ; *Owen* v. *Stainoe*, Skin. 45 ; Glover on Municipal Corporations, 216. "An existing office without an incumbent is vacant, whether it be a new or an old one," Per Stuart, J., in *Stocking* v. *State*, 7 Ind. 326 ; see also *Collins* v. *State*, 8 Ind. 344. Where the office becomes vacant, through any other contingency than death, and the person whose seat is vacant insists on holding it, the proper remedy against him is *quo warranto* procedure and not a writ of mandamus on the Mayor to hold a new election. *The Queen* v. *Cornwall*, 25 U. C. Q. B. 293 ; *The Queen* v. *Rowley*, 3 Q. B. 143, *S. C.*, 6 Q. B. 668 ; *The Queen* v. *Rippon*, L. R. 1 Q. B. Div. 217. But it would appear that in such a case the summary procedure given by this Act, in the nature of a *quo warranto*, cannot be adopted. *The Queen ex rel. McGouverin* v. *Lawlor*, 5 U. C.

Quo warranto proceedings on omitting to vacate seat.

171. In the event of any member of any Municipal Council forfeiting his seat at the Council or his right thereto, or of his becoming disqualified to hold his seat, or of his seat becoming vacant by disqualification or otherwise, he shall forthwith vacate his seat, and in the event of his omitting to do so at any time after his election, proceedings by *quo warranto* to unseat any such member, as provided by sections one hundred and seventy-nine to two hundred, both inclusive, of this Act, may be had and taken, and such sections shall, for the purposes of such proceedings, apply to any such forfeiture, disqualification or vacancy. (*i*) 37 V. c, 16, s. 5.

Any member may resign with consent of majority of council.

172. Any Mayor or other member of a Council may, with the consent of the majority of the members present, to be entered on the minutes of the Council, resign his seat in the Council. (*k*) 36 V. c. 48, s. 124.

P. R. 208. The expensive and dilatory proceeding authorized by the statute of Anne would therefore have to be adopted. See *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.

(*i*) Until 1874 there was no more in the Municipal Act than the simple declaration that, on the happening of the events mentioned, the seat should become vacant. No mode was provided for the removal of the person whose seat was declared vacant, except in the case of a disqualification to hold the seat at the time of the election, and an application made by summons in the nature of a *quo warranto* within four weeks after the acceptance of office, or six weeks after the election. See *The Queen ex rel. McGouverin* v. *Lawlor*, 5 U. C. P. R. 208. The Legislature, by the Act 37 Vict. c. 16, sec. 5, supplied the needed amendment of the law, and this was the origin of the above section.

(*k*) A resignation implies that the person resigning has been elected to the office which he resigns, and has accepted that office. *The Queen* v. *Blizard*, L. R. 2 Q. B. 55; *Hardwick* v. *Brown*, L. R. 8 C. P. 406; *Miller* v. *Supervisors*, 25 Cal. 93. Where the person elected instead of accepting office refuses office, he may, under certain circumstances, disclaim even before proceedings are taken to unseat him. Sec. 194. The right of a member of a Municipal Corporation to resign in the absence of express provision authorizing it, has been doubted. *The King* v. *Tidderley*, 1 Sid. 14, Com. Dig. title "Franchise," F. 30; *The King* v. *Rippon*, 1 Ld. Rayd. 563; *The Queen* v. *Lane*, 2 Ld. Rayd. 1304; see also *State* v. *Ferguson*, 31 N. J. (2 Vroom.) 107; *Lewis* v. *Oliver*, 4 Abb. Pr. 121; *People* v. *Porter*, 6 Cal. 26; *Gates* v. *Delaware County*, 12 Iowa 405; *United States* v. *Wright*, 1 McLean 509. In 2 Roll. Ab. 456, it is said that an Alderman, with the assent of the Corporation, may resign his office in the Corporation, and that the Corporation may accept the resignation as of right. Where the Act which sanctions a resignation prescribes the mode, that mode must be followed. *The King* v. *Hughes*, 5 B. & C. 886; *The King* v. *Rippon*, 1 Ld. Rayd. 563; *The King* v. *Payne*,

173. The Warden of a County may resign his office (*l*) by verbal intimation to the Council while in session, or by letter to the County Clerk if not in session, in which

Resignation of warden provided for.

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2 Chitty 367 ; *The Queen* v. *Morton*, 4 Q. B. 146. Where no particular mode is specified, the resignation need not be in writing or other set form. *The King* v. *Rippon*, 1 Ld. Rayd. 563 ; *The Queen* v. *Lane*, 2 Ld. Rayd. 1304 ; see *Jenning's Case*, 12 Mod. 402 ; *The Queen* v. *Gloucester*, Holt 450 ; *Van Orsdall* v. *Hazard* 3 Hill (N. Y.) 243 ; *State* v. *Allen*, 21 Ind. 516 ; *People ex rel. Hanrahan* v. *Metropolitan Police Board*, 26 N. Y. 316. A Warden may resign by "verbal intimation to the Council while in session," or "by letter to the County Clerk, if not in session." Sec. 173. By this section the resignation can only be effective when "with the consent of the majority of the members present, to be entered on the minutes of the Council." Until such consent be given and recorded, the offer to resign may be recalled, *The Queen* v. *Lane*, 2 Ld. Rayd. 1304 ; *The King* v. *Rippon*, 1 Ld. Rayd. 563 ; *Jenning's Case*, 12 Mod. 402 ; *Hazard's Case*, 2 Roll. 11; *The King* v. *Patteson*, 4 B. & Ad. 9 ; see also *Van Orsdall* v. *Hazard*, 3 Hill. (N. Y.) 243 ; *State* v. *Ancker*, 2 Rich. (S. C.) 245. But see *State* v. *Hanss*, 13 Am. 384. In general, the right to accept a resignation is incidental to the power of appointment. *The King* v. *Tidderley*, 1 Sid. 14 ; *Jenning's Case*, 12 Mod. 402 ; *Taylor's Case*, Popham 133 ; *Staniland* v. *Hopkins*, 9 M. & W. 178. When two offices are incompatible, they cannot be held together ; therefore, the acceptance of the one is an implied resignation of the other. *The King* v. *Patteson*, 4 B. & Ad. 9 ; *sed qu.*, *Regents of the University* v. *Williams*, 9 Gill. & Johns. (Md.) 365, and it matters not whether the second office is superior or inferior to the office first held. *Milward* v. *Thatcher*, 2 T. R. 87 ; see also *The King* v. *Trelawney*, 3 Burr. 1615 ; *Crane* v. *Holland*, Cro. Car. 138. In such a case it is said that *quo warranto* is unnecessary. *Verrior* v. *Sandwich*, 1 Sid. 305 ; *Gabriel* v. *Clerke*, Cro. Eliz. 76 ; *Milward* v. *Thatcher*, 2 T. R. 87. Where the same authority confers both offices, there can be no difficulty on the point. *Arkwright* v. *Cantrell*, 7 A. & E. 565; *The King* v. *Bond*, 6 D. & R. 333. If the first office cannot be resigned without the consent of some particular body, such as the Council, under this section the acceptance of an incompatible office, in the gift of a different body, could not *per se* be held to vacate the first office. *Ib.* Offices are incompatible where, from considerations of public policy, the incumbent cannot be properly expected to discharge the duties of both. *Staniland* v. *Hopkins*, 9 M. & W. 178 ; *The King* v. *Tizzard*, 9 B. & C. 418 ; *People ex rel. Whiting* v. *Carrique*, 2 Hill. (N. Y.) 93 ; *Bryan* v. *Cattell*, 15 Iowa 538. The offices of Chamberlain and Treasurer and member of the Council are incompatible. *The Queen* v. *Smith*, 4 U. C. Q. B. 322, and sec. 247. If, by any disregard of the law, accidental or otherwise, a person has been placed in the office who cannot by law hold it, things must take their course—the illegality must be ascertained and pronounced upon in a proper proceeding, instituted to try the question. *The Queen* v. *Smith*, 4 U. C. Q. B. 322. A Treasurer of a Municipality should not be permitted also to act as a Bank Agent. *Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278.

(*l*) See preceding note.

Vacancies, how filled.

cases, and in cases of vacancy by death or otherwise, the Clerk shall notify all the members of the Council, and shall, if required by a majority of the members of the County Council, call a special meeting to fill such vacancy. (*m*) 36 V. c. 48, s. 130.

New elections provided for and mode of conducting same.

174. In case no return is made for one or more Wards or polling sub-divisions, in consequence of non-election, owing to interruption by riot or other cause, or in case a person elected to a Council neglects or refuses to accept office, or to make the necessary declarations of office within the time required, (*n*) or in case a vacancy occurs in the Council caused by resignation, death, judicial decision (*o*) or otherwise, the head of the Council for the time being, or in case of his absence, or of his office being vacant, the Clerk, or in case of the like absence or vacancy in the office of the Clerk, one of the members of the Council, (*p*) shall forthwith, (*q*) by warrant under the signiture of such head, Clerk or member, if procurable, require the Returning Officers and Deputy Returning Officers appointed to hold the last election for the Municipality, Ward and polling subdivision respectively, or any other persons duly appointed to those offices, to hold a new election to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy. (*r*) 36 V. c. 48, s. 125.

(*m*) The duty of the Clerk in the first instance, is to notify the members of the Council of the vacancy. He is only required to call a special meeting to fill the vacancy, "if required by a majority of the members of the Council.

(*n*) Mere hesitation to take the oath until legal advice can be procured is not to be deemed a neglect or refusal within the meaning of this section. *In re Asphodel and Sargant et al.*, 17 U. C. Q. B. 593.

(*o*) See secs. 171, 172.

(*p*) Some evidence must be adduced before the officer named, to satisfy him as to the vacancy, in order to make it obligatory upon him to act under this section. It is impossible to lay down any rule as to what amount or kind of evidence or information should be laid before him. *In re Asphodel and Sargant et al.*, 17 U. C. Q. B. 593.

(*q*) Where a thing is directed to be done by a statute "forthwith," it means within a reasonable time. *The Queen* v. *Worcester*, 7 Dowl. 789. The word "immediately" is more strictly construed. *The King* v. *Huntingdonshire*, 5 D. & R. 588; *The Queen* v. *Ashton*, 1 L. M. & P. 491; *Folkard* v. *The Metropolitan Railway Co.*, L. R. 8 C. P. 470.

(*r*) The person to be appointed is the person who was appointed to hold the last past election, unless some other has been appointed by

175. The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected, or for which the office is to be filled. (*s*) 36 V. c. 48, s. 126. Term of office of person thereupon elected.

176. In case such non-election, neglect or refusal as aforesaid, (*t*) occurs previous to the organization of the Council for the year, the warrant for the new election shall be issued by the head or a member of the Council for the previous year, or by the Clerk, in like manner as provided by the one hundred and seventy-fourth section; (*u*) but such neglect or refusal shall not interfere with the immediate organization of the new Council, provided a majority are present of the full number of the Council. 36 V. c. 48, s. 127. Warrant for new election. But non-election not to prevent organization of council.

177. The Returning Officers and Deputy Returning Officers shall hold the new election at furthest, within eight days after receiving the warrant, (*a*) and the Clerk shall appoint a Time for holding and notice of new election.

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the Council to hold casual elections, or to hold the particular election. It does not appear to be left to the discretion of the head, Clerk or member who issues the warrant to nominate the Returning Officer.

(*s*) The word "seat" is several times used in this Act. It is a figurative expression to indicate office. When a person takes his seat, he is said to take the office. When he resigns his seat, he resigns the office. When the seat is vacant, the office is vacant. The person elected is, in the language of this section, to hold his seat for the residue of the term of his predecessor, in other words, to hold the office for the residue of such term. The word, in the sense here used, is borrowed from Parliamentary language.

(*t*) See note *n* to s. 174.

(*u*) Five Councillors were elected in January. At their first meeting, on the 17th January, only one made the declaration of qualification; and a doubt having been raised as to the remaining four, in consequence of some employment held by them under the corporation they delayed in order to consult the County Judge. On the 19th January they met again and organized themselves, but on the same day the Reeve for the previous year issued his warrant to elect four other Councillors who were returned; and on the 31st January these four with the one who had first qualified, met and claimed to be the Council. *Held*, that the second election was invalid; for the parties first elected not having *refused* to qualify, but only delayed, and having done so within the twenty days allowed, there was no ground for a new election. *In re Asphodel and Sargant et al.*, 17 U. C. Q. B. 593. A mandamus was therefore ordered to the clerk to deliver up the papers to the Council first chosen. *Ib.*

(*a*) The Returning Officer is to hold the election at *furthest* "*within* eight days *after receiving the warrant.*" The general rule for the computation of time fixed by a statute is—unless there be something in the statute to the contrary—to hold the first day excluded and the

time and place for the nomination of candidates, and in case a poll is demanded, shall, at least four days before such poll-

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atter day included. *Ex parte Fallon et ux.*, 5 T. R. 283. In this case the statute required an annuity deed to be enrolled "*within* twenty days of the execution," and it was read as excluding the day of execution. Lord Kenyon, in delivering judgment, said, "it would be straining the words to construe the twenty days *all* inclusively. Suppose the direction of the Act had been to enrol the memorial within *one* day after the granting of the annuity, could it be pretended that it meant the same as if it were said that it should be done on the *same* day on which the act was done? If not, neither can it be construed inclusively where a greater number of days is allowed." The same interpretation was put on the words "*within* twenty-one days after the execution," in the case of the registry of a warrant of attorney. *Williams* v. *Burgess*, 9 Dowl. 544. Lord Denman, in delivering judgment, said, "The question in this case has been decided in *ex parte Fallon*, which is an unquestionable authority." In *Scott* v. *Dickson*, 1 U. C. P. R. 366, where the words were "within sixteen days after the service hereof," as used in the Ejectment Act 14 & 15 Vict. c. 114, Robinson, C. J., said, "I think the rule of computation given by Stat. 2 Geo. IV. ch. 1, s. 22, does not apply, as this is a term appointed by a statute, not by a rule of court, and by a statute passed after that Act, and therefore we must compute according to the general rule where there is no express provision. This makes the first day inclusive and the last exclusive, or *vice versâ*." *Scott* v. *Dickson*, 1 U. C. P. R. 366, was followed in *Vrooman* v. *Shuert*, 2 U. C. P. R. 122; *Buffalo and L. H. R. W. Co.* v. *Brooksbanks*, *Ib.*, 126; *Cameron* v. *Cameron*, *Ib.*, 259; *Callaghan* v. *Baines et al.*, *Ib.*, 144; *Clark* v. *Waddell*, *Ib.*, 145; *Phillips* v. *Merritt*, *Ib.*, 233; *Cuthbert* v. *Street*, 6 U. C. L. J. 20; *In re West Toronto Election*, 5 U. C. P. R. 394. See further, *Warren* v. *Slade*, 9 Am. 70; *Westbrook Manufacturing Co.* v. *Grant*, 11 Am. 181; *Bemis* v. *Leonard*, 19 Am. 470; *Clarke* v. *Garrett et al.*, 28 U. C. C. P. 75. The following cases, in which *both* days were held to be inclusive, were decided under the 2 Geo. IV. c. 1, or some other statute or rule expressly making both days inclusive: *Moore* v. *The Grand Trunk Railway Co.*, 2 U. C. P. R. 227; *Ross et al.* v. *Johnson et al.*, *Ib.*, 230; *Ridout* v. *Orr*, *Ib.*, 231; *Willams* v. *Lee*, 2 U. C. C. P. 157; *Morell* v. *Wilmott*, 20 U. C. C. P. 378. See further note to sec. 195 of the Assessment Act. But the words "*from*" and "*until*" do not admit of so rigid and well understood a rule of construction. In *Pugh* v. *Duke of Leeds*, 2. Cowp. 714, 717, Lord Mansfield said, "In grammatical strictness and in the nicest propriety of speech that the English language admits of, the sense of the word 'from' must always *depend* upon the *context* and *subject matter* whether it shall be construed *inclusive* or *exclusive* of the *terminus a quo*, and whilst the gentlemen of the bar were arguing this case, a hundred instances and more occurred to me, both in verse and prose, where it is used both inclusively and exclusively. If the parties in the present case had added the word 'inclusive' or 'exclusive,' the matter would have been very clear. If they had said 'from the day of the date *inclusive*,' the term would have commenced immediately, if they had said from

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178. In case, at any annual or other election, the electors from any cause not provided for by the one hundred and fifty-third, or one hundred and fifty-fourth sections, neglect or decline to elect the members of Council for a Municipality on the day appointed, or to elect the requisite number of members, (*c*) the new members of the Council, if they equal or exceed the half of the Council when complete, or a majority of such new members, or if a half of such members are not elected, then the members for the preceding year, or a majority of them,—shall appoint as many qualified persons as will constitute or complete the number of members requisite; (*d*) and the persons so appointed shall accept

Mode of appointing requisite number of council if election neglected, etc.

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the day of the date *exclusive* it would have commenced the *next* day. But let us see whether the context and subject matter in this case do not show that the construction here should be *inclusive* as demonstrably as if the word 'inclusive' had been added," &c. In *Watson* v. *Pears*, 2 Camp. 294, Lord Ellenborough said, "It used to be held that 'from the date' includes the day, and from 'the day of the date' excludes it. But since the case of *Pugh* v. *The Duke of Leeds*, the formal distinctions have been done away, and the rule of good sense has been established that such words shall be construed according to the meaning of the parties who use them." In *Isaacs et al.* v. *The Royal Ins. Co.*, L. R. 5 Ex. 296, Kelly, C. B., said "Upon looking at the authorities before *Pugh* v. *Duke of Leeds*, 2 Cowp. 714, it appears that questions without number arose as to whether upon a contract to do any act or enter into an engagement at or for a definite term, say six or twelve months from the day of the date of some act done, time was to be reckoned exclusive or inclusive of the last day of the time, but in that case it was observed that it was impossible to lay down any fixed rule, but that each case must depend on its own circumstances and subject matter. Sometimes the first day, and sometimes the last was included. No settled and invariable rule has been laid down for all cases." The word "until," which is also equivocal in its meaning was in this case held to be inclusive of the last day. See also *Hardy* v. *Ryle*, 9 B. & C. 603, 609.

(*b*) *At least four days, &c.* See note *a* to s. 111.

(*c*) The power to proceed under this section may be exercised, first, in case the electors neglect or decline to elect the necessary members on the day appointed for the election, and, secondly, in case they neglect or decline to elect the requisite number of members.

(*d*) There is a difference between an election and an appointment *The Queen ex rel. Beaty* v. *O'Donaghue et al.*, 3 U. C. L. J. 75. An election, whether by the electors at large or by the members of the

office and make the necessary declarations under the same penalty, in case of refusal or neglect, as if elected. 36 V. c. 48, s. 129.

DIVISION VIII.—CONTROVERTED ELECTIONS.

How validity or right of election determined. *Secs.* 179-189.
Writ for removal, &c. *Sec.* 190.
If entire election invalid. *Sec.* 191.
Disclaimer. *Secs.* 192–197.
Costs. *Secs.* 197, 198.
Decision of Judge final. *Sec.* 199.
Judges may settle forms and practice. *Sec.* 200.

Trial of contested elections or right to elect.

179. In case the right of any Municipality to a Reeve or Deputy Reeve or Reeves, or in case the validity of the election or appointment of Mayor, Warden or Reeve, or Deputy Reeve, Alderman, or Councillor is contested, (*e*) the same may be tried in Term or Vacation by a Judge of either of the Superior Courts of Common Law, or the Senior or officiating Judge of the County Court of the County in which the

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Council, is by vote, and usually consists in the choice of the members of the Council by the electors of the Municipality, or of the head of the Council by the members of the Council elect; both of which proceedings are in general essential to the organization of the Council. Sec. 217 and notes. An *appointment* is, properly speaking, an act of the Council after it has been organized. Thus: the Clerk and other officers are appointed, not elected, by the Council. See sec. 237. The section speaks of appointments, not of elections. It therefore becomes material to consider precisely under what circumstances the power of appointment under the section can be exercised. If there be an *entire* failure to elect members on the day fixed for the purpose, the power to appoint would of course devolve on the Council of the preceding year, which, having been duly organized, continues in office until superseded by the organization of a new Council. But if the failure to elect be only *partial*, that is to say, if the failure be to elect the requisite number of members, then the other members of the Council, *provided they equal or exceed the half of the Council when complete*, appoint the requisite number of members. If *less* than half of the members of the new Council have been elected, then the members of the *preceding* year may make the requisite appointments.

(*e*) Two matters are stated as subjects that may be contested:

1. The *right* of a Municipality to a Reeve or Deputy Reeve or Reeves, which must depend on the number of freeholders and householders on the last revised Assessment Roll.

election or appointment took place; (*f*) and when the right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter contested, any municipal elector in the County may be the relator, and when the contest is respecting the validity of any such election as aforesaid, any candidate at the election, or any elector who gave or tendered his vote thereat, or if respecting the validity of any such appointment, any member of the Council or any elector of the Ward, or, if there is no Ward, of the Municipality for which the appointment was made, may be the relator for the purpose. (*g*) 36 V. c. 48, s. 131.

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2. The *validity* of the election or appointment of Mayor, Warden or Reeve or Deputy Reeve, Alderman or Councillor.

When the office is of a public nature the remedy by *quo warranto* information is the proper one. See *Askew* v. *Manning*, 38 U. C. Q. B. 345. And where *quo warranto* does not lie *mandamus* is the proper remedy. *Regina* v. *St. Martins'-in-the-Fields*, 17 Q. B. 149. *The Queen* v. *Hertford College*, L. R. 2 Q. B. Div. 590. Until the passing of the C. S. U. C. ch. 54, there was no mode by which the right of a Municipality to a Reeve or Deputy Reeve could be contested otherwise than by an information in the nature of a *quo warranto*. *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51. Nor until the passing of that Act was there any power in a summary manner to determine the validity of an appointment. *The Queen ex rel. Beaty* v. *O'Donaghue et al.*, 3 U. C. L. J. 75.

(*f*) Before the summary mode of trial of contested elections prescribed by the Municipal Act, the only remedy was the tedious and expensive one of information in the nature of a *quo warranto*, and in cases where the provisions of the Municipal Act are inapplicable, that remedy must still be adopted. *In re Biggar*, 3 U. C. Q. B. 144. *The Queen ex rel. Coleman* v. *O'Hare*, 2 U. C. P. R. 18; *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51. Where an information in the nature of a *quo warranto* is asked for on behalf of an individual, it must if allowed, be exhibited in the name of the Master of the Crown Office. *Ib.* The summary mode prescribed by the Municipal Act is, so far as applicable, intended as a substitute for the proceeding by *quo warranto* information. *The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226. The general practice is, as much as possible, to confine parties aggrieved to the relief to be obtained under the statute. *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457. *Mandamus* is not an appropriate remedy. *In re Brenan*, 6 O. S. 330.

(*g*) The relator is the person upon whose application the jurisdiction of the Judge is put in motion. It is to be observed that—

1. When the right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter of contest, *any* Municipal elector *in the County* may be the relator.

2. When the contest is respecting the validity of any such election

Time for limited, and

180. If within six weeks after the election, or one month

as aforesaid, "*any candidate* at the election, or any elector who gave or tendered his vote" at the election, may be a relator.

3. When respecting the validity of any such appointment, "*any* member of the Council, or *any* elector of the Ward, or, if there be no Ward, of the Municipality for which the appointment was made," may be the relator.

It is not necessary to give any definition of an elector. Reference may be made to sec. 76 and following sections as to who are electors. But it is to be observed, that while *any* elector may be relator when the right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter of contest, it must be "an elector who gave or tendered his vote at the election," or "a candidate" in the case where the validity of an election is the matter of contest. It is not in such a case as last mentioned, enough for the relator to show that he "protested and voted" against the person elected. *The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226. "Candidate" is a vague term. No certain idea is fixed by law to it. *Per* Lord Mansfield, in *Comb* v. *Pitt*, 3 Burr. 1590; see further, *Morris* v. *Burdett*, 1 Camp. 218. A candidate was defined by Lord Ellenborough as "a person offering himself to the suffrages of the electors," *Morris* v. *Burdett*, 2 M. & S. 216, and by Dampier, J., as "one who voluntarily proposes himself or adopts the proposal of others." *Ib.* See further, *Muntz* v. *Sturge*, 8 M. & W. 310. It is not necessary to constitute a person a candidate for the purposes of this section that he should be actually nominated at the election. *The Queen ex rel. Corbett* v. *Jull*, 5 U. C. P. R. 41. But if, after having been nominated, he, with the consent of his proposer and seconder, withdraw, he ceases to be a candidate. *The Queen ex rel. Coyne* v. *Chisholm*, 5 U. C. P. R. 328. The interest of the relator is not established by the ordering of the writ. *The Queen ex rel. Shaw* v. *Mackenzie*, 2 C. L. Chamb. R. 36. It is not necessary that a relator who was a candidate should shew in his application to oust the successful candidate that he himself is qualified to accept office. *The Queen ex rel. Mitchell* v. *Adams*, 1 C. L. Chamb. R. 203. An elector who has himself been instrumental in electing a candidate will not be allowed afterwards to complain of the election of that candidate. *The Queen ex rel. Pomeroy* v. *Watson*, 1 U. C. L. J. 48. *The Queen ex rel. Loyall* v. *Ponton*, 2 U. C. P. R. 18; *The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457; *The Queen ex rel. Grayson*, v. *Bell*, 1 U. C. L. J. N. S. 130; *Regina ex rel. Regis* v. *Cusac*, 6 U. C. P. R. 303. Upon similar principles it has been held that a Councillor who is instrumental in the election of a particular person as Reeve or Deputy Reeve, cannot afterwards be allowed to move against the person so elected Reeve or Deputy Reeve. *The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; but see *The Queen ex rel. Clint* v. *Upham*, 7 U. C. L. J. 69. So where there is only one candidate or set of candidates proposed, and he or they are in good faith elected by acclamation, no contest will be allowed under this section. *The Queen ex rel. Bugg et al.* v. *Bell*, 4 U. C. P. R. 226. "If the electors do not think it worth while to contest an election in the ordinary way, it may

after acceptance of office by the person elected, (*h*) the relator shews by affidavit to any such Judge, (*i*) reasonable grounds for

security and proof required.

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properly be considered that the Legislature did not mean to give them a right to contest it by an application of this kind." *Per* Hagarty, C. J., *Ib.* 229. It is not desirable that the Clerks of Municipal Corporations, having the custody of the papers of the Corporation, should be relators in *quo warranto* proceedings to unseat members of the Councils of which they are Clerks. *The Queen ex rel. McMullen* v. *DeLisle*, 8 U. C. L. J. 291. All the Judges, whether of Superior or County Courts named in this section, possess concurrent and co-ordinate jurisdiction. But where a Judge of the Superior Court was of opinion against a sitting member, he declined to withhold his judgment, upon the ground that there was a prior relation at the instance of a different relator against same defendant for same cause, pending before a County Court Judge, which relation it was sworn was collusive and intended to protect the defendant in the enjoyment of office contrary to law. *The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71. A stranger to the proceedings may, if otherwise qualified, attack them on the ground that they have been initiated in collusion with the defendant. *The Queen ex rel. Patterson* v. *Vance*, 5 U. C. P. R. 334. But he will not be allowed to set up irregularities in the proceedings as such unless he shew that the relator committed them purposely, as, for example, to secure the failure of his own proceedings. *Ib.* If a relator find his proceedings irregular, he may notify defendant not to appear and of his intention to proceed *de novo*, in which case he may successfully make a second application. *The Queen ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 80.

(*h*) The first point for consideration is the time within which the application is to be made, that is, "within six weeks after the election, or one calendar month after the acceptance of office by the person elected." In the computation of the six weeks, the day of the election is to be excluded. See note *a* to sec. 177. Six weeks at all events are allowed to impeach the election, although the office may have been accepted more than a calendar month. If the application be not made within the six weeks, the test is then, whether the office has been accepted more than one calendar month. *The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 16. The application must not only be made within the time limited, but be made as the practice directs. *The Queen ex rel. Telfer* v. *Allan*, 1 U. C. P. R. 214. Therefore, where there was no written motion paper, as required by Rule No. 1, and the statement was not signed, as required by Rule No. 2, the application failed. *Ib.* (See Appendix); and if the time limited be allowed to elapse without an application, the relator will not be allowed to file an information in the nature of a *quo warranto*. *The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.

(*i*) There should be at least two affidavits: the one of the relator, to the effect that he believes the grounds mentioned in the statement to be well founded; the other an affidavit of the relator or other person, setting forth fully and in detail the facts and circumstances which support the application. Rule No. 2. The affidavit of the relator is sufficient to obtain the writ. *The Queen ex rel. Carroll* v.

supposing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, (*k*) and if the relator enters into

Beckwith et al. 1 U. C. P. R. 278. It seems, although it has not been expressly decided, that the attorney of the relator may act as a commissioner for taking the affidavits. *The Queen ex rel. Blaisdell* v. *Rochester*, 12 U. C. Q. B. 630. The Judge must be either a Judge of the Superior Courts of Common Law, or the senior or officiating Judge of the County Court of the County in which the election or appointment took place. Sec. 179.

(*k*) The grounds of the application are here specified, viz: either that the election was not legal, or was not conducted according to law, or that the person declared elected was not duly elected. The granting or refusal of the writ is a matter of discretion. If "reasonable grounds" be shewn, the writ no doubt will be ordered. But it is not for every mistake or irregularity that the writ will be ordered. If the mistake or irregularity in no manner contributed to an improper result, the Judge may very properly refuse the writ. See *The Queen* v. *Ward*, L. R. 8 Q. B. 210. The application may be made although defendant has not taken the oath of office. *In re Sawers* v. *Stevenson*, 5 U. C. L. J. 42.

The following may be the form of the statement:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The statement and relation of ——, of ——, who, complaining that ——, of ——, (*here insert the names and additions of all, if more than one person*), hath (*or* have) not been duly elected, and hath (*or* have) unjustly usurped and still doth (*or* do) usurp the office of ——, in the Town of —— (*or* Township of ——, *as the case may be*), in the County (*or* United Counties) of ——, under the pretence of an election held on ——, at ——, in the said County *or* (United Counties). [And, (*when it is claimed that the relator, or the relator and another, or others, ought to have been returned*), that, (*here name the party or parties so entitled*) was (*or* were) duly elected thereto, and ought to have been returned at such election], and declaring that he, the said relator, hath an interest in the said election, as a ——, states and shews the following causes why the election as the said —— to the said office should be declared invalid and void. [And *when so claimed*) the said —— (*naming the party or parties*) be duly elected thereto].

First—That (*for example*) the said election was not conducted according to law in this, that, &c.

Second—That the said —— was not duly or legally elected or returned, in this, that, &c.

Third—That, &c.

Signed by the relator in person, or by C. D., his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

a recognizance before the Judge or before a Commissioner for taking affidavits, in the sum of two hundred dollars, with two sureties (*l*) (to be allowed as sufficient by the Judge upon

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The relator is not allowed, at the hearing, to object to the election of the party or parties complained against, on any ground not specified in the statement on which the summons was moved. Rule 9, Appendix. But it is, notwithstanding, in the discretion of the Judge, if he see fit, to entertain, upon his own view of the case, any substantial ground of objection to or in support of the valdity of the election of either or any of the parties which may appear in the evidence before him. *Ib.* None of the proceedings are to be set aside or held void on account of any irregularity or defect, which shall not, in the opinion of the Court or Judge, be deemed such as to interfere with the just trial and adjudication of the case on the merits. Rule 18. The statement of the relator as to an objection supported by his affidavit is looked upon as a material traversable allegation, and if defendant omit to answer it, he may be held to admit its truth. *Regina ex rel. Hervey* v. *Scott*, 2 C. L. Chamb. R. 88. The statement may be amended by shewing that the relator was a candidate or a voter. *The Queen ex rel. O'Reilly* v. *Charlton*, 6 U. C. P. R. 254. Where the allegation was, that the relator "had an interest in the said election as a voter," and his affidavit stated that he had voted "on the said election, but not for the said William Rastall," it was held to be sufficient. *Regina ex rel. Ross* v. *Rastall*, 2 U. C. L. J. N. S. 160. A Relator is not necessarily bound to prove his interest. *Regina ex rel. Bartliffe* v. *O'Reilly*, 8 U. C. Q. B. 617; see further *The Queen ex rel. Pomeroy* v. *Watson*, 1 U. C. C. L. J. 48. *The Queen ex rel. Campbell* v. *O'Malley*, 10 U. C. L. J. N. S. 250.

(*l*) The following may be the form of the recognizance:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

ONTARIO, County (*or* United Counties) of ——. Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me ——, of ——, Chief Justice (*or* a Justice, *or* a Commissioner for taking bail) in Her Majesty's Court of Queen's Bench (*or* Common Pleas) for Ontario, cometh ——, of ——, and ——, of ——, and acknowledge themselves severally and respectively to owe to ——, of —— (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said —— the sum of two hundred dollars, and the said —— and —— the sum of one hundred dollars each, upon condition that if the said—— do prosecute with effect the writ of summons in the nature of *quo warranto*, to be issued on an order of fiat to be made at the instance and upon the relation of the said ——, against the said ——, to show by what authority he (*or* they) the said —— claims (*or* claim) to be (*here state the office so claimed*), and why he (*or* they) the said —— should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (*or* the party *or* parties entitled) should not be declared duly elected, and be admitted to the said office]; and if the said —— do pay to the said —— all such costs as the said

affidavit of justification) (*m*) in the sum of one hundred dollars each, conditioned to prosecute the writ with effect, or to pay the party against whom the same is brought any costs which may be adjudged to him against the relator, the Judge shall direct (*n*) a writ of summons in the nature of a *quo*

Court of —— (*or* the Judge presiding in Chambers, at the City of Toronto, in the County of York, *or* the Judge of the County Court of the County of ——) shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned,

Before me ——

(*m*) The following may be the form of affidavit of justification:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

I, A. B., of, &c., one of the sureties in the recognizance hereto annexed, make oath and say as follows:

1. That I am a freeholder (*or* householder, *as the case may be*), residing at, &c.

2. That I am worth property to the amount of one hundred dollars over and above what will pay all my just debts (*if bail in any other action, add*) "and for every other sum for which I am now bail".

3. That I am not bail in any other action or proceeding (*or*, except for E. F., at the suit of G. H., in the Court of, &c., in the sum of, &c.)

And I, C. D., of, &c., the remaining surety in the recognizance hereto annexed, make oath and say as follows:

1. That I am a freeholder, &c. (*as before*).

The above named deponents, A. B. and C. D., were severally sworn before me, at, &c., in the County of, &c., this —— day of ——, A. D. 18—. } A. B. C. D.

A Commissioner, &c.

(*n*) The following may be the form of the Judge's fiat:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

Upon reading the statement of ——, of ——, in the County of ——, complaining of the undue election and usurpation of the office of ——, by ——, [and (*if so, stating*) that the said —— (*relator or other person named*) was (*or* were) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement; and also upon reading the recognizance of the said ——, and sureties therein named, and the same being allowed as sufficient; I do order that a writ of summons do issue, calling upon the said ——, (*the party whose election is complained of,*) to show by what authority he (*or* they) the said —— (*the party whose election is complained of*) now exercises or enjoys (*or* exercise and enjoy) the said office [and why (*if so claimed*)

warranto to be issued to try the matters contested. (*o*) 36 V. c. 48, s. 132.

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he (*or* they) the said —— should not be removed therefrom, and the said —— *relator or other person or persons named*) should not be declared duly elected, and be admitted thereto], returnable before, &c.

Dated this —— day of ——, 18—.

(*o*) The following may be the form of writ :

ONTARIO.

VICTORIA, by the Grace of God, &c.

To ——, of ——, &c., in the County (*or* United Counties) of ——.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench or Common Pleas for Ontario, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of ——, which office upon the relation of ——, having as he says an interest in the election to the said office as a ——, we are informed that you have usurped and do still usurp [and that (*if so claimed*) the said —— (*relator or party or parties mentioned*) was (*or* were) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness, the Honourable ——, Chief Justice of our said Court of —— (*or other Justice in whose name the writ is tested*, at Toronto, this —— day of ——, 18—, and in the—— year of our reign.

To the writ must be attached a copy of the relator's statement of objections and grounds, and of the names and additions of the persons who shall have made the affidavits upon which the writ issued. (Rule 3 Appendix.)

The notice may be in the following form :

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

THE QUEEN, upon the relation of ——, against ——.

To —— and ——, named in the within (*or* annexed) writ of summons.

The within (*or* annexed) writ of summons has been issued at my instance and relation ; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or* with the Clerk in Chambers at the City of Toronto), together with affidavits supporting the same ; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer, as herein commanded, or otherwise judgment will be given against you by your

Evidence to be used on return of writ may be taken *viva voce* by leave of judge, etc.

181. The Judge of the Superior Court before whom the writ of summons is returnable, may order the evidence to be used on the hearing of the summons to be taken *viva voce* before the Judge of the County Court, in the presence of counsel for, or after notice to, all parties interested, and such Judge shall return the evidence to the Clerk of the Crown of the Court at Toronto, and every party shall be entitled to a copy thereof. (*p*) 36 V. c. 48, s. 133.

When the relator claims to be elected.

182. In case the relator alleges that he himself or some other person has been duly elected, the writ shall be to try the validity, both of the election complained of, and the alleged election of the relator or other person. (*q*) 36 V. c. 48, s. 134.

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default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said —— (*the relator, or* ——, *the party or parties, if any, alleged to be entitled*) therein named be declared duly elected, and will be admitted thereto in your place.]

A. B. in person.
or by
C. D. his Attorney.

The above mentioned deponents are :

——, of ——.
——, of ——.

(*p*) There was no such provision as the above in the Act of 1866. It for the first time appeared in the Corrupt Practices Municipal Elections Act, 35 Viet. cap. 36, ss. 5 & 6. In some cases it may be necessary for the Judge before whom the case is returnable, in order to avoid needless expense, to avail himself of this section. It authorizes a proceeding in the nature of a commission to examine witnesses. The Judge may, if he see fit, command the attendance of witnesses before him. See sec. 189.

(*q*) It seems to be well understood that before a Judge will entertain an application, not merely to make void the election of the party complained against, but to declare the relator or some other person elected in his stead, it must be shewn, to the satisfaction of the Judge, that notice had been given of the disqualification of the successful candidate at such a time and in such a manner as must have made the electors aware that if they voted for that candidate their votes would be thrown away. See note *p* to sec. 74. Twenty-six persons voted twice for the defendant. The Judge deducted twenty-six from the gross number of votes recorded for defendant, and thus left the relator in a majority of nine. The relator was accordingly declared elected. *The Queen ex rel Pomeroy* v. *Watson*, 1 U. C. L. J. 48. The relator, who is entitled to the seat, is not to be deprived of it by the resignation of his opponent. *The Queen ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87.

When several elections complained of.

183. In case the grounds of objection apply equally to two or more persons elected, the relator may proceed by one writ against such persons. (*r*) 36 V. c. 48, s. 135.

All to be tried by the same judge.

184. Where more writs than one are brought to try the validity of an election, or the right to a Reeve or Deputy Reeve or Reeves as aforesaid, all such writs shall be made returnable before the Judge who is to try the first, and such Judge may give one judgment upon all, or a separate judgment upon each one or more of them, as he thinks fit. (*s*) 36 V. c. 48, s. 136.

Writ, who to issue, and return day thereof.

185. The writ shall be issued by the Clerk of the Process of the said Superior Courts, or by the Deputy Clerk of the Crown in the County in which the election took place, and shall be returnable before the Judge in Chambers of the proper Court at Toronto, or before the Judge of a County Court at a place named in the writ, (*t*) upon the eighth day

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(*r*) It was, under the statute 12 Vict. cap. 81, sec. 146, held that a private relator had no right by a writ of summons, in the nature of a *quo warranto*, either to attack the Township Council by name upon grounds which, if mentioned, must necessarily lead to a dissolution of the body, or to attack the whole Council in one proceeding, through the individual names of every member of it. *The Queen ex rel. Lawrence* v. *Woodruff*, 8 U. C. Q. B. 336. But the law appears to have been in this respect afterwards amended (see 13 & 14 Vict. cap. 64, sch. No. 23, and 16 Vict. cap. 181, s. 27), and sec. 191 of this Act appears to be in the amended and extended form.

(*s*) At an election there may be several candidates; so there may be several persons elected to office. One person may see fit to contest the election of any successful candidate; so another person may see fit to contest the election of another of the successful candidates. Each relator complying with this statute, may have his own separate and independent writ. In this way there may be several writs brought to try the validity of the same election. When such is the case, all the writs are to be made returnable before the Judge who is to try the first. One object is obvious, and that is, to preserve uniformity of decision. *The Queen ex rel. Forward* v. *Detlor*, 4 U. C. P. R. 198. Where the first relation is collusive, and merely intended to protect the defendant in the enjoyment of office, it may be disregarded. *The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.

(*t*) If not tested on the day it was issued, it would be irregular. *The Queen ex rel. Linton* v. *Jackson*, 2 C. L. Chamb. R. 18. But the irregularity may be waived by appearance. (*Ib.*)

Although a County Court Judge may grant a fiat for the writ, it is always to be issued out of one of the Superior Courts. It is suggested that the fiat should state before what Judge the writ is to be returnable. It has been held that a County Court Judge may

after service computed exclusively of the day of service (*u*), or upon any later day named in the writ. (*v*) 36 V. c. 48, s. 137.

Service to be personal, un-

186. The writ shall be served personally, (*a*) unless the party to be served keeps out of the way to avoid personal

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order the writ to issue returnable before a Judge of a Superior Court *The Queen ex rel. Lutz* v. *Williamson*, 1 U. C. P. R. 94. In such case it is the duty of the relator to see that the proper papers are transmitted to Toronto. *Ib.*

(*u*) Thus, a writ served on Monday of one week would be returnable on Tuesday of the ensuing week, "or upon any later day named in the writ."

(*v*) The following may be the form of affidavit of service.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

THE QUEEN, on the relation of ——, against ——.

I, ——, of ——. in the ——, make oath and say, that I did, on the —— day of ——, personally serve the above named defendant (*or* defendants) with the annexed writ of summons, by delivering to him (*or* each of them) a true copy thereof, on which said copy was endorsed a written notice, a copy whereof is hereto annexed, and to which said copy (*or* copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and I further say that the minute (*or* minutes) of the said service, written on the said writ of summons, was (*or* were) so written by me within twenty-four hours after such service.

Sworn at ——, in the County of ——, this —— day of ——, 18—.

Before me ——.

Upon the return of the writ, the party or parties summoned may appear either in person or by attorney. Rule No. 4, Appendix. The manner of appearance is by endorsing on the back of the relator's statement, attached to the motion papers, the words, "The within named C. D. appears in person (*or* by attorney, *as the case may be*) to answer the grounds of objection to his election which are within stated." *Ib.* If on the return no appearance be entered, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made on the back of the statement, as follows: "The within named C. D. (*and* E F.) being duly summoned, hath (*or* have) not appeared to answer the matters within objected." (Rule No. 5, Appendix.) This entry, if not made on the day directed, may be made on a subsequent day. *Ib.* The Judge may thereupon, on that or any subsequent day, proceed to hear and determine the matter. (Rule No. 7, Appendix.)

(*a*) "Personal service" of a writ has never been defined by the Legislature. Each case is left to depend on its own particular cir-

service, in which case the Judge, upon being satisfied thereof, by affidavit or otherwise, may make an order for such substitutional service as he thinks fit. (*b*) 36 V. c. 48, s. 139.

Service may be excused by Judge.

187 The Judge before whom the writ is made returnable, or is returned, (*c*) may, if he thinks proper, order the issue of a writ of summons (*d*) at any stage of the proceedings to make

Returning officer or deputy returning officer

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cumstances. The Courts have not held it necessary to put process into the actual corporcal possession of the defendant, to constitute personal service, but have looked more to the object of the service—timely notice to defendant of intended legal proceedings against him. Har. C. L. P. Act, 2nd ed., note *v* to sec. 16 p. 17. In general a copy of the writ should be left with defendant, and the original shewn to him if he desire to see it. *Goggs* v. *Lord Huntingtower*, 1 D. & L. 599, per Alderson, B. The copy of the writ must be left with, and not merely shewn to defendant. *Morley* v. *Glover*, 2 Str. 877. Though defendant refuse to take the copy, if the person serving it bring it away with him, the service will be defective. *Pigeon* v. *Bruce et al.*, 8 Taunt. 410. Where the copy was thrust through the crevice of a door to defendant, who had locked himself in, the service was held to be sufficient. *Smith* v. *Wintle*, Barnes, 405. Service upon a wife, agent or servant, is not personal service. *Frith* v. *Lord Donegal*, 2 Dowl. P. C. 527; *Davies* v. *Morgan*, 2 C. & J. 237; *Goggs.* v. *Lord Huntingtower*, 1 D. & L. 599; *Christmas* v. *Eicke*, 6 D. &. L. 156.

(*b*) Personal service can only be dispensed with under the circumstances here mentioned. *The Queen ex rel. Arnott* v. *Marchant et al.* 2 C. L. Chamb. R. 167.

(*c*) "Is made returnable, or is returned." This expression appears to be used in order that a writ "returnable" on the face of it before a Judge named therein, may be "returned" to and acted upon by any Judge presiding in Chambers, or the Judge presiding in the County Court for the time being, according as the Judge mentioned in the writ belongs to a superior or an inferior court.

(*d*) The writ to make a Returning Officer a party may be in the following form:

ONTARIO.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of ——, in our Court of Queen's Bench (*or* Common Pleas), ——, it hath been ordered that a writ of summons should issue ——, to show by what authority he (*or* they) claims or exercises (*or* claim or exercise) the office of ——; and whereas it appears to our Justices of our Court of Queen's Bench (*or* Common Pleas), before whom the said writ hath been made returnable (*or as the case may be*), that you were the Returning Officer by whom the said —— hath (*or* have) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid: These are therefore to summon you to be

may be made a party.

the Returning Officer or any Deputy Returning Officer a party thereto. (*e*) 36 V. c. 48, s. 138.

The judge may allow certain persons to intervene and defend.

188. The Judge before whom the writ is returned may allow any person entitled to be a relator to intervene and defend, and may grant a reasonable time for the purpose; (*g*) and any intervening party shall be liable or entitled to costs like any other party to the proceedings. (*h*) 36 V. c. 48, s. 140.

Judge shall try summarily.

189. The Judge shall, in a summary manner, upon statement and answer, without formal pleadings, hear and determine the validity of the election, or the right to a Reeve or Deputy Reeve or Reeves, and may, by order, cause the

Evidence.

assessment rolls, collectors' rolls, list of electors, and any

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and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or* Common Pleas) for Ontario, presiding in Chambers, at the Judges' Chambers, in our City of Toronto, on ——, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

This writ must be served, with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons. (Rule 6, Appendix.) The appearance and subsequent proceedings must also be the same. *Ib.*

(*e*) The Court will presume that a public officer acts properly and honestly till the contrary is shown; and where it is intended to charge any officer with unfairness or partiality, the case should be plainly stated and clearly made out. *The Queen ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138. Where a Returning Officer, after closing the poll, received an affidavit from M. that his vote had been entered by mistake for relator, on which he altered his vote in the poll-book, and, the votes then being equal, gave his casting vote, the election was set aside. *The Queen ex rel. Acheson* v. *Donoghue et al*, 15 U. C. Q. B. 454. In a similar case the Returning Officer was ordered to pay the relator's costs. *The Queen ex rel. Mitchell* v. *Rankin et al.*, 2 C. L. Chamb. R. 161. If the Returning Officer act in good faith, though illegally, it is not usual to inflict costs on him. *The Queen ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89. It has been held that a Returning Officer cannot after the close of the poll, add his vote for a candidate, although he then for the first time discover a tie between them. *The Queen ex rel. Bulger* v. *Smith et al.*, 4 U. C. L. J. 18.

(*g*) The only persons allowed to intervene are persons entitled to be a relator, as to which see note *g* to sec. 179.

(*h*) See note *b* to sec. 198.

other records of the election to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him, (*i*) and sent to be tried by jury by writ of trial directed to any Court named by the Judge, or by one or more of these means, as he deems expedient; (*j*) subject, however, to the provi- Trial.

(*i*) The duty and the powers of the Judge are here mentioned.

The duty is, in a summary manner, upon statement and answer, without formal pleadings, to hear and determine, &c.

The powers are:

1. To cause the Assessment Rolls, Collectors' Rolls, Poll Books, and any other records of the election to be brought before him.

2. To enquire into the facts.

On affidavit or affirmation,

Or by oral testimony,

Or by issues framed and sent to be tried by a jury,

Or by one or more of these means as he may deem expedient.

If any question be raised as to whether the candidate or any voter has been guilty of bribery or undue influence, under the meaning of sections 201 or 202 of this Act, "Affidavit Evidence" is not to be used. See sec. 204.

(*j*) The following may be the form of writ of trial:

[L.S.] VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Judge of the County Court of the County of ——

Greeting:

Whereas, upon the trial of the validity of an election of ——, chosen upon the —— day of ——, to be —— for the Township of ——, (*or as the case may be*) in the County of ——, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c., or that C. D., &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here stating concisely the issues to be tried*), and whereas it is desired by ——, our Chief Justice (*or* Justice) of our Court of Queen's Bench (*or* Common Pleas) before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such case made and provided, command you, that by twelve good and lawful men of the County of ——, who are in nowise akin to the said E. F., the relator in the said case, or to the said (*the other party or parties, naming him or them*), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or* Justice) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

sions of section two hundred and four. (*k*) 36 V. c. 48, s. 141.

Judge shall remove person not duly

190. In case the election complained of is adjudged invalid, (*l*) the Judge shall forthwith, by writ, cause the person

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Witness, the Honorable ——, Chief Justice (*or* Justice) of our said Court at Toronto, this —— day of ——, in the —— year of our reign.

The following may be the form of indorsement of verdict thereon:

I hereby certify that on the —— day of ——, before me, L. M., Judge of the County Court of the County (*or* United Counties) of ——, came as well the within named relator as the within named (*the other party or parties*) by their attorneys (*or as the case may be*) and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

(*k*) When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case than by affidavits filed in answer. (Rule No. 10, Appendix.) But the Judge may in his discretion require from either or any of the parties further affidavits or the production of any such evidence as the law allows. *Ib.* None of the proceedings had in any case for trying the validity of an election, or which follow the determination thereof, are to be set aside or held void on account of any irregularity or defect, which shall not, in the opinion of the Judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits. (Rule No. 18, Appendix.) Contempts in disobeying writs of summons, *certiorari*, *mandamus* or other process, rule or order of Court or of any Judge thereof, acting in the execution of the powers conferred by this Act, are to be certified into the Court from which the writ of summons issued, to be dealt with like other contempts of such Court in other cases. (Rule No. 16, Appendix.) The forms given may be changed when necessary, at the discretion of the Judge who tries or determines the case, to adapt the same to such particular case. (Rule No. 17, Appendix.)

It has been held that a Judge of a County Court cannot, in determining the validity of a contested election, incidentally decide against the validity of a Township By-law. *The Queen ex rel. McLaughlin* v. *Hicks et al.*, 5 U. C. L. J. 89.

(*l*) The following may be the form of the judgment:

In the Queen's Bench (*or* Common Pleas) the Queen on the relation of —— against ——(*and* A. B., Returning Officer, made a party by the order of a Judge.)

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before me, ——, Chief Justice (*or* Justice) of Her Majesty's Court of Queen's Bench (*or* Common Pleas) came as well the above named relator by —— his attorney as the above named —— by his (*or* their) attorney and service of the writ

found not to have been duly elected to be removed, and in case the Judge determines that any other person was duly elected, the Judge shall forthwith order a writ to issue

elected, admit persons elected, or confirm election, etc.

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of summons hereunto annexed, having been duly proved upon affidavit, and upon the said day and upon other days thereafter, at the Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said —— of the office of —— in the said writ of summons mentioned (and of the alleged misconduct of said A. B. as Returning Officer at the said election) [and *if so*] the election of (*the party or parties named*) thereto], and the answers and proofs of the said ——, and having heard the said parties by their council (*or as the case may be*), and upon due consideration of all and singular the premises now, that is to say, this —— day of ——, in the year aforesaid, I do adjudge and determine :

First—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of —— as a ——.

Second—That, &c.

Third—That, &c.

Fourth—That the said —— hath (*or* have) usurped, and doth (*or* do) still usurp the said office, and that he (*or* they) be removed therefrom [*or* that the election of —— to the said office was void, and that he (*or* they) be removed therefrom (*as the judgment may be.*)] And that the said relator [*or* the said (*naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office*)] was (*or* were) duly elected thereto, and ought to have been returned, and is (*or* are) entitled in law to be received into, and to use, exercise and enjoy the said office.

And I do adjudge and determine that the said —— do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (*naming the relator or party whose election is affirmed*) be (*or* be respectively) admitted to the said office in his (*or* their place (*or* places)].

And I do further order, adjudge and determine, that the said relator do recover against the said —— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said ——, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, there to remain of record as a judgment of said Court, according to the form of the statute in such case made and provided. E. F., *J.*

The following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form :

Thereupon now at this day, that is to say, on the ——day of—— aforesaid, at the Judges' Chambers at Toronto aforesaid, all and

May cause new election.

causing such other person to be admitted; (*m*) and in case the Judge determines that no other person was duly elected

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singular the relation and proofs of the said relator, and the answers and proofs of the said —— being seen and fully understood, I do consider and adjudge that the said office of —— so claimed by him (*or* them) the said —— be allowed and adjudged to him (*or* them), that the said —— be dismissed and discharged of and from the premises above charged upon him (*or* them) and also that he (*or* they) the said —— do recover against the said relator his (*or* their) costs by him (*or* them respectively) laid out and expended in defending himself (*or* themselves) in this behalf. All which, &c., (*as in the judgment for the relator.*)

The following may be added if costs allowed and taxed:

"Afterwards, that is to say, on the —— day of ——, in the —— year of the reign of our Lady the Queen, cometh, the said ——, and prayeth that his (*or* their) said costs so as aforesaid adjudged to him or them be taxed and assessed according to the form of the statute, in such case made and provided, and the said costs of the said ——, in and about his (*or* their) prosecution (*or* defence) aforesaid, and (*when the Returning Officer is a party*) of the said ——, in and about his defence aforesaid, so as aforesaid adjudged to him (*or* them), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said —— at the sum of —— [and the costs of the said —— (*when Returning Officer entitled thereto*) at the sum of ——,] and the said ——, in mercy, &c." See *Regina ex rel. Gibbon* v. *McLellan*, 1 C. L. Chamb. R. 125; *The Queen ex rel. Bucliffe* v. *O'Reilly*, 8 U. C. Q. B. 617.

(*m*) The following may be the form of writ for removal, &c.

VICTORIA, &c.

To the Corporation of —— (*the town, township, or city of.*)

Whereas on the —— day of —— in the year of our Lord one thousand eight hundred and —— at the Judges' Chambers in the City of Toronto, before —— Chief Justice (*or* one of the Justices) of our Court of Queen's Bench (*or* Common Pleas) for Ontario, it was by the said Chief Justice (*or* Justice) adjudged and determined that —— of —— had usurped, and did then usurp, the office of —— [and that —— was (*or* were) duly elected thereto, and ought to have been returned, and was (*or* were) entitled in law to be received into, and to use, exercise and enjoy the said office,] all which has, by the said Chief Justice (*or* Justice) been duly certified into our Court of Queen's Bench (*or* Common Pleas) pursuant to the statute in that behalf. Now, we being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself or themselves) in or about the said office, but that he (*or* they) be absolutely forejudged, removed and excluded from further using or exercising the same, under pretence of his (*or* their) election thereto."* [And we do further command that the said (*the person or persons, naming him or them, who has or have been adjudged lawfully elected*) be forthwith

instead of the person removed, the Judge shall by the writ cause a new election to be held. (*n*) 36 V. c. 48, s. 142.

If all the members ousted, etc., writ for new election to go to the sheriff.

191. In case the election of all the members of a Council is adjudged invalid, the writ for their removal, and for the election of new members in their place, or for the admission of others adjudged legally elected, and an election to fill up the remaining seats in the Council, shall be directed to the Sheriff of the County in which the election took place: (*o*) and the Sheriff shall have all the powers for

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admitted, received, and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you and every of you to obey, observe, and do all and every act, matter and thing that may be necessary on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of ——, how this writ shall have been executed.

Witness, &c.

(*n*) The following may be the form of the writ for new election:

VICTORIA, &c.

To the Corporation of ——, and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held:

Whereas, (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows:*) And we do further command that you, the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or* persons) in the place or stead of the said ——, who has (*or* have) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or* persons) who shall be so elected, the oath (*or* oaths), if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or* persons) so elected into the same office, and that you, the said Municipal Corporation, do shew how this writ shall have been executed to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the—— day of ——.

Witness, &c.

(*o*) The following may be the form of writ in such case:

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——,

Greeting:

Whereas (*the same as in the precedent of mandamus* (note *m* to s. 190) *to the end of the words "adjudged and determined," then say*) that the

causing the election to be held which a Municipal Council has in order to supply vacancies therein. (*p*) 36 V. c. 48, s. 143.

Defendant may disclaim, except in certain cases.

192. Any person whose election is complained of may, unless such election is complained of on the ground of corrupt practices on the part of such person, within one week after service on him of the writ, (*q*) transmit post paid,

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election (*or* elections) of all the members of the Municipal Corporation of ——, returned as elected at the election (*or* elections) of members of the said Corporation held (*describing the time or times and place or places of such election* (*or* elections) was (*or* were) invalid or void in law, and that (*naming them all*) had usurped (*proceeding as in the said precedent, adopting the plural form, to the asterisk, and then as follows:*) and we do hereby further command you, the said Sheriff, that you do, pursuant to the statute in that behalf, admit and and return and swear into, or cause the said *naming the person adjudged to have been duly elected*) to be forthwith admitted or returned, and sworn into the said office, to use, exercise, and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises: and we hereby command and strictly enjoin all and every person or persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of —— next, and have then there this writ.

Witness, &c.

A writ requiring a new election may be in the following form:

VICTORIA, &c.

To the Sheriff, &c., (*as in the precedent of a mandamus* (note *m* to s. 190) *to the asterisk, omitting the part between the brackets, and adopting the plural form, then concluding as follows:*) and that you do every act necessary to be done by you in order to the due election and admission of members of said the Corporation, in the place and stead of the persons whose elections have been so declared invalid, and we hereby command, and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end.*)

Witness, &c.

(*p*) It would seem that the Sheriff is to appoint a Returning Officer when an old Council has been superseded by a new one. Where the members of the new Council have been ejected there can be no longer any councillors in possession of the office. The object therefore of this clause is to enable the Sheriff to take the steps necessary to the election or admission of new members with a view to the reorganization of the Council.

(*q*) The writ is to be generally made returnable on the eighth day

through the post office, directed to "The Clerk of the Judge's Chambers, at Osgoode Hall, Toronto," or to "The Judge of the County Court of the County of " (*as the case may be*), or may cause to be delivered to such Clerk or Judge a disclaimer signed by him, to the effect following: (*r*) Mode of proceeding.

"I, *A. B.*, upon whom a Writ of Summons, in the nature of a *Quo Warranto*, has been served for the purpose of contesting my right to the office of Township Councillor (*or as the case may be*) for the Township of in the County of (*or as the case may be*), do hereby disclaim the said office, and all defence of any right I may have to the same.] Form.

"Dated day of

(Signed) "*A. B.*"

36 V. c. 48, s. 144.

193. Such disclaimer, or the envelope containing the same, shall moreover be endorsed on the outside thereof with the word "*Disclaimer*," and be registered at the post office where mailed. (*s*) 36 V. c. 48, s. 145. Posting and registry of disclaimer.

194. Where there has been a contested election, the person elected may at any time after the election, and before his election is complained of, deliver to the Clerk Person elected may disclaim at any time before

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after service, computed exclusively of the day of service; and the design of this clause is, that the disclaimer, if any, should be filed before the writ is returned.

(*r*) When the writ has been issued by direction of a Judge of one of the Superior Courts and is returnable before a Judge of any such Court, the disclaimer should be addressed, "To the Clerk of Judge's Chambers, at Osgoode Hall, Toronto," or if returnable before the Judge of the County Court, then to "The Judge of the County Court of the County of," &c. In either case, the disclaimer so addressed may, if preferred, be mailed or else be delivered to the proper Judge or Clerk. If mailed, the envelope must on the outside be endorsed with the word "Disclaimer." The letter must also be registered in the office where mailed. Sec. 193. If the party, instead of disclaiming under this section or sec. 194, accept office, he can only resign under circumstances detailed in sec. 172 and sec. 173 of this Act.

(*s*) Two things are here made requisite:

1. That the disclaimer or envelope containing the same be endorsed on the outside thereof with the word "Disclaimer."

2. That it be registered at the post office where mailed.

his election complained of.

of the Municipality a disclaimer signed by him as follows :— (*t*)

Form.

"I, *A. B.*, do hereby disclaim all right to the office of Township Councillor (*or as the case may be*) for the Township of (*or as the case may be*), and all defence of any right I may have to the same."

36 V. c. 48, s. 146.

Disclaimer to operate as resignation. Who to be deemed elected.

195. Such disclaimer shall relieve the party making it from all liability to costs, (*u*) and where a disclaimer has been made in accordance with the preceding sections, it shall operate as a resignation, (*v*) and the candidate having the next highest number of votes shall then become the Councillor, or other officer, as the case may be. (*w*) 36 V. c. 48, s. 147.

Duplicate disclaimer to be delivered to clerk.

196. Every person disclaiming shall deliver a duplicate of his disclaimer to the Clerk of the Council, and the Clerk shall forthwith communicate the same to the Council. (*x*) 36 V. c. 48, s. 148.

(*t*) Disclaimers are of two kinds :

1. Disclaimer under sec. 192, which must be transmitted "within one week after service of the writ."

2. Disclaimer under the section here annotated, which may be transmitted "at any time after the election," but "before the election is complained of."

In the case of the former there are no costs, unless the Judge is satisfied that the party disclaiming consented to his nomination as a candidate, or accepted the office.

In the case of the latter there can be no costs, as the disclaimer must be made before writ, and when made relieves the party "from all liability." See sec. 195.

The effect of a disclaimer after the issue of the writ is to put an end to the suit. *Regina ex rel. Hannah* v. *Paul*, 9 U. C. L. J. N. S. 238.

(*u*) If the disclaimer be too late defendant may be ordered to pay costs, *Ex rel. Hawke* v. *Hall*, 2 C. L. Chamb. R. 182. See further note *t* s. 194.

(*v*) See note *k* to s. 172.

(*w*) Where the object of the relator is not only to cause the defendant to vacate office but to substitute another candidate into the office the disclaimer cannot prevent the latter being substituted but rather under this section facilitates that result, see *The Queen* v. *Blizard*, L. R. 2 Q. B. 55.

(*x*) The purpose of this section is obvious. It is that the Council may be informed of what has taken place. This is done through the

197. No costs shall be awarded against any person duly disclaiming, unless the Judge is satisfied that such party consented to his nomination as a candidate, or accepted the office, in which case the costs shall be in the discretion of the Judge. (*a*) 36 V. c. 48, s. 149. Costs of person disclaiming.

198. In all cases not otherwise provided for, costs shall be in the discretion of the Judge. (*b*) 36 V. c. 48, s. 150. Costs generally.

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the instrumentality of the Clerk. And he obtains the knowledge necessary to enable him to act from having been served with a duplicate of the disclaimer.

(*a*) The rule is, that the costs of a contested election are in the discretion of the Judge. Sec. 198. The exception is, where a regular disclaimer is made within the time limited for the purpose, in which case no costs are to be awarded against the party who disclaims. If however, the Judge be satisfied that the party "consented to his nomination as a candidate, or accepted the office," the case comes within the rule and not the exception. Where defendant personally contested the election, but on its being moved against sent in a disclaimer praying to be relieved from costs, because, having been duly elected, he was obliged, under a penalty, to accept office, the learned Judge in Chambers refused to relieve him of costs. *The Queen ex rel. Featherstone* v. *McMonies*, 2 C. L. Chamb. R. 137. But if the defendant disclaim in proper time, and be free from any imputation of blame, it is not usual to give costs against him. *The Queen ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89. If the disclaimer be filed too late, clearly costs are in the discretion of the Judge. *Ex rel. Hawke* v. *Hall*, 2 U. C. Chamb. R. 182. On the 4th March the relator obtained a summons to contest defendant's election, and the writ and statement were served on that day. On the 9th, defendant sent a written disclaimer to the Judge in Chambers, which was received on the 10th, and on the 13th the relator's affidavit was filed stating that defendant had consented to his own nomination, and had taken his seat, &c. No proof of the grounds taken in the statement were ever filed, and the case was then allowed to drop. On the 27th April, the relator filed a further affidavit stating that after the disclaimer the Reeve had ordered a new election, at which he, the relator, was duly elected, but that the defendant persisted in retaining his seat, contending that it had not become vacant by his disclaimer. Sir J. B. Robinson under these circumstances, refused to give judgment, as if the matter were still pending on the summons, there being no proof of any of the objections taken, but held that the disclaimer could not nullify the election, as the parties seemed to have supposed; and that if the Council should support the relator in his seat, the defendant or some one else must move against his election on the ground that it was illegally ordered. *The Queen ex rel. Freeman* v. *Jones*, 1 U. C. P. R. 306. The Judge who was in Chambers at the return of the summons, might perhaps enter an adjournment to a certain day, and call for proofs as to the first election, and give judgment. *Ib.*

(*b*) The Judge has a discretion to withhold costs altogether from either side, if he see fit. *The Queen ex rel. Swan* v. *Rowat*, 13 U. C.

Judge to return his judgment to the court. It shall be final.

199. The decision of the Judge shall be final, and he shall, immediately after his judgment, return the writ and judgment, with all things had before him touching the same, into the Court from which the writ issued, there to remain of

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Q. B. 340, or to distribute the costs, that is, to order each party to pay his own costs. *Per* Hagarty, J., *The Queen ex rel. Gordanier* v. *Perry et al.*, 3 U. C. L. J. 90. They are absolutely in his discretion: *Lovering* v. *Dawson*, L. R. 10 C. P. 726. Where it was sworn that intending voters for an unsuccessful candidate were obstructed in the approach to the polling place by a crowd under the control of one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election as to him was set aside with costs. *The Queen ex rel. Gibbs* v. *Branighan*, 3 U. C. L. J. 127. The tendency of modern decisions is not to make a party pay costs unless it be shewn that he himself participated in the improper conduct for which the election is set aside. *The Queen ex rel. Kirk* v. *Asselstine*, 1 U. C. L. J. 49. *The Queen ex rel. Davis et al.* v. *Wilson et al.*, *Ib.* 165; *The Queen ex rel. Walker* v. *Mitchell*, 4 U. C. P. R. 218; *The Queen ex rel. Johnson* v. *Murney et al.*, 5 U. C. L. J. 87. But relators are not to be discouraged from bringing cases of invalid elections under notice of a Judge at the peril of having to lose the costs necessarily incurred. *The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126; *The Queen ex rel. Charles* v. *Lewis et al.*, 2 C. L. Chamb. R. 177; *The Queen ex rel. Hawke* v. *Hall*, *Ib.* 187; *The Queen ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137. In one case a learned Judge refused to make a relator pay costs, though unsuccessful, where it was shown he had acted in good faith in bringing forward his complaint. *The Queen ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60. So where a Returning Officer, made a party to the proceedings, was shewn to have acted in good faith, though illegally, costs were not imposed upon him. *The Queen ex rel. Pomeroy* v. *Watson*, 1 U. C. L. J. 48; *The Queen ex rel. Copland* v. *Webster*, 6 U. C. L. J. 89. Where the Returning Officer was acquitted of blame, and relator's statement was shewn not to be strictly correct, the latter was ordered to pay costs to the former. *The Queen ex rel. Hawke* v. *Hall*, 2 C. L. Chamb. R. 182. But a returning officer, who received illegal votes not on the roll was ordered to pay costs. *The Queen ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87. The Master, on taxing costs to the successful party, should consider whether or not the successful party produced an unnecessary number of affidavits, or affidavits unnecessarily diffuse, and act accordingly. *The Queen ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138. A by-law to pay the costs of a contested election is illegal, and will be quashed with costs. *In re Bell* v. *Manvers*, 2 U. C. C. P. 507. A Municipality cannot legally support such a contest, or indemnify one of the parties to a contest, of the kind. *Ib.* But the cost of litigation undertaken *bona fide*, and on reasonable grounds, for the assertion or defence of corporate rights, may be paid out of corporate funds. *The Queen* v. *Bridgewater*, 10 A. & E. 281; *The Queen* v. *Lichfield*, 4 Q. B. 893; *The Queen* v. *Leeds*, *Ib.* 796; *The Queen* v. *Warwick*, 15 L. J. Q. B. 306; *Attorney-General* v. *Wigan*, 1 Kay 268; *Lewis* v. *Rochester*, 9 C. B. N. S. 401; *The Queen* v. *Tamworth*, 19 L. T. N. S. 434.

record as a judgment of the said Court; (*c*) and he shall, as occasion requires, enforce such judgment by a writ in the nature of a writ of peremptory *mandamus*, and by writs of execution for the costs awarded. (*d*) 36 V. c. 48, s. 151.

Mode of enforcing obedience.

200. The Judges of the Superior Courts of Common Law, or a majority of them, may, by rules made in Term time, settle the forms of the writs of summons, *certiorari*, *mandamus* and execution under this Act, (*e*) and may regulate the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same, or any other writ or order of the Court or Judge, and respecting the practice generally, in hearing and determining the validity of such elections or appointments, and respecting the costs thereon; and may from time to time rescind, alter, or

The Judges to make rules, etc.

(*c*) Formerly leave was given to appeal from the decision of the Judge to the full Court. *The Queen ex rel. McKean* v. *Hogg*, 15 U. C. Q. B. 140. That privilege was in the Municipal Institutions Act of 1858, when introduced to the Assembly, but was struck out in Committee. The object, no doubt, is promptly to ensure the relief intended. The danger is that there may be a want of uniformity of decision. So far no such mischief has arisen.

(*d*) The power of a Judge to award costs for or against a relator, defendant or Returning Officer, is in general exercised only on the final determination of the case. *The Queen ex rel. Arnott* v. *Marchant et al.*, 2 C. L. Chamb. R. 167.

(*e*) The following may be the form of *fi. fa.* for costs:

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of——, Greeting,

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of ——, the sum of ——, which hath lately been adjudged to C. D., of ——, in our Court of Queen's Bench (*or* Common Pleas), at Toronto, according to the form of the statute in such cases made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of ——, in our —— of ——, in your County (*or* Counties) *if the Returning Officer has been made a party, add here,* "to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office was made a party"); whereof the said A. B. is convicted, as in our said Court appears of record; and that you have that money before our said Court, at Toronto, immediately after the execution hereof, to satisfy the said C. D., for his costs aforesaid, and have you then there this writ.

Witness, &c.

N. B.—When the Returning Officer has been made a party, and is entitled to costs, the fieri facias *must be framed accordingly.*

add to such rules; but all existing rules shall remain in force until rescinded or altered as aforesaid. (*f*) 36 V. c. 48, s. 152.

DIVISION IX.—PREVENTION OF CORRUPT PRACTICES.

Bribery and undue influence defined. *Secs.* 201, 202.
Certain payments lawful. *Sec.* 203.
Evidence to be viva voce. *Sec.* 204.
Effect of conviction of candidate for bribery. *Sec.* 205.
Additional penalty. *Sec.* 206.
How penalties recoverable. *Sec.* 207.
Report and record of convictions. *Secs.* 208, 209.
Witnesses, how procured—Self-crimination not to excuse from giving evidence. *Secs.* 210, 211.
Proceedings, within what time to be taken. *Sec.* 212.
Case in which penalties not recoverable. *Sec.* 213.
Publication of the law against corrupt practices. *Sec.* 214.

Certain persons to be deemed guilty of bribery.

201. The following persons shall be deemed guilty of bribery, and shall be punished accordingly :— (*g*)

(*f*) The powers conferred are :

1. To *settle* the forms of the writs of summons, certiorari, mandamus and execution,

2. To *regulate* the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same or any other writ or order of the Court or Judge, and respecting the practice generally in hearing and determining the validity of such elections and appointments, and respecting the costs thereon.

3. To rescind, alter, or add to such rules.

But it is declared that all existing rules are to remain in force until rescinded or altered. The existing rules which have been in force since the Municipal Act of 1849 will be found in the Appendix.

The tariff of fees allowed in contested Municipal Election cases will be found in 32 U. C. Q. B. 211.

(*g*) Bribery was an offence at Common Law and independently of any statute. *The King* v. *Pitt et al.* 3 Burr. 1338. So the mere offer of a bribe was at Common Law an offence. *The King* v. *Vaughan*, 4 Burr. 2500. But in order, if possible, effectually to put it down, the Legislature has from time to time interfered. In the year 1854 the Imperial Legislature, after all that had previously been done, passed an Act in which it was recited "that the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient." 17 & 18 Vict. ch. 102. In the hope of remedying the insufficiency of the law the statute called "The Corrupt Practices Prevention Act, 1854," was framed. *Ib.* Its provisions were embodied in statutes of the

1. Every person who, directly or indirectly, by himself, or by any other person in his behalf, (*h*) gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or gives or procures, or agrees to give or procure, or offers or promises, any office, place or employment to or for any voter, or to or for any person on behalf of any

Giving money to voters, etc.

Procuring office, etc., for voters.

late Province of Canada and of the Legislature of Ontario, as regards Parliamentary elections Stat. Can. 23 Vict. c. 17; Stat. Ont. 32 Vict. cap. 21, s. 67, and in 1872 were applied by the Local Legislature to Municipal Elections. 35 Vict. cap. 36. The sections here annotated are substantially the same as the provisions of the Imperial statute 17 & 18 Vict. c. 102. Formerly bribery at Municipal Elections was the subject of legislative interference. *Regina ex rel. McKeon* v. *Hogg*, 15 U. C. Q. B. 140. Each act of bribery is a distinct offence. *Milnes* v. *Bale*, L. R. 10 C. P. 591.

(*h*) It is perfectly clear that the meaning which is to be given in this Act of Parliament to the words "any other person on his behalf," is every person other than the candidate for whose act he is responsible. *Per* Martin, B., in *The Norwich Election Petition*, 19 L. T. N. S. 617. In Parliamentary election law it has long been established that where a preson has employed an agent for the purpose of procuring his election he, the candidate, is reponsible for the act of that agent, though he himself did not intend to authorize it. *The Taunton Case*, 1 O'M. & H. 182. It is, in point of fact, making the relation between a candidate and his agent the relation of master and servant, and not of principal and agent. *The Westminster Case*, *Ib.* 95; *The Wigan Case*, *Ib.* 191. A variety of cases might be put, in which a principal is liable even civilly for an act of an agent which he never intended, and at which he is exceedingly displeased. See *The Westbury Case*, *Ib.* 54. A well established case of bribery by an agent avoids an election, even though the agent acted against instructions. *South Grey Election*, 8 U. C. L. J. N. S. 17. It is now, as regards elections for the Local Legislature, expressly declared that "when it is found, upon the report of a Judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, *or by his agent*, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void." 36 Vict. cap. 2, s. 3. sub-s. 1, Ont. Agency is a result of law to be drawn from the facts in the case, and from the acts of individuals. *The Sligo Case*, 1 O'M. & H. 301. There is always a great difference in the degrees of agency. As you go lower down, you require more distinctly to shew that the act was done by a person whom the candidate would be responsible for; as you come higher up, it is more as if the candidate had done it himself. *The Hereford Case*, *Ib.*, 194. No one can lay down a precise rule as to what would constitute evidence of being an agent. *The Bewdley Case*, *Ib.*, 17; *S. C.* 19 L. T. N. S. 676; *The Bridgewater Case*, 1 O'M. & H. 115. A man's wife, if she interfere in the election, is *ipso facto* his agent. *The Cashel Case*, *Ib.* 288. It may be said that an act, however trifling, is evidence of agency, and that an aggregate of isolated acts will by their cumulative force constitute agency. *The Bewdley Case*, *Ib.* 18. Canvassing alone, and with or without a can-

voter, or to or for any person in order to induce any voter to vote or refrain from voting at a municipal election, or upon a by-law for raising any money or creating a debt upon a Municipality or part of a Municipality for any purpose whatever, (*i*) or who corruptly does any such act as aforesaid, on

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vassing book, is evidence of agency. *The Staleybridge Case, Ib.* 68; *The Lichfield Case, Ib.* 25; *The Windsor Case*, 19 L. T. N. S. 613; *The Londonderry Case*, 21 L. T. N. S. 709. But canvassing, independently of the candidate, and for an independent association, rebuts the inference of agency. *The Westminster Case*, 1 O'M. & H. 91. "I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes, and to make speeches in his favour, can force himself upon the candidate as an agent." *Per* O'Brien, J., *The Londonderry Case*, 21 L. T. N. S. 712. A supporter of a candidate who accompanied the candidate in a sleigh saying to some cabmen, "Boys, follow me," does not sufficiently constitute him the agent of the candidate so as to affect him with illegal acts. *The Queen ex rel Thompson* v. *Medcalf*, 11 U.C. L. J. N.S. 248. Ratification by the principal after the act is equivalent to a previous authority. *The Tamworth Case*, 1 O'M. & H. 80; *The Blackburn Case, Ib.* 200. Agency ceases with the election. *The Salford Case, Ib.* 137; *The King's Lynn Case, Ib.* 208; *The Bridgewater Case, Ib.* 114; Conversation after the election is over is inadmissible without previous proof of agency. *The Waterford Case*, 2 O'M. & H. 3.

(*i*) This section gives a new and enlarged definition of bribery. An *offer* is included in the definition. See *Bush* v. *Ralling*, Sayer, 289; *Sulston* v *Norton*, 3 Burr. 1235; *Harding* v. *Stokes*, 2 M & W. 233; *Henslow* v. *Fawcett*, 3 A. & E. 51. "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money." *The Coventry Case*, 1 O'M. & H. 107; *The Staleybridge Case Ib.* 66; see also *The Taunton Case, Ib.* 183. Offering to accept a public office in the election of the people at a reduced salary may be deemed bribery. *State ex rel. Newell* v. *Purdy*, 17 Am. 485. The *evidence* to prove an offer is usually required to be stronger than when money has actually passed. *The Cheltenham Case*, 1 O'M. & H. 64. Money given to a *disqualified* voter is apparently within the terms of the Act. *The Guildford Case, Ib.* 15. The section speaks of the giving, lending, or agreeing to give or lend "money or valuable consideration," or "office, place or employment," "anything, great or small, which is given to procure a vote," is a bribe. *The Coventry Case Ib.* 100. The promise of refreshment is bribery. *The Bodmin Case, Ib.* 124. So a promise before a poll to repay a voter after the money expended by him upon drink. *The Hastings Case, Ib.* 218. It matters not how long before the election the promise may have been made. *The Sligo Case, Ib.* 302. Betting on the result of an election may be held to be bribery. *Gregory* v. *King*, 11 Am. 56, 58, note . The charge of bribery, however, is one that ought to be established by clear and satisfactory evidence. *The Londonderry Case*, 1 O'M. & H. 278. Mere suspicion of bribery is not enough to upset an election. *Ib.* The Judge should be satisfied beyond doubt that the offence is made out. *The Lichfield Case*, 20 L. T. N. S. 11.

account of such voter having voted or refrained from voting at any such election, or upon any such by-law; (*j*)

Or for persons influencing voters.

2. Every person who, directly or indirectly, by himself or by any other person in his behalf, (*k*) makes any gift, loan, offer, promise or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in any Municipal Council, or to procure the passing of any such by-law as aforesaid, or the vote of any voter at any municipal election, or for any such by-law; (*l*)

(*j*) If the money be given *before* the election, to induce a man to vote or refrain from voting, the act is *ipso facto* bribery. But if *after* the election, it must be shown to have been done "*corruptly*." An act done corruptly means an act done by a man knowing that he is doing wrong, and doing it with an evil object. *The Bradford Case*, 1 O'M. & H. 37. Corruptly means to influence votes. *The Cheltenham Case*, 1 *Ib.* 64. "To produce the result which the Legislature intended to forbid." *The Wallingford Case*, *Ib.* 60. Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect upon the election. *The Hereford Case*, *Ib.* 195. The Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way, that he ought to impute, to the person who has done so, a criminal intention in doing it. *The Bodmin Case*, *Ib.* 125.

(*k*) See note *h* to sub. s. 1 of this section.

(*l*) This sub-section is aimed at that offence which is known in England as "purchasing a borough." Of late such transactions have been very rare. An instance of it was exposed in 1858. The Committee in the Harwich Election, reported that G. W. P. was not duly elected; that G. W. P. entered into an engagement with J. A., through his solicitor, in accordance with the terms of which engagement the said G. W. P. was on his part to pay certain sums of money in the event of his return, and the said J. A. was to endeavour to procure the return of the said G. W. P. for the said borough. Clerk on Elections, 99. In the *Barnstaple Case*, 2 P. R. & D. 336, an agreement was proved in the following form:—"I will pay £400 and £1000 within a week after the election at B." C., it was proved had been very active in averting the threatened disfranchisement of the borough, and incurred expenses to the amount of £1,400 in so doing. It was in respect of this bill that the agreement was made. C. swore that it was no part of the understanding that he should procure L.'s return. But the election was held void. The fair payment of the expenses of a member, if he will stand, does not of itself constitute an illegality under this provision, although it constitutes a case calling for a full enquiry. *The Coventry Case*, 1 O'M. & H. 97. If the inquiry, according to what the learned Judge said had shewn that E. had agreed to give H. £5, he might say a farthing, in point of law,—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which H. had with the

Corruptly influencing voters.

3. Every person who, by reason of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any person in any municipal election, or to procure the passing of any such by-law as aforesaid, or the vote of any voter at any municipal election, or for any such by-law ; (*m*)

Advancing, etc., money for bribery, etc.

4. Every person who advances or pays, or causes to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any municipal election, or at any voting upon a by-law as aforesaid, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election, or at the voting upon any such by-law ; (*n*)

Voter receiving money, etc. for vote, or agreeing for money to vote.

5. Every voter who, before or during any municipal election, or the voting on any such by-law, directly or indirectly by himself or any other person in his behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or any other

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electors of Coventry, and of advancing E.'s interest as a candidate at the election, it would have been bribery, and would have avoided the election. *Per* Willes, *Ib.* 100.

(*m*) The transaction intended by this and the preceding sub-section is one and the same. But while the preceding sub-section makes illegal the conduct of the giver, this makes illegal the conduct of the receiver. See the last note.

(*n*) The object of this sub-section is to prevent the expenditure of money for purposes of bribery. If advanced or paid *before* the election, *with intent* that it shall be expended in bribery, it is illegal. If *knowingly* paid *after* the election in discharge of money expended in bribery, it is illegal. The word "knowingly," in this sub-section, is used very much in the same sense as the word "corruptly" is used in the latter part of sub-section 1. It is by no means an uncommon practice for a candidate to pay a large sum of money into the hands of two or three persons, or into the hands of a banker, with permission to certain persons to draw upon such sum of money. This occurs most frequently at elections where it is considered expedient that the candidate should know as little as possible of the means used to procure his return. Were the money so paid in to be expended wholly or partly in bribery, would such a candidate be guilty of bribery within the statute? Such conduct would be very suspicious, to say the least of it. See Clerk on Elections, 101 ; see also remarks of Richards, C. J., *East Toronto Election Petition*, 8 U. C. L. J. N. S. 119.

person, for voting or agreeing to vote, or refraining or agreeing to refain from voting at any such election, or upon any such by-law; (*o*)

6. Every person who, after any such election, or the voting upon any such by-law, directly or indirectly, by himself

Receiving money, etc., after the election for

(*o*) While the preceding sub-sections relate more especially to the candidates and to persons acting on their behalf, this sub-section applies only to voters. The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless under the express enactment of the Legislature. There are other persons interested and affected by the vote beside the voter. The candidate for whom he voted is interested in it, and so are the whole body of the electors who voted for the same candidate. One vote has, and may again influence or change the result of an election, and that is not to be brought about by merely inferential or argumentative legislation, or as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and as a consequence to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependant on the vote. *Per* Richards, C. J., *In re Brockville Election*, 32 U. C. Q. B. 139. Either taking or giving a bribe invalidates a vote on a scrutiny. *The Southampton Case*, 1 O'M. & H. 224. A man who votes for one candidate after having received money to vote for another is as much guilty of bribery as if he had done what was expected of him. *The Lichfield Case. Ib.* 29. To take pay for a day's wages is bribery. *The Staleybridge Case, Ib.* 66; see also *The Taunton Case, Ib.* 183. So payment of a debt for which the voter was incarcerated. *The Londonderry Case*, 21 L. T. N. S. 709; *S. C.* 1 O'M. & H. 275; see further *Harding* v. *Stokes*, 1 M. & W. 354; *The Queen* v. *Thwaites*, 1 E. & B. 704. The question is not what is the motive operating on the mind of the voter. The mind of the voter has nothing to do with it. The question is the motive of the person bribing. Probably there is no man who ever was bribed but would swear that the bribe had not influenced his vote. *The Westminster Case*, 1 O'M. & H. 95; see also *The Cashel Case, Ib.* 289. A conditional inducement of any kind to induce a voter to vote or refrain from voting is bribery. See *Simpson* v. *Yeend*, L. R. 4 Q. B. 626. Payment of travelling expenses to induce the voter to vote is bribery. *The Dublin Case*, 1 O'M. & H. 273. It is not decided that payment afterwards, without a previous promise, is bribery. *The Northallerton Case, Ib.* 167. Colourable employment of a voter is bribery. *The Penryn Case, Ib.* 128. So lavish household expenditure if intended to influence votes. *The Hastings Case, Ib.* 218. Admissions by a voter that he has been bribed are evidence to invalidate his vote on a scrutiny. *The Windsor Case, Ib.* 5; *The King's Lynn Case, Ib.* 208. Votes given for a candidate after an act of bribery has been committed by him, or on his behalf, are not null and void, but merely unavailable for the purpose of the election,—his status as a candidate being annihilated by the act of bribery. *The Norwich Election Petition*, 19 L. T. N. S. 619. The votes remain as good to be struck off by the party claiming the seat. *Ib.*

voting, or inducing, etc., to vote.

or any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any such election, or upon any such by-law; (*p*)

Hiring teams, etc.

7. Every person who hires any horses, teams, carriages or other vehicles for the purpose of conveying electors to and from the polls, and every person who receives pay for the use of any horse, teams, carriages, or other vehicles, for the purpose of conveying electors to and from any polls as aforesaid. 36 V. c. 48, s. 153. (*q*)

(*p*) The word corruptly, as used in the first sub-section is not repeated here, but is involved in the language used. To receive after an election, money or valuable consideration "on account of any person having voted or refrained from voting," &c., is to receive it corruptly. See note *j* to sub. 1 of this section.

(*q*) For a long time doubts existed as to whether the hiring of teams and vehicles to convey voters to and from the polls was legal or not. The doubts were removed in the case of Parliamentary elections for the Local Legislature by sec. 71 of 32 Vict. ch. 21, Ont. The subsection under consideration is in effect a transcript of that section. The subsection is in two parts. The first part affects the candidate and his agent; the second part affects the voters. To bring a case under the Act there must be a hiring on the part of the candidate or his agent, or receiving pay for the use of horses, teams, carriages, or other vehicles for the purpose mentioned. One M., a carter, who voted for respondent at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after the election P. gave M. $2, intending it as compensation for such carriage, but M. thought it was in payment for work which he had done for P. as a carter. The candidate knew nothing of the matter. *Held*, that there was not properly any payment by P. to M. for any purpose, the money having been given for one purpose and received for another. *In re Brockville Election*, 32 U. C. Q. B. 132. But even if there had been such a payment, it was made after P.'s agency had ceased, and as there was no previous hiring or promise to pay to which it could relate, it was held not to come under the operation of the statute. *Ib.* If such payment had been established it would have avoided P.'s vote, but not M.'s. *Ib.* See further the remarks of Richards, C. J., as to the hiring of cabs, &c., in *The West Toronto Case*, not yet reported. A candidate is under no obligation, legal or moral, to pay for loss of time of voters or their travelling expenses. Per Baron Watson in *Cooper* v *Slade*, 6 H. L. C. 754. The payment of a voter's expenses in going to the poll is illegal as such, even though the payment may not have been intended as a bribe. *South Grey Election*, 8 U. C. L. J. N. S. 17. If made on condition of his voting it is bribery. *Cooper* v. *Slade*, 6 H. L. C. 754. See further *Regina ex rel. Thompson* v. *Medcalf*, 11 C. L. J. N. S. 248.

202. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens the infliction, by himself or by or through any other person, of any injury, damage or loss, or in any manner practices intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who in any way prevents or otherwise interferes with the free exercise of the franchise of any voter, shall be deemed to be guilty of undue influence, and be subject to the penalty hereinafter mentioned. (*r*) 36 V. c. 48, s. 154.

Persons using violence or intimidation to be guilty of undue influence.

(*r*) Intimidation may be either general or particular. The great object of the Legislature is to secure freedom of election. "In order to avoid an election on the ground of intimidation, it must be shewn that the rioting or violence was instigated by the member or his agents, for whom he is responsible; or it must be shewn it was to such an extent as to prevent the election being an entirely free election." *The Staleybridge Case*, 1 O'M. & H. 72. The common law renders an election carried by violence, force or intimidation void, because the freedom of election is violated, and persons are prevented from freely exercising their franchise and giving their votes. *The Cheltenham Case*, *Ib.* 64. If the intimidation be so general that the election cannot be said to be a free one, in that case, though it is not brought home to the candidate or his agents, the election would be void. *The Stafford Case*, *Ib.* 229. General intimidation must be put on a parallel with general bribery or general treating; that is, it must be shewn to spread over such an extent of ground, and to permeate through the community to such an extent, that the tribunal considering the case is satisfied that freedom of election has ceased to exist in consequence. *The Drogheda Case*, *Ib.* 259. With respect to particular voters, the Legislature has used language which makes it undue influence to practise intimidation, directly or indirectly, with intent to influence the vote of a single voter. Whether the voter be the person illtreated, or whether the illtreatment be violence, or damage done by the removal of custom or business, or employment, is immaterial, if it is done with a view to affect the voter or interfere with the free exercise of the franchise, it is within the prohibition of the Act. *The Blackburn Case*, *Ib.* 204. The question whether a man made a free vote is something like the question whether a man made a free will. *The Windsor Case*, *Ib.* 6. Threats of eviction by landlords. *The Queen* v. *Barnwell*, 5 W. R. 557. Threats to suspend or refuse the rights of the Church. *The Galway Case*, 1 O'M. & H. 303; see also *The Longford Case*, 2 O'M. & H. 16; *The Tipperary Case*, *Ib.* 31, threats of dismissal from employment; *The Westbury Case*, 1 O'M. & H. 50; discharge of servants; *The Blackburn Case*, *Ib.* 203; *The North Norfolk Case*, *Ib.* 241, or other wrongs or injuries of a similar character, if made in order to influence the vote, is undue influence. Where an injury has been actually inflicted the proof is comparatively easy, but

Expenses of candidates.

203. The actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be the expenses lawfully incurred, and the payment thereof, shall not be a contravention of this Act. (*s*) 36 V. c. 48, s. 155.

Evidence of corrupt practices on application in nature of *quo warranto*.

204. Where, in an application in the nature of a *quo warranto*, any question is raised as to whether the candidate or any voter has been guilty of any violation of section two hundred and one or two hundred and two of this Act, affidavit evidence shall not be used to prove the offence, but it

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where merely a threat has been made, and not executed, the point is often difficult to determine. *The North Norfolk Case*, *Ib.* 242. If the threat be proved, the onus is upon those who made the threat or who are responsible for it, to shew that intimidation did not produce its natural consequence, namely, terrifying the people from the exercise of their legitimate franchise. *The Drogheda Case Ib.* 256. A mere attempt to intimidate a voter, even though unsuccessful, would avoid an election. *The Northallerton Case*, *Ib.* 173.

(*s*) The candidate is not restricted to purely personal expenses, but may (if there is no intent thereby to influence votes) hire rooms for committees and meetings, and employ men to distribute cards and placards, and perform similar services. *East Toronto Case*, 8 U. C. L. J. N. S. 113. A candidate in good faith intended that his election should be conducted in accordance both with the letter and spirit of the law, and himself paid no money except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no accounts or vouchers of what they paid. The election, notwithstanding, was supported. *Ib.* In England candidates are required to pay money for election purposes through an authorized agent, and to render detailed accounts of the expenditure. 26 & 27 Vict. ch. 29, ss. 2, 3, 4. Similar provisions now exist here as to Parliamentary elections. See 36 Vict. ch. 2, ss. 8, 9, 10, 11, 12, Ont. It is always more satisfactory, on an election inquiry to have the expenditure shewn by proper vouchers. See remarks of Chief Justice Richards on *The East Toronto Case*, 8 U. C. L. J. N. S. 119, and *The West Toronto Case*, not reported. Where all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct. *South Grey Election Case*, *Ib.* 17. Where a candidate puts money into the hands of an agent, and exercises no supervision over the way in which the agent is spending the money, but accredits and trusts him and leaves him the power of spending the money, there is such an agency established as to render the candidate liable to the fullest extent, not only for what the agent may do but also for what all the people that agent employs may do, although express instructions be given that none of the money should be improperly spent. *Ib.*

shall be proved by *viva voce* evidence taken before the Judge of any County Court, upon a reference to him by the Judge of the Superior Court for that purpose, or upon an appointment granted by him in cases pending in such County Court. (*t*) 36 V. c. 48, s. 156.

Penalty on candidates guilty of bribery, etc.

205. Any candidate elected at any municipal election, who is found guilty by the Judge, upon any trial upon a writ of *quo warranto*, of any act of bribery, or of using undue influence as aforesaid, shall forfeit his seat, and shall be ineligible as a candidate at any municipal election for two years thereafter. (*u*) 36 V. c. 48, s. 157.

(*t*) The Judge whose duty it is to try an ordinary application in the nature of a *quo warranto*, may inquire into the facts either by affidavit or by oral testimony. See sec. 189. The exception created by this section is, where "any question is *raised* as to whether the candidate or any other voter has been guilty of any violation of sections 201 or 202 of this Act;" in other words, been guilty of bribery or undue influence within the meaning of those sections. In such a case *viva voce* evidence alone can be used. The reason no doubt is, that to charge the candidate or a voter under either of the sections mentioned, is to charge him with an offence which may be either a crime or in the nature of a crime. See sec. 205, and that it would be contrary to all precedent to permit a person to be tried for a crime on what is called in this section "affidavit evidence."

(*u*) The consequences of being found guilty are two-fold:

1. A forfeiture of the seat.

2. Personal incapacity, for two years thereafter, to be a candidate at a Municipal election.

It is not said that these consequences shall follow if there be bribery or undue influence by an agent, without the knowledge, or against the instructions of the candidate. It may be that in such a case the seat will be lost to the candidate. See note *f* to s. 201. But it is clear that a man cannot be guilty by his agent of an illegal act, and be held personally responsible, and be personally punished for that act, unless he has given the agent authority, express or implied, to do the illegal act. The law of agency has certainly, in such cases, been much extended by Committees of the House of Commons. But it is a clear proposition of law, that if a candidate employ an agent for a perfectly legal purpose, and that agent do an illegal act, that act does not affect the principal personally, although it may affect his seat, unless a great deal more be shewn. It must be shewn that the principal directed the agent to do the act, or really meant he should so act. No man who is an agent for a legal purpose can make his principal criminally responsible for an illegal act, unless the principal in some way authorized it. See *per* Lord Wensleydale, in *Cooper* v. *Slade*, 6 H. L. C. 793. See further *Dungarvan Case*, 2 P. R. & D. 324, and *Lovering* v. *Dawson*, L. R. 10 C. P. 711. The learned Judge of the County of Simcoe, in *Booth* v.

Additional penalties.

206. Any person who is adjudged guilty of any of the offences within the meaning of sections two hundred and one or two hundred and two of this Act, shall incur a penalty of twenty dollars, and shall be disqualified from voting at any municipal election or upon a by-law for the next succeeding two years. (*v*) 36 V. c. 48, s. 159.

Recovery of penalties.

207. The penalties imposed by section two hundred and six of this Act shall be recoverable, with full costs of suit, by any person who will sue for the same by action of debt in the Division Court having jurisdiction where the offence was committed; (*w*) and any person against whom judgment is rendered, shall be ineligible, either as a candidate or municipal voter, until the amount which he has been condemned to pay is fully paid and satisfied. (*x*) 36 V. c. 48, s. 160.

Judge to make return.

208. It shall be the duty of the Judge who finds any candidate guilty of a contravention of section two hundred and one or two hundred and two of this Act, or who condemns any person to pay any sum in the Division Court for any offence within the meaning of this Act, to report the same forthwith to the Clerk of the Municipality wherein the offence has been committed. (*y*) 36 V. c. 48, s. 161.

Sutherland, 10 U. C. L. J. N. S. 287, held that indirect bribery as bribery by agents, rendered the candidate ineligible for re-election.

(*v*) These penalties, it is presumed, will not follow unless the illegal act be shewn to be that of the party sought to be personally affected, or the act of some person who was authorized by him to do it. See note *u* to sec. 205.

(*w*) As the pecuniary penalty is only $20, it is believed that the Division Court would have had jurisdiction without this provision; see *Medcalf* v. *Widdifield*, 12 U. C. C. P. 411; but its enactment here, as the point is not entirely free from doubt, *O'Reilly q. t.* v. *Allan*, 11 U. C. Q. B. 526, was a proper precaution.

(*x*) The payment of the amount will not remove the disability where the payment is within two years of the conviction. See sec. 206. But the disability shall continue after the two years and until the judgment is satisfied.

(*y*) The object of this provision is to prevent the person disqualified being placed upon the voters' list. The clerk upon receipt of the report rendered necessary by this section, should enter the name in a book to be kept for that purpose, and erase the name from the list of voters of the Municipality. The former duty is imposed by the next section of this Act; the latter, it is apprehended, is an implied duty. So far as the Returning Officer at an election is concerned, the list is final. See secs. 99, 100.

209. The Clerk of every Municipality shall duly enter in a book, to be kept for that purpose, the names of all persons within his Municipality who have been adjudged guilty of any offence within the meaning of section two hundred and one or two hundred and two of this Act, and of which he has been notified by the Judge who tried the case. (*z*) 36 V. c. 48, s. 162.

Clerk to keep book shewing names of persons guilty of offences, etc.

210. Any witness shall be bound to attend before the Judge of the County Court upon being served with the order of such County Court Judge directing his attendance (*a*) and

Attendance of witnesses.

(*z*) It is presumed, for reasons given in the previous note, that the Clerk should also erase the name from the list of voters of the Municipality.

(*a*) The order should be intituled as of the proper Court and cause, and may be directed to the witnesses by name, and after reciting the power of the Judge to take evidence, might conclude as follows:—

You and each of you are hereby required to attend before me at —— on the —— day of —— A.D., 187 , at the hour of —— o'clock in the —— noon (*or* forthwith), to be examined as a witness in the matter of the said Petition and to attend the said Court until your examination shall have been completed.

As witness my hand.

(Signed)

Judge of the County Court.

This is in the form of order in general use under the English Act of 1868, for the trial of controverted elections. R. S. O. c. 11 secs. 51, 52. Under the English Act, counsel applied for an order for the attendance of one J. M. He stated that the process server had used every effort to serve him with a subpœna but without effect, though there was reason to believe he was in the house. The application was granted. *The Waterford Case*, 2 O'M. & H. 3. Serjeant Ballantine, in one case in proof by a witness that T. W. was keeping out of the way to avoid being served with a subpœna, applied to the Court for an order for the attendance of his wife, who had not been subpœnaed. But the Judge (Martin, B.) said he had no power to grant such an order, unless the wife had been subpœnaed. *The Norwich Case*, 1 O'M. & H. 8. Upon another witness (Mrs. H., who had been subpœnaed as a witness) being called and not answering, the same learned Judge is reported to have said, "I will make an order for her to come. If witnesses will not come, I will immediately make an order for them to come." *Ib.* In one case where counsel for the respondent stated that he would require the attendance of a witness who had been previously called by the petitioners, (the learned Judge, Fitzgerald. B.,) said, "You had better write a letter to M., and he must be brought back at the respondent's expense." On the following day M. was called, but did not appear, and an order was granted for his attendance. *The Longford Case*, 2 O'M. & H. 12. In a case tried before Mowat, V. C., at Prescott, where it was shown that

upon payment of the necessary fees for such attendance, (*b*) in the same manner as if he had been directed by a writ of *subpœna* so to attend, and he may be punished for contempt, and shall be liable to all the penalties for such non attendance in the same manner as if he had been served with such subpœna. (*c*) 36 V. c. 48, s. 163.

Witnesses not excused from answering on grounds of self crimination or privilege.

211. No person shall be excused from answering any question put to him in any action, suit or other proceeding in any Court or before any Judge, touching or concerning any election, or by-law, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; (*d*) but no answer given by any person claiming to be excused on the ground of privilege, or

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one of the hands on a steamboat, then at the wharf in the town, was a material witness, an order was made for his attendance; and upon the captain of the boat refusing to allow him to be served or to give any information about him, an order was made for the attendance of the captain. *The South Grenville Case*, August, 1872, not reported.

(*b*) When the witness, at the close of his examination, asked for his expenses, the Judge (Willes, J.) allowed him his expenses as he had been called by himself, but intimated that if any other witness desired to be paid his expenses, he should make the demand before he was sworn.

(*c*) Quære, should the process for contempt be issued by the Judge presiding at the trial, or from the office of the court in which the petition has been filed. Unless the former, there would be great delay in enforcing the attendance of a witness ordered to attend.

(*d*) At common law, a witness is entitled to refuse to answer any question that may tend to criminate him, not only because the answer itself might be evidence against him on a criminal charge, but because it might furnish a link in the chain of testimony which might implicate him in such charge. See *Keith* v. *Lynch et al.*, 19 Grant, 497; See further, *Emery's Case*, 9 Am. 22. Those who decided the common law, originally thought it was unwise and unjust to make a man, however guilty, criminate himself. See *Regina* v. *Roddy*, 41 U. C. Q. B. 291. The object of this section is to make an innovation, to a certain extent, on these principles of the common law. Election Committees, Judges, and Election Commissioners must make their inquiries among persons who are generally expected to be hostile witnesses and unwilling to tell the truth, and who, if the common law were left untouched, would be always entitled to say, "I will answer no such question," and so the inquiry would be baffled. Therefore the Legislature, in the section here annotated, has enacted that the tendency of the answer to expose the witness to a criminal charge, should not, contrary to the general rule, be any excuse for not answering the question. See *per* Blackburn, J.. in *The Queen* v. *Hulme*, L. R. 5 Q. B. 383, 384.

on the ground that such answer will subject him to any penalty under this Act, shall be used in any proceeding under this Act, against such person, (*e*) if the Judge gives to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answer, to the satisfaction of the Judge. (*f*) 36 V. c. 48, s. 164.

Limitation of actions.

212. All proceedings other than an application in the nature of *quo warranto* against any person for any violation of section two hundred and one or two hundred and two of this Act, shall be commenced within four weeks after the municipal election at which the offence is said to have been committed, or within four weeks after the day of voting upon any by-law as aforesaid. (*g*) 36 V. c. 48, s. 165.

(*e*) The Legislature, having taken away from the witness that common law immunity against criminating himself, here gives him an immunity on certain conditions. *The Queen* v. *Hulme*, L. R. 5 Q. B. 384.

(*f*) If the witness has really complied with the conditions he is entitled to a certificate, and the Judge has no right to refuse it. *The Queen* v. *Price et al.*, 22 L. T. N. S. 12. The conditions are not only that he claimed the certificate, but "made full *and* true answer *to the satisfaction of the Judge.*" The obligation intended to be thrown upon the person who is called as witness is, that he shall make full and true answer to the question put to him. If the evidence given be false there is no protection, and the witness is undoubtedly liable to be prosecuted for perjury. See *The Queen* v. *Brittle*, L. R. 1 C. C. 248. A certificate in the following form: "We do hereby certify that J. H. Hulme, was sworn and examined upon oath before us as such commissioners, and, upon such examination, was required by us to answer questions the answers to which tended to criminate him, and answered all such questions; but divers of the said answers to the said questions were unsatisfactory to us, and we believe were false, and false to the knowledge of him, the said J. H. Hulme,"—is no certificate such as is required by the Act, and is no protection. *The Queen* v. *Hulme*, L. R. 5 Q. B. 386. A witness who has received a pardon under the Great Seal is not privileged from answering questions the replies to which may criminate him on the ground that actions for penalties, under the Corrupt Practices Prevention Act, are pending against him. *The Queen* v. *Kinglake et al.*, 22 L. T. N. S. 316.

(*g*) The time limited for a proceeding in the nature of a *quo warranto* is "six weeks after the election," or "one month after the acceptance of office." See sec. 180. This section is intended to apply to proceedings "other than an application in the nature of a *quo warranto*" against any person for any violation of the sections mentioned. It is plain, therefore, that the mere fact of raising charges under the sections mentioned, in a *quo warranto* proceeding, is no ground for shortening the ordinary time allowed for such a pro-

No statutory penalty for corrupt practices at elections, where the party charged has first prosecuted a party jointly liable.

213. No pecuniary penalty or forfeiture imposed by this Act or any other Act of the Legislature of Ontario, shall be recoverable for any act of bribery or corrupt practice at an election, in case it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver and receiver, or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted such other person or persons or any of them for the said act; but this provision shall not apply in case the Judge before whom the person claiming the benefit thereof is charged, certifies that it clearly appears to him that the person so charged took the first step towards the commission of the offence charged, and that such person was in fact the principal offender. 37 V. c. 7, s. 95.

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Copies of ss. 201-214 to be mailed and posted up prior to election.

214. The Clerk of every Municipality shall, prior to any election, or voting on any by-law, furnish each Deputy Returning Officer with at least two copies of the sections of this Act numbered from two hundred and one to two hundred and fourteen inclusive, and shall also post at least six copies thereof in conspicuous places in each polling subdivision in the Municipality. (*h*) 36 V. c. 48 s. 166.

PART IV.

MEETINGS OF MUNICIPAL COUNCILS.

DIV. I.—WHEN AND WHERE HELD.
DIV. II.—CONDUCT OF BUSINESS.

ceeding. But where the proceeding intended is either an action for a penalty, or an information or indictment for the criminal offence, such proceeding must, in the case of an election, be taken "*within* four weeks after the Municipal election," or, in the case of voting on a by-law, "*within* four weeks after the day of voting." As to computation of time, see note *a* to sec. 177.

(*h*) The duty imposed on the Clerk is two-fold:

1. To furnish each Returning Officer with *at least* two copies of the sections mentioned.

2. To post *at least* six copies thereof in conspicuous places in *each* polling division in the Municipality.

The object is to bring home to the electors a knowledge of the highly penal character of the sections as to bribery and undue influence, in the hope that such knowledge will deter them from committing any such offence. The section is directory. See *West Gwillimbury* v. *Simcoe*, 20 Grant 211. See further note to sec. 240 of this Act.

DIV. I.—WHEN AND WHERE HELD.

First and subsequent meetings. *Secs.* 215–222.
Payment of members for attendance. *Secs.* 223, 224.

First meetings of councils.

215. The members of every Municipal Council (except County Councils) shall hold their first meeting at eleven o'clock in the forenoon, (*i*) on the third Monday of the same January in which they are elected, or on some day thereafter; (*j*) and the members of every County Council shall hold their first meeting at two o'clock in the afternoon, or some hour thereafter, (*k*) on the fourth Tuesday of the same month, or on some day thereafter. (*l*) 36 V. c. 48, s. 167.

No business before declarations of office, etc.

216. No business shall be proceeded with at the first meeting of the Council, until the declarations of office and qualification have been administered to all the members who present themselves to take the same. (*m*) 36 V. c. 48, s. 175.

(*i*) An objection, that an election took place at six o'clock instead of at noon on the day appointed for the election, was held to be "too trivial to require serious notice." *The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.

(*j*) The members of the Council are bound to know the day specially named for the first meeting. See *In re Slavin and Orillia*, 36 U. C. Q. B. 159. But if the meeting be held on a subsequent day, it would appear to be only reasonable, in order to prevent surprise, that notice should be given of the subsequent day. *The King* v. *Liverpool*, 2 Burr. 731; *The King* v. *Doncaster*, *Ib.* 743; *The King* v. *Theodorick*, 8 East. 543: *The King* v. *May et al.*, 5 Burr. 2682; *The King* v. *Grimes*, *Ib.* 2601; *Musgrave* v. *Nevinson*, 1 Str. 584; *Kynaston* v. *Shrewsbury*, 2 Str. 1051; *The King* v. *Hill*, 4 B. & C. 441; *Smyth* v. *Darley*, 2 H. L. C. 789; see further, *The King* v. *Faversham*, 8 T. R. 352; *The King* v. *Langhorn*, 4 A. & E. 538. Where two members of a Village Council, being a minority of the whole number when full, met, but, in the absence of the three remaining members, were unable to proceed to business; and on a subsequent day the three remaining members, without notice to the two members, met and elected one of themselves to be Reeve, the election, in the absence of proof of want of *bona fides*, was maintained. *The Queen ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126.

(*k*) See note *i* above.

(*l*) See note *j* above.

(*m*) It is apprehended that before appointing a presiding officer, when necessary to do so, the members ought to take the necessary declarations. Such an election would, it is believed, be deemed "business" within the meaning of this section. The members of a Council, "after making the declarations of office and qualification when required to be taken," organize themselves as a Council by electing a Warden. See notes to sec. 217.

Election by county council of a warden.

217. The members elect of every County Council, being at least a majority of the whole number of the Council when full, (*n*) shall at their first meeting after the yearly elections, and after making the declarations of office and qualification when required to be taken, (*o*) organize themselves as a

(*n*) Thus, assuming the whole number of members of the Council to be twelve, there must be seven present to constitute a quorum. *The Queen ex rel. Evans* v. *Starratt*, 7 U. C. C. P. 487. So that an election by six in such a case, though unanimous would be void. See *Lockwood* v. *Mechanics' National Bank*, 11 Am. 253. Acts done with less than a legal quorum are generally void. *The King* v. *Bellringer*, 4 T. R. 810; *The King* v. *Miller*, 6 T. R. 268; *The Queen ex rel. Evans* v. *Starratt*, 7 U. C. C. P. 487; see also *Price* v. *Railroad Co.*, 13 Ind. 58; *Ferguson* v. *Crittenden*, 1 Eng. (Ark.) 479; *Logansport* v. *Legg*, 20 Ind. 315; *McCracken* v. *San Francisco*, 16 Cal. 591; *Piemental* v. *San Francisco*, 21 Cal. 351. But in one case the Court, in the exercise of its discretion, refused to quash a by-law upon proof that a quorum was not present at the time of its passing. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. The Court will presume, till the contrary be clearly shewn, that there was a quorum present at the doing of a corporate act. *Citizens' Mutual Fire Insurance Co.* v. *Sortwell et al.*, 8 Allen (Mass.) 217; see also *Southworth* v. *Palmyra and Jackson Railroad Co. et al.*, 2 Mich. 287. Quære, suppose seven present, in the case put of twelve members, would the vote of four be a valid election under this section. This depends on the question whether a majority of the quorum is all that is necessary. It cannot be said that those who vote against a man elect him to office. If three vote against him and four for him, and the latter be sufficient, he would be elected by four when seven are present, when an election by six, when six only are present, would not be sufficient. The question is whether, to entitle a man to the position of Warden, he should not have the voices of, in other words, be elected by, a majority of the Council when full. So far as the Editor is aware the point has not yet been decided. But reading this section in connection with sec. 219, it would seem that a majority of the quorum is all that is necessary. See *Southworth* v. *Palmyra and Jackson Railroad Co. et al.*, 2 Mich. 287; see also *Ex parte Willocks et al.*, 7 Cow. (N.Y) 402; *Buell* v. *Buckingham*, 16 Iowa 284; *Regents, &c.* v. *Williams*, 9 Gill & Johns. (Md.) 365; *Mills* v. *Gleason*, 11 Wis. 470. A majority of those present, when legally assembled, binds the rest. *The King* v. *Monday*, Cowp. 530, 538; *The King* v. *Devonshire*, 1 B. & C. 609; *The King* v. *Bower*, *Ib.*, 492; *The King* v. *May*, 4 B. & Ad. 843; *The King* v. *Greet*, 8 B. & C. 363; *The King* v. *Headley*, 7 B. & C. 496; see also *The Queen ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126; *The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.

(*o*) No Reeve or Deputy Reeve is allowed "to take his seat" until he has filed with the Clerk of the County Council a certificate of the Clerk of the Local Council, under the Corporate seal, that such Reeve or Deputy Reeve was duly elected, and made and subscribed the declarations of office and qualification as such Reeve or Deputy Reeve, sec. 62. In the case of a Deputy Reeve, a declaration as to the number of persons on the Roll is also required. *Ib.* The filing

Council by electing one of themselves to be Warden. (*p*) 36 V. c. 48, s. 120.

218. At every such election the Clerk of the Council shall preside, and if there is no Clerk, the members present shall select one of themselves to preside, and the person selected may vote as a member. (*q*) 36 V. c. 48, s. 121.

Who to preside at election.

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of these papers, and the making of the declarations of office and qualifications, when required, are conditions precedent to the election. *In re Hawk and Ballard*, 3 U. C. C. P. 241; see also *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 23. When the Reeve or Deputy Reeve has taken his seat, he cannot prevent the carriage of a vote by merely retiring from the Council after a motion has been made. *The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104. But see *The People* v. *Whiteside*, 23 Wend. (N.Y.) 9; *S. C.* 26 Wend. (N.Y.) 634. When four members of a Village Council, being at least a majority of the whole number of the Council when full, met, and at their first meeting a resolution, naming one of them as Reeve, was put and seconded, and no dissent expressed, whereupon the Clerk, in the hearing of all, but while two of the members were retiring from the Council Chamber, declared the resolution carried, the Reeve was held to be duly elected. *The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104. It is said that if a majority of the members present dissent from an election, but do not vote for any other than the person proposed, the election will be valid. See *Cotton* v. *Davies*, 1 Str. 52; *Oldknow* v. *Wainwright*, 2 Burr. 1017. *S. C.* 1 W. Bl. 229. They are taken to assent by not properly dissenting. If a majority of the whole Council, when full, be present and vote, it is of no consequence whether the minority were notified or not. *The Queen ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126, even though the election take place at a meeting subsequent to the day fixed by the statute for the holding of the election. *Ib.*

(*p*) What is meant by organizing themselves as a Council by electing one of themselves to be Warden? The Council is a body; the Warden is the head thereof. To organize, in such a case, must mean so to bring the parts together as to constitute a body, and this organization is perfected when the head is constituted. But unless the parts come together there can be no such organization. If the members refuse to take their seats, or act as members of the Council, members refusing cannot be said to organize themselves. But members not desirous of being counted as of the quorum ought to absent themselves. So long as present, although for the purpose of protesting that they should not be counted, they may be counted as of the quorum. See *The Queen ex rel. Rose* v. *Beach*, argued before Mr. Dalton, May 8th, 1873, afterwards affirmed on appeal by Gwynne, J. It is believed that a member *de facto* elected Warden, is entitled to hold the office until removed by proper process of a proper court. See *The Wandsworth and Putney Gas Light and Coke Co.* v. *Wright et al.*, 22 L. T. N. S. 404; See also *Citizens' Mutual Fire Ins. Co.* v. *Sortwell et al.*, 8 Allen, (Mass.) 217.

(*q*) There must be a meeting, at which the clerk is to preside. See *Small ex rel. Walker* v. *Biggar*, 4 U. C. Q. B. 497. When the mem-

Who to have the casting vote in the event of equality of votes.

219. In case of an equality of votes on the election of the head of any County Council, or Provisional County Council, then of those present, the Reeve, or in his absence the Deputy Reeve of the Municipality which has the largest number of names on its last revised assessment roll, as ratepayers, shall have a second and casting vote. (*r*) 36 V. c. 48, s. 122.

Place of first meeting.

220. The members of every County Council shall hold their first meeting at the County Hall if there is one, or otherwise at the County Court House. (*s*) 36 V. c. 48, s. 168.

Place of subsequent meeting of county council, etc.

221. The subsequent meetings of the County Council, and all the meetings of every other Council shall be held at such place, either within or without the Municipality, as the Council from time to time, by resolution on adjourning to be entered on the minutes, or by by-law, appoints. (*t*) 36 V. c. 48, s. 169.

Place of meeting may

222. The Council of any County or Township in which any City, Town, or incorporated Village lies, may hold its

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bers have met for the purpose of electing a Warden, the Clerk of the Council is to preside at the meeting. If there be no Clerk, the members present are enabled to elect one of themselves to preside. He may, however, vote, but not have a casting vote unless he happen to be the representative of the Municipality which has the largest number of names on its last revised Assessment Roll. See sec. 219.

(*r*) See note *j* to sec. 152.

(*s*) The object of stating *place* as well as *time* of the first meeting is to prevent surprise. See notes to sec. 215. Subsequent meetings, as to time and place, may be regulated by adjournments. See sec. 221.

(*t*) The object of this section would seem to be to enable a County Council to sit in a city or town that has been separated from the county, when the proper county buildings are situate therein and are owned by the county. See secs. 220, 222. But the language "every *other* council," is broad enough to admit of any Municipal Council holding sittings elsewhere than within the Municipality. The section has not yet been judically interpreted. The meetings are to be held "at such place," &c., as the council, from time to time, by *resolution* on adjourning, to be entered on the minutes, or by *by-law*, appoints. It is apprehended that an established place of meeting would be by by-law, and that, in the absence of any such by-law, the place may be determined for the next meeting by resolution on adjourning, at which time there would be no opportunity of passing a by-law. Strictly speaking, there ought to be either a by-law fixing a permanent place, or a resolution from time to time entered at each adjournment. See *In re Pafford and Lincoln*, 24 U. C. Q. B. 16.

sittings, keep its public officers, and transact all the business of the Council and of its officers and servants within such City, Town or incorporated Village, (*u*) and may purchase and hold such real property therein as may be convenient for such purposes. (*v*) 36 V. c. 48, s. 170. to be in cities, etc.

223. The Council of every Township and County may pass by-laws for paying the members of the Council for their attendance in Council, or any member while attending on committee of the Council, at a rate not exceeding three dollars *per diem*, and five cents per mile necessarily travelled (to and from) for such attendance. (*w*) 36 V. c. 48, s. 172; 40 V. c. 7 *Sched.* A (171). Remuneration to councillors and committeemen limited.

(*u*) See note *t* to sec. 221.

(*v*) Municipal Corporations are within the operation of the Statutes of Mortmain. *Brown* v. *McNab*, 20 Grant 179. And these Statutes are held to be in force in Ontario. *Corporation of Whitby* v. *Liscombe*, 22 Grant 203; affirmed, 23 Grant 1. See further, *Doe d. Anderson* v. *Todd et al.*, 2 U. C. Q. B. 82; *Doe* d. *Vancott* v. *Read*, 3 U. C. Q. B. 244; *Hallock et al.* v. *Wilson*, 7 U. C. C. P. 28; *Mercer* v. *Hewston et al.*, 9 U. C. C. P. 349. And this being so, the power can only properly be exercised in the limited manner in which it is conferred, *i. e.*, to purchase and hold such real property as may be *convenient for the purposes mentioned.* See *Ketchum et al.* v. *Buffalo et al.*, 14 N. Y. 356; *State* v. *Mansfield*, 3 Zab. (N. J.) 510; *Nicoll* v. *New York & Erie R. R. Co.*, 12 N. Y. (2 Kern.) 121; *McCartee* v. *Orphan Asylum Society*, 9 Cow. (N. Y.) 437; *Reynolds* v. *Commissioners, &c.*, 5 Ohio, 204; *Paige* v. *Heinburg*, 40 Vt. 81; *Davison College* v. *Chambers*, 3 Jones, Eq. (N. C.) 253; *Louisville* v. *Commonwealth*, 1 Duvall (Ky.) 295; *State ex rel. Dean* v. *Madison*, 7 Wis. 688. But the right to hold is not one that can ordinarily arise as between vendor and vendee. See *Becher* v. *Woods*, 16 U. C. C. P. 29; *Belleville* v. *Judd*, *Ib.* 297; *Orford* v. *Bailey*, 12 Grant 276; see also *Goundie* v. *Northampton Water Company*, 7 Pa. St. 233; *Chambers* v. *St. Louis*, 29 Mob. 543; *Leazure* v. *Hillegas*, 7 Serg. & Rawl. 313. But see also *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *The Banks* v. *Pontiaux*, 3 Rand. (Va.) 136; *Martin* v. *Bank*, 15 Ala. 587; *Baird* v. *Bank of Washington*, 11 Serg. & Rawl. 411; *Worcester* v. *Eaton*, 13 Mass. 371.

(*w*) A by-law directing payment of $30 to each Councillor, "being $20 for services as Councillor, and $10 for services for letting and superintending repairs of roads," is bad. *In re Blaikie and Hamilton*, 25 U. C. Q. B. 469. Over payments may be recovered back by the municipality. *St. Vincent* v. *Grier*, 13 Grant 173. The Council is not to be confounded with the Corporation. It is the governing body acting on behalf of the Corporation for the particular year. It is, moreover, a fluctuating body; the Council for one year not being identical with the Council for another year, and not to be so looked upon even though it should happen to be composed of the same

Remuneration of mayor, etc.

224. The Head of the Council of any County, City, Town or incorporated Village may be paid such annual sum or other remuneration as the Council of the Municipality may determine. (*x*) 36 V. c. 48, s. 173 ; 40 V. c. 7, *Sched.* A (172.)

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persons. *Per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 583. The members of the Council are not the Corporation, but the agents of the Corporation for the affairs and funds of the Corporation. When these agents are proved so to misappropriate the funds of the Corporation as to put the money into their own pockets when not authorized so to do, a bill in Equity at the instance of a ratepayer, *Blakie* v. *Staples et al.*, 13 Grant 67, or an action at the suit of the Corporation will lie against them to recover it back, and when that misappropriation is mixed up with what may have been rightfully paid, it is but right, in order to operate as a safeguard to the Corporation, to cast the burthen of proof on the agent, to separate from the appropriation he has received that portion which he would be legally entitled to take. *Per* Burns, J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 588. And it would be well for those who take part in the illegal appropriation of public moneys to reflect that there is not only a civil but a criminal remedy. *Per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481. See further, *Baxter* v. *Kerr*, 23 Grant 367. The Treasurer should not pay money on any or every draft and order which the Reeve for the time being may direct him to pay. The Township moneys will probably be considered as still in his hands, unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the Municipality. *East Nissouri* v. *Horseman et al.*, 9 U. C. C. P. 191, *per* Draper, C. J. Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or By-law of a Corporation created by Act of Parliament. *Per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481. And if a Treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution : *per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 580 ; but not now liable to any action at law for moneys paid by him in accordance with a By-law or resolution of the Council. See. 247. It was, under the old statutes, held, that under power to remunerate Municipal officers, the members of the Council had no power to remunerate themselves. See note to sec. 273.

(*x*) The office of Mayor is in many cases a very onerous and responsible position, and one which subjects the incumbent to many obvious and unavoidable expenses. See sec. 236. It is only proper, therefore, that some provision should be made for the remuneration of a person holding such a position. Before 1873, there was no power to make such a provision. See note to sec. 273. The power now conferred on the Council is to determine "such annual sum or other remuneration" as the Council sees fit. The grant should not be made in the shape of a gratuity for services rendered in several years previous to the making of it. See *McLean and The Corporation of The Town of Cornwall*, 31 U. C. Q. B. 314. The deter-

DIVISION II.—CONDUCT OF BUSINESS.

Meetings to be open to public. *Sec.* 225.
Quorum, how many. *Secs.* 226, 227.
Who to preside. *Secs.* 228, 230–232.
Special meetings. *Secs.* 228, 229.
Presiding officer may vote. *Sec.* 233.
Equality of votes negatives question. *Sec.* 233.
Power to adjourn. *Sec.* 234.

Ordinary meetings to be open.

225. Every Council shall hold its ordinary meetings openly, and no person shall be excluded except for improper conduct, but the head or other chairman of the Council may expel and exclude from any meeting, any person who has been guilty of improper conduct at such meeting. (*a*) 36 V. c. 48, s. 174.

Quorum.

226. A majority of the whole number of members required by law to constitute the Council shall be necessary to form a quorum. (*b*) 36 V. c. 48, s. 176.

In councils of five, three must concur.

227. When a Council consists of only five members, the concurrent votes of at least three shall be necessary to carry any resolution or other measure. (*c*). 36 V. c. 48, s. 177.

The heads to preside in council.

228. The head of every Council shall preside at the meetings of Council, (*d*) and may at any time summon a special

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mination should, it is apprehended, be made by By-law, and made to take effect only for the future. *Ib.* The section was, by 40 Vict. ch. 7, Sch. A., 272, extended to the head of any County Council.

(*a*) It is one of the essential qualities of a Court of Justice, that its proceedings be public, and all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose, provided they do not interrupt the proceedings, and provided there be no other kind of improper conduct, have a right to be present and hear what is going on. *Per* Bayley, J., in *Dubney* v. *Cooper*, 10 B. & C. 240. This rule is to its fullest extent to be applied to ordinary meetings of every Municipal Council.

(*b*) See note *n* to sec. 217.

(*c*) Where there were four councillors present at the passing of a By-law, the Reeve put the motion, two of the Council declared themselves in favour of it, and the third made no objection, the Court refused to quash the By-law. *In re Mallough and Ashfield*, 6 C. P. 158. Where four out five of a Village Council were shareholders in a trading company to which the Municipality granted a bonus, the By-law was set aside. *In re Baird and Almonte*, 41 Q. B. 415.

(*d*) It is not only the duty but the right of the head of the Council

meeting thereof, and it shall be his duty to summon a special meeting whenever requested in writing by a majority of the members of the Council. (*e*) 36 V. c. 48, s. 178.

Special meetings.

Special meeting may be either open or closed.

229. In case there is no by-law of a Council fixing the place of meeting, any special meeting of the Council shall be held at the place where the then last meeting of the Council was held, (*f*) and a special meeting may be open or closed as in the opinion of the Council, expressed by resolution in writing, the public interest requires. (*g*) 36 V. c. 48, s. 171.

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to preside at its meetings. In the event of the right being denied, legal proceedings may be instituted to enforce it. See *The King* v. *Williams*, 1 Burr. 402; *Cochran* v. *McCleary*, 22 Iowa, 75; *Reynolds* v. *Baldwin*, 1 La. An. 162; *Commonwealth* v. *Arrison*, 15 Serg. & Rawle (Pa.) 130. But the question cannot in general be determined as a collateral inquiry in an existing suit. *Tappan* v. *Gray*, 7 Hill, (N. H.) 259; *Markle* v. *Wright*, 13 Ind. 548; *Hullman* v. *Honcomp*, 5 Ohio, 237; *People* v. *Cook*, 4 Seld. 67; *Indiana Mutual Fire Ins. Co.* v. *Connor*, 5 Ind. 171; *Hagmer* v. *Heyberger*, 7 Watts & Serg. (Pa.) 104; *People* v. *Carpenter*, 24 N. Y. 86; *Attorney-General* v. *Utica Insurance Co.*, 2 Johns. Ch. (N. Y.) 371; *People ex rel. Wood* v. *Draper et al.*, 15 N. Y. 532; *People* v. *Utica Insurance Co.*, 15 Johns. (N. Y.) 358; *Hughes* v. *Parker*, 20 N. H. 58; *Ex parte Strahl*, 16 Iowa, 369; *Facey* v. *Fuller*, 13 Mich. 527; *Updegraff* v. *Crans*, 47 Pa. St. 103; *Kerr* v. *Trego*, *Ib.*, 292. If the head of the Council refuse to put a motion which it is his duty to put, he may be voted out of the chair. *In re Preston and The Corporation of The Township of Manvers*, 21 U. C. Q. B. 626; or the members may vote on the motion without it being put from the chair. *Brock* v. *Toronto and Nippising R. W. Co.*, 17 Grant 425.

(*e*) It is in his discretion at any time to summon a special meeting; but when requested in writing to do so by a majority of the members of the Council, it is obligatory upon him to do as requested. All the members entitled to be present at a special meeting should be notified to attend, and, if practicable, notified also of the purpose for which the meeting is called. *Smyth* v. *Darley*, 2 H. L. C. 789; see also *Ex parte Rogers*, 7 Cow. 526; *People* v. *Batchelor*, 22 N. Y. 128; *Downing* v. *Rugar*, 21 Wend. (N. Y.) 178; *Burgess* v. *Pue*, 2 Gill (Md.) 254; *Stow* v. *Wise*, 7 Conn. 214. The omission to notify a member entitled to be present may be held to invalidate all proceedings at at such meeting, *Ib.*, and where the purpose is specified in the notice, there is in general no power to transact business beside such purpose. *The King* v. *Liverpool*, 2 Burr. 735; *The King* v. *Carlisle*, 1 Str. 385; *Machell* v. *Nevinson*, 2 Ld. Rayd. 1355; *Bergen* v. *Clarkson*, 1 Halst. (N. J.) 352; see further, note *j* to sec. 215.

(*f*) See note *t* to s. 221.

(*g*) The line is drawn between open and closed meetings. The former is the rule, see s. 225. The latter the exception. The latter is to exist only when in the opinion of the Council expressed by resolution in writing the public interest requires it.

When reeve or deputy reeve to preside.

230. In case of the death or absence of the head of a Town Council, the Reeve, and in case of the absence or death of both of them, the Deputy Reeve, and in case of the death or absence of the head of a Village or Township Council, the Deputy Reeve shall preside at the meetings of the Council, and may at any time summon a special meeting thereof; but if there be more than one Deputy Reeve, the Council shall determine which of them shall preside at their meeting. (*h*) 36 V. c. 48, s. 179.

Absence of head, etc., provided for.

231. In the absence of the head of the Council, and in the case of a Town, Village or Township, in the absence also of the Reeve, if there be one, and also of the Deputy Reeve or Deputy Reeves, if there be one or more, by leave of the Council, or from illness, the Council may, from among the members thereof, appoint a presiding officer, who, during such absence, shall have all the powers of the head of the Council. (*i*) 36 V. c. 48, s. 180.

Casual absence provided for.

232. If the person who ought to preside at any meeting (*j*) does not attend within fifteen minutes after the hour appointed, the members present may appoint a chairman from amongst themselves, and such chairman shall have the same authority in presiding at the meeting as the absent person would have had if present. (*k*) 36 V. c. 48, s. 181.

Head to vote.

Question negatived in

233. The head of the Council, or the presiding officer or chairman of any meeting of any Council, may vote with the other members on all questions, (*l*) and any question on which

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(*h*) See note *d* to s. 228.

(*i*) If any of the officers mentioned in the preceding section happen to be present at a meeting, each such officer is, according to the order mentioned, entitled to preside and bound to do so. But if none of the officers named be present, a presiding officer may be elected from among the members to act during the absence of the officer named. Should either of these officers appear, it would be his right to preside.

(*j*) This may mean the head of the Council, or, in his absence, one of the officers named in sec. 230.

(*k*) This part of the section is silent as to the duration of the authority. But it is apprehended that the authority would cease on the presence of the officer "who ought to preside." See note *i* to sec. 231.

(*l*) The general import of the words used deserves attention. Apparently no question can come before the Council or meeting, on which the presiding officer or Chairman is disentitled to vote.

Case of equality of votes.

there is an equality of votes shall be deemed to be negatived. (*m*) 36 V. c. 48, s. 182.

Adjournment.

234. Every Council may adjourn its meetings from time to time. (*o*) 36 V. c. 48, s. 183.

There is no exception of any kind in the enactment. The right to vote is given "on *all* questions." Its exercise on any particular question, perhaps affecting the conduct of the presiding officer or Chairman himself, is a matter left entirely in his own discretion.

(*m*) An exception to this rule, recognized in the Act, is that which allows a casting vote in the election of the head of a County Council. See sec. 219. Another is where united Counties make provision for improvements in one of the Counties separately. Sec. 479.

(*o*) Adjourned meetings are generally held for the purpose of completing the unfinished business of a preceding meeting. It is allowable, therefore, in the case of an ordinary adjournment, to transact any business that might have been lawfully transacted at the preceding meeting, but which was not transacted for want of time or opportunity to do so. See *The King* v. *Harris*, 1 B. & Ad. 936; *Scalding* v. *Lorant*, 3 H. L. C. 418; *Smith* v. *Law*, 21 N. Y. 296; *Warner* v. *Mower et al.* 11 Vt. 385; *People ex rel. Loew* v. *Batchelor*, 22 N. Y. 128; *People* v. *Martin*, 1 Seld. (N. Y.) 22; *Hudson Co.* v. *State*, 4 Zabr. (N.J.) 718; *In re Robin Street*, 1 La. An. 412.

In the midst of a Parliamentary debate upon a question, any member may move "that this house do *now* adjourn," not by way of amendment to the original question, but as a distinct question which interrupts and supersedes that already under consideration. If this second question be resolved in the affirmative, the original question is superseded; the House must immediately adjourn, and all business for that day is at an end. May on the Law and Practice of Parliament, 7 ed. 274. The motion for adjournment, in order to supersede a question, must be simply that the House do *now* adjourn. It is not allowable to move that the House do adjourn to any future time specified, nor to move an amendment to that effect to the question of adjournment. *Ib.* The House may also be suddenly adjourned by notice being taken that the necessary number of members to constitute a majority are not present; and an adjournment caused in that manner has the effect of superseding a question in the same way as a formal question to adjourn when put and carried. In either case the original question is so entirely superseded, that if it has not yet been proposed to the House by the Speaker, it is not even entered in the votes, as the House was not fully in possession of the question before adjournment. If a motion to adjourn be negatived, it may not be proposed again without some intermediate proceeding; and in order to avoid any infringement of this rule, it is a common practice for those who desire to avoid a decision upon the original question on that day, to move alternately that "this House do now adjourn," and "that the debate be now adjourned." The latter motion, if carried, merely defers the decision of the House, while the former, as already explained, altogether supersedes the question. Yet members who only desire to enforce the continuance of the debate on another day, often vote for an adjournment of the House,

PART V.

OFFICERS OF MUNICIPAL CORPORATIONS.

Div. I.—The Head.
Div. II.—The Clerk.
Div. III.—The Treasurer.
Div. IV.—Assessors and Collectors.
Div. V.—Auditors and Audit.
Div. VI.—Valuators.
Div. VII.—Duties of Officers respecting Oaths and Declarations.
Div. VIII.—Salaries Tenure of Office and Security.

Division I.—The Head.

Who to be. *Sec.* 235.
Duties. *Sec.* 236.

235. The head of every County and Provisional Corporation shall be the Warden thereof, and of every City and Town the Mayor thereof, and of every Township and incorporated Village the Reeve thereof. (*r*) 36 V. c. 48, s. 184. Who to be head of council.

236. The head of the Council shall be chief executive officer of the Corporation; (*s*) and it shall be his duty to be Duties of head of council.

which, if carried, would supersede the question they are prepared to support. This distinction should always be borne in mind, lest a result should follow that is widely different from that anticipated. Suppose a question to be opposed by a majority, and that the minority are anxious for an adjournment of the debate, but that on the failure of a question proposed by them to that effect, they vote for an adjournment of the House, the majority have only to vote with them and carry the adjournment, when the obnoxious question is disposed of at once, and its supporters have themselves contributed to its defeat. *Ib.*

(*r*) It is said that at common law Corporations have power to appoint such officers as the nature of their constitution requires. *Vintner's Co.* v. *Passey*, 1 Burr. 237; *Hasting's Case*, 1 Mod. 23; *The King* v. *Barnard*, Comb. 416. But by this Act provision is made for the appointment of the principal officers of a Municipal Corporation, and so the implied power, if it exist at all, should be sparingly exercised. See *Hoboken* v. *Harrison*, 1 Vroom. (N. J.) 73; *White* v. *Tallman*, 2 Dutch. (N. J.) 67; see also *People* v. *Bedell*, 2 Hill (N. Y.) 196; *Field* v. *Girard College*, 54 Pa. St. 233. There are obvious differences between such officers as enumerated in this section and subordinate officers. See *In re McLean* v. *Cornwall*, 31 U. C. Q. B. 314.

(*s*) Experience has demonstrated the necessity of more power and

vigilant and active at all times in causing the law for the government of the Municipalty to be duly executed and put in force ; to inspect the conduct of all subordinate officers in the government thereof, and, as far as may be in his power, to cause all negligence, carelessness and positive violation of duty, to be duly prosecuted and punished, and to communicate from time to time to the Council all such information, and recommend such measures within the powers of the Council as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the Municipality. (*t*) 36 V. c. 48, s. 185.

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more responsibility in the Executive Head of our Municipal Institutions. Too often the duties of the Mayor or the Chief Executive Officer are only nominal, and to these he gives but little attention—a natural result of his want of importance and of his inability to control the administration of Municipal affairs. If the office be clothed with dignity and real authority ; if the Mayor shall be invested with the veto power ; if he shall have the sole right to appoint and the unrestricted power to suspend or remove subordinate officials or heads of departments ;—then the citizens can justly demand of him that he shall be individually responsible for the proper conduct of the concerns of the Municipality, and if grievances exist they will know to whom to apply for remedy, and on whom to fix the blame. *Per* Judge Dillon, in Dillon's Municipal Corporations, p. 23. Mayors of our Cities and Towns have responsibility without power, and one result is a lax administration of Municipal affairs, too often combining inefficiency with extravagance and waste.

(*t*) Much of the happiness of the inhabitants of a City or Town depends upon the prudent management of the finances, the preservation of health, the proper repair of roads, and the ornamentation of the Municipality. The inhabitants of all Municipalities have, more or less, these wants in common. By-laws to secure these objects are generally passed but seldom enforced ; the consequence is, the reverse of all that is desirable in Municipal government. It is by this section made the duty of Heads of Councils to be *vigilant* and *active* in the performance of just such duties as above suggested.

The duties in detail may be stated as follows :—

1. To be vigilant and active at all times in causing the law for the government of the Municipality to be duly executed and put in force.

2. To inspect the conduct of all subordinate officers in the government thereof.

3. To cause, as far as may be in his power, all negligence, carelessness and positive violition of duty to be duly prosecuted and punished.

4. To communicate from time to time to the Council all such information and recommend such means as may tend to the improvement of the finances, health, security, cleanliness, comfort, and ornament of the Municipality.

DIVISION II.—THE CLERK.

Appointment and duties of. *Secs.* 237, 238.
Records and papers may be inspected. *Sec.* 239.
Return of statistics to Government. *Secs.* 240–244.
On default, moneys retained. *Sec.* 245.

The clerk, and his duties.

237. Every Council shall appoint a Clerk; (*a*) and the Clerk shall truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the Council, and, if required by any member present, shall record the name and vote of every member voting on any matter submitted, and shall keep the books, records and accounts of the Council, and shall preserve and file all accounts acted upon by the Council, and also the originals or certified copies of all by-laws, and of all minutes of the proceedings of the Council, all of which he shall so keep in his office, or in the place appointed by by-law of the Council. (*b*) 36 V. c. 48, s. 186.

These are all executive duties: other duties, not necessary to be here particularized, are sometimes cast upon heads of Corporations. See *Ela* v. *Smith et al.*, 5 Gray (Mass.) 121; *Henderson* v. *Mayor*, 3 La. 563; *Shafer et al.* v. *Mumma*, 17 Md. 331; *Slater* v. *Wood*, 9 Bosw. (N.Y.) 15; *Pedrick* v. *Bakley et al.*, 12 Gray (Mass.) 161; *Nichols* v. *Boston*, 98 Mass. 39; *Waldo* v. *Wallace*, 12 Ind. 569; *Gulick* v. *New*, 14 Ind. 93; *Muscatine* v. *Steck*, 7 Iowa 505; *Ex parte Strahl*, 16 Iowa 369; *Morrison* v. *McDonald*, 21 Maine 550; *State ex rel. Rockford* v. *Maynard*, 14 Ill. 419; *Commonwealth* v. *Dallas*, 3 Yeates (Pa.) 300; *State* v. *Wilmington*, 3 Harring. (Del.) 294. It is now enacted that the Head of the Council of a City, Town or Village may be paid such annual or other remuneration as the Council may determine. See sec. 324. The Mayor of a City or Town is *ex officio* a Justice of the Peace: sec. 395, and, where there is no Police Magistrate, has jurisdiction to hear and determine prosecutions for offences against By-laws: sec. 396, and, under particular circumstances, is authorized to call out the *posse comitatus* to enforce the law within the Municipality, should exigencies require it. Sec. 453.

(*a*) It is made the duty of the Council to appoint a Clerk. Convenience, if not duty, however, will at all times render one necessary. *Beverley* v. *Barlow*, 7 U. C. L. J. 117. Quære, are the offices of Clerk and Treasurer so incompatible as to make it illegal for the same person to hold both offices. See note *k* to sec. 172. In the Eng. Stat. 3 & 4 Will. IV. cap. 101, s. 18, there is an express prohibition against appointing the same person to both such offices. See *Hawkings* v. *Newman*, 4 M. & W. 613.

(*b*) The Clerk being an executive officer of the Council, it is his duty to make all entries as directed. He is not at liberty, without the previous sanction of the Council, to exercise any discretion of

Provision for absence, &c., of clerk.

238. The Council may by resolution provide that, in case the Clerk is absent, or incapable through illness of performing his duties of Clerk, some other person to be named in such resolution, or to be appointed under the hand and seal of such Clerk, shall act in his stead, and the person so appointed shall, while he so acts, have all the powers of the Clerk. (*c*) 36 V. c. 48, s. 187.

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his own. His record of the proceedings is to be "true" and "without note or comment."

The duties of the Clerk, here enumerated, are the following:—

1. To record all resolutions, decisions and other proceedings of the Council.

2. To record the name and vote of every member voting, if required by any member present.

3. To keep the books, records and accounts of the Council.

4. To preserve and file all accounts acted upon by the Council.

5. To keep the original or certified copies of all By-laws, and of all minutes and proceedings of the Council.

All which he is to keep in his office, or the place appointed by By-law of the Council.

Other duties are imposed by succeeding sections of this Act.

The Clerk while in office, can only charge the Council by acts within the scope of his general authority, or by such as the Council beforehand directed or afterwards sanctioned. *Ramsay* v. *Western District Council*, 4 U. C. Q. B. 374. He may amend an erroneous record. *Scammond* v. *Scammond*, 8 Fost. (N.H.) 429; *Cass* v. *Bellows*, 11 Fost. (N. H.) 501; *Harris* v. *School District*, 8 Fost. (N.H.) 58; *Gibson* v. *Bailey*, 9 N. H. 168; *Whittier* v. *Varney*, 10 N. H. 291; *Welles* v. *Battelle*, 11 Mass. 477; *Low* v. *Pettingill*, 12 N. H. 337; *Pierce* v. *Richardson*, 37 N. H. 306; *President* v. *O'Malley*, 18 Ill. 407; *Mott* v. *Reynolds*, 27 Vt. 1 Wms. 206; *Covington* v. *Ludlow*, 1 Met. (Ky.) 295; *Boston Turnpike Company* v. *Pomfret*, 20 Conn. 590; *Bishop* v. *Cone et al.*, 3 N. H. 513; *Hoag* v. *Durfey*, 1 Aiken (Vt.) 286; *Chamberlain* v. *Dover*, 13 Maine, 466. The power to amend ceases when he ceases to hold the office. *School District* v. *Atherton*, 12 Met. (Mass.) 105; *Hartwell* v. *Littleton*, 13 Pick. (Mass.) 229. His successors cannot make an amendment. *Taylor* v. *Henry*, 2 Pick. (Mass.) 397; *State* v. *Williams*, 25 Maine, 561, 565; *Fossett* v. *Bearce*, 29 Maine, 523. But in a proper case the Council might direct the amendment to be made. *Hutchinson* v. *Pratt*, 11 Vt. 402. Where an amendment is made, and it should not be attempted unless absolutely necessary, it should be made with the sanction of some superior officer or of the Council, and in such a manner as to be easily distinguished from the original text. See *Pierce* v. *Richardson*, 37 N. H. 306. Where the applicant for the office of Township Clerk shewed that he was unable to write, his application for a writ of mandamus failed. *The Queen* v. *Ryan*, 6 U.C. Q. B. 296.

(*c*) The Council has an implied power, in case of the temporary

Minutes, &c., to be open to inspection.

239. Any person may inspect any of the particulars aforesaid, (*d*) as well as the assessment rolls, voters' lists, poll books, and other documents in the possession of or under the control of the Clerk, at all seasonable times, (*e*) and the Clerk shall, within a reasonable time, furnish copies thereof to any applicant at the rate of ten cents per hundred words, or at such lower rates as the Council appoints, and shall, on payment of the proper fee therefor, furnish within a reasonable time, to any elector of the Municipality, or to any other person interested in any by-law, order or resolution, or to his attorney, a copy of such by-law, order or resolution, certified under his hand and under the corporate seal. (*f*) 36 V. c. 48, s. 188.

Copies to be furnished and charges therefor, &c.

Clerk to transmit a yearly return of ratepayers to the Provincial Treasurer.

240. The Clerk of every City, Town, incorporated Village and Township shall, on or before the first day of December in each year, under a penalty of twenty dollars, to be paid to the Treasurer of Ontario in case of default, transmit to the Treasurer of Ontario a true return of the number of resident ratepayers appearing on the revised assessment roll of his Municipality for the year, and shall accompany such return with an affidavit of the correctness of the same made before a Justice of the Peace verifying the same in the following form :— (*g*)

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absence of the Clerk, to appoint a person to discharge his duties. See *The King* v. *Mothersell*, 1 Str. 93 ; *Hutchinson* v. *Pratt*, 11 Vt. 402.

(*d*) See note *b* to sec. 237.

(*e*) It is the right of any inhabitant of the Municipality to inspect the records, books and other documents of the Corporation on proper occasions : *The King* v. *Shelley*, 3 T. R. 142 ; *The King* v. *Babb*, *Ib.* 579 ; *Harrison* v. *Williams*, 3 B. & C. 162 ; *Rogers* v. *Jones*, 5 D. & R. 484. And it is a right which may be enforced by mandamus. *The King* v. *Newcastle*, 2 Str. 1223 ; *The King* v. *Lucas*, 10 East 235 ; *The King* v. *Purnell*, 1 Wils. 242 ; *The King* v. *Bridgeman*, 2 Str. 1203 ; *People* v. *Mott*, 1 How. Prac. (N.Y.) 247 ; *Cockburn* v. *Bank*, 13 La. An. 289 ; *People* v. *Walker*, 9 Mich. 328 ; *People* v. *Cornell*, 47 Barb. (N.Y.) 329.

(*f*) No provision is made for the funding of these fees by the Clerk ; and there is no declaration making the fees his own. In the absence of some By-law or resolution authorizing him to keep them, it would, it is presumed, be his duty to pay him over to the Corporation. See *The Queen* v. *Cumberlege*, 36 L. T. N. S. 700.

(*g*) The duty of the Clerk is to make the return required by this section "on or before the first day of December in each year," under the penalty named. The machinery of Municipal government assumes that certain things are done by certain days in the Municipal year, so that other things may in their order follow. Municipal officers

Oath of verification,

I, *A. B.*, Clerk of the Municipality of the (City Town, Township *or* Village (*as the case may be*), of make oath any say, that the (above, within written, *or* annexed *as the case may be*) return, contains a true statement of the number of resident ratepayers appearing on the assessment roll of the said City (Town, Township *or* Village) for the year one thousand eight hundred and

(Signed) *A. B.*

Sworn before me, &c.

36 V. c. 48, s. 189. *See also Rev. Stat.* c. 28, s. 5.

To make to yearly return to the County Clerk.

241. The Clerk of every Township, Village and Town shall in each year, within one week after the first day in March, (*h*) under a penalty of twenty dollars in case of default, make a return to the Clerk of the County in which the Municipality is situate, of the following particulars respecting his Municipality for the year then last past, namely:

What such return shall show.

Heads of columns to be varied according to the form of the assessment rolls required by law.

1. Number of persons assessed.
2. Number of acres assessed.
3. Total actual value of real property.
4. Total of taxable incomes.
5. Total value of personal property.
6. Total amount of assessed value of real and personal property.
7. Total amount of taxes imposed by by-laws of the Municipality.
8. Total amount of taxes imposed by by-laws of the County Council.
9. Total amount of taxes imposed by by-laws of any Provisional County Council.

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cannot, therefore, regard provisions as to time with too much strictness. But if the thing required to be done within the time limited be not done, it does not follow that it cannot afterwards be done. It is, no doubt, important that it should be done within the time limited; but "it is still more important that it *should be done;* and therefore if, owing to some uncontrollable circumstance, it is not done on the proper day, it ought to be done on the next or some other." *Per* Pollock, C. B., in *Hunt* v. *Hibbs*, 5 H. & N. 126. So far as the public interests are concerned, the Act may be looked upon as directory. *The King* v. *Norwich*, 1 B. & Ad. 310; see further, *Cole* v. *Green*, 6 M. & G. 872; *Morgan* v. *Parry*, 17 C. B. 334; *Brumfit* v. *Bremmer*, 9 C. B. N. S. 1; *Nickle* v. *Douglass*, 35 U. C. Q. B. 127; *The Queen* v. *Ingall et al.*, L. R. 2 Q. B. Div. 199; *Striker* v. *Kelly*, 7 Hill (N. Y.) 9; *Elendorf* v. *New York*, 25 Wend. (N. Y.) 693. But so far as the officers whose duty it is made to do the things within a limited time, the Act may be construed as imperative. *Hunt* v. *Hibbs*, 5 H. & N. 126. The Municipality may suffer in more ways than one if the officer neglect to perform his duty by the day named. See sec. 245.

(*h*) See the last note

10. Total amount of taxes as aforesaid.
11. Total amount of income collected or to be collected from assessed taxes for the use of the Municipality.
12. Total amount of income from Licenses.
13. Total amount of income from Public Works.
14. Total amount of income from shares in incorporated Companies.
15. Total amount from all other sources.
16. Total amount of income from all sources.
17. Total expenditure on account of roads and bridges.
18. Total expenditure on account of other public works and property.
19. Total expenditure on account of stock held in any incorporated Company.
20. Total expenditure on account of Schools and Education, exclusive of School Trustees' Rates.
21. Total expenditure on account of the support of the poor, or charitable purposes.
22. Total expenditure on account of debentures and interest thereon.
23. Total gross expenditure or account of Administration of Justice in all its branches.
24. Amount received from Government on account of Administration of Justice.
25. Total net expenditure on account of Administration of Justice.
26. Total expenditure on account of salaries, and the expenses of Municipal Government.
27. Total number of sheep worried by dogs, and the amount paid therefor by the Municipality.
28. Total expenditure on all other accounts.
29. Total expenditure of all kinds.
30. Total amount of liabilities secured by debentures.
31. Total amount of liabilities unsecured.
32. Total liabilities of all kinds.
33. Total value of real property belonging to Municipality.
34. Total value of stock in incorporated Companies owned by Municipality.
35. Total amount of debts due to Municipality.
36. Total amount of arrears of taxes.
37. Balance in hands of Treasurer.
38. All other property owned by Municipality.
39. Total assets.

36 V. c. 48, s. 190.

County clerk to make a return to the Provincial Secretary.

242. The Clerk of every County shall, before the first day of April in each year, (*i*) prepare and transmit to the Provincial Secretary a statement of the aforesaid particulars respecting all the Municipalities within his County, (*j*) entering each Municipality in a separate line, and the particulars required opposite to it, each in a separate column, together with the sum total of all the columns for the whole County, and shall also make at the same time a return of the same particulars respecting his County, as a separate Municipality, and also of the following particulars;—

1. Number of Public School Inspectors.
2. Amount paid to School Inspectors.
3. Total amount paid to Sheriffs.
4. Total amount paid to County Crown Attorney.
5. Total amount paid to Clerk of the Peace.
6. Total amount paid for constable and police service.

36 V. c. 48, s. 191; 40 V. c 7, *Sched.* A. (173).

And also Clerks of cities and towns.

243. The Clerk of every City and Town separated from a County shall, before the first day of April in each year, (*k*) make a return to the Provincial Secretary of the particulars in section two hundred and forty-one mentioned respecting his City or Town. 36 V. c. 48, s. 192.

Provincial Secretary to lay returns before the Legislative Assembly.

244. The Provincial Secretary shall, as soon as may be after the commencement of every Session, lay before the Legislative Assembly a copy of all returns hereinbefore required to be made. (*l*) 36 V. c. 48, s. 193.

Moneys to be retained if returns not made.

245. The Treasurer of the County shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Clerk of the County that the Clerk of such Municipality has not made the return hereinbefore required; and the Treasurer of Ontario shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Provincial Secretary that the Clerk of such

(*i*) See note *g* to sec. 240.

(*j*) See sec. 241.

(*k*) See note *g* to sec. 240.

(*l*) It is to be noted that while the duty of the Clerk, as to each return, is to make it on or before a particular day named, see secs. 240, 241, 242, 243, the Provincial Secretary is required, "as soon as may be after the commencement of every Session," to lay a copy of all the returns before the Legislative Assembly.

Municipality has not made the returns hereinbefore required. (*m*) 36 V. c. 48, s. 194.

DIVISION III.—THE TREASURER.

His appointment, duties and remuneration. *Secs.* 246–248.

Successor may draw moneys. *Sec.* 249.

246. Every Municipal Council shall appoint a Treasurer, (*o*) who may be paid either by salary or by by a percentage (*p*) and every Treasurer, before entering upon the duties of his office, shall give such security as the Council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands; (*q*) and it shall be the duty of every Coun-

Treasurer to be appointed.

To give security.

(*m*) The object of this section is to bring to bear the pressure indicated on the Municipalities concerned, in order that the Municipal officers may be thereby compelled to make the requisite returns.

(*o*) The offices of Treasurer and member of the Council are incompatible. *The Queen* v. *Smith*, 4 U. C. Q. B. 322. The Treasurer has no power to bind the Corporation by acceptance of orders for School Teachers salaries. *Munson* v. *Collingwood*, 9 U. C. C. P. 497; *Smith* v. *Collingwood*, 19 U. C. Q. B. 259.

(*p*) A resolution, empowering a person to collect taxes due to the City, at a given rate per cent. on the amount collected, may be repealed or modified at any time by the Corporation, on the sole condition that the Corporation shall continue liable for any compensation earned under the resolution previous to its repeal or modification. *Hestand* v. *New Orleans*, 14 La. An. 330. The personal representatives of a deceased Treasurer, however, are liable to be sued in respect of his default. *Lincoln et al.* v. *Thompson et al.*, 8 U. C. Q. B. 615.

(*q*) The Treasurer is—

1. To give security.

2. The security is to be given before he enters upon the duties of his office.

3. The security is to be for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands.

Accounting for moneys includes payment over. *Malling* v. *Chalkin*, 3 M. & S. 502. Where the Treasurer had in his hands a large balance belonging to the Township at the time of giving his bond with new sureties, it was held that subsequent payments by the Treasurer were applicable first to the discharge of that balance. *East Zorra* v. *Douglas*, 17 Grant 462. See further, *Leonard* v. *Black*, 4 U. C. L. J. 260; *Peers* v. *Oxford*, 17 Grant 472.

Annual inquiry as to sufficiency of.

cil in each and every year to inquire into the sufficiency of the security given by such Treasurer, and report thereon. (*r*) 36 V. c. 48, s. 195.

It is no objection to the bond that it was executed before the appointment to office was made. *Essex* v. *Strong*, 8 U. C. L. J. 15; *S. C.* 21 U. C. Q. B. 149. If the condition of the bond of a public officer substantially comply with the requirements of the Statute, Courts will endeavour to sustain the bond as against technical defences. *Baby* v. *Baby*, 8 U. C. Q. B. 76. See *People* v. *Holmes*, 2 Wend. (N.Y.) 281, *Ib.* 615; *Alleghany County* v. *Van Campen*, 3 Wend. (N.Y.) 49; *Lawton* v. *Erwin*, 9 Wend. (N.Y.) 233; *Postmaster-General* v. *Rice*, Gilpin (Pa.) 554; *Montville* v. *Haughton*, 7 Conn. 543; *Commonwealth* v. *Wolbert*, 6 Binn. (Pa.) 292; *Thomas* v. *White*, 12 Mass. 369; *Morse* v. *Hodsdon et al.*, 5 Mass. 314; *Kavanaugh* v. *Sanders*, 8 Greenl. (Me.) 442; *Sweetzer* v. *Hay*, 2 Gray (Mass.) 49; *Horn* v. *Whittier*, 6 N. H. 88; *Supervisors* v. *Coffinbury*, 1 Mich. 359. The invalidity of the appointment cannot be set up as a defence to an action on a bond where moneys have been collected. *Hoboken* v. *Harrison*, 1 Vroom. (N. J.) 73; *Seiple* v. *Elizabeth*, 3 Dutch (N.J.) 407; nor can irregularities in the mode of appointment. *Whitby* v. *Harrison*, 18 U. C. Q. B. 603; *Whitby* v. *Flint*, 9 U. C. C. P. 449; *Todd* v. *Perry et al.*, 20 U. C. Q. B. 649. The imposition of additional taxes to those assessed at the time of taking the security and the increase of risk thereby, has been held not to violate a bond given for the general performance of duties and payment of moneys. *Beverley* v. *Barlow et al.*, 10 U. C. C. P. 178; *S. C.* 7 U. C. L. J. 117 Nor is it a defence that the money received by the Treasurer was not demanded by the Government, which was entitled thereto. *Essex* v. *Park*, 11 U. C. C. P. 473. It has been held that sureties for an officer whose term is limited to a year, are not liable beyond the year, though the officer continue by law till his successor is appointed. *The Queen ex rel. Ford* v. *McRae*, 5 U. C. P. R. 309; *Dover* v. *Twombly*, 42 N. H. 59; *Clemsford Co.* v. *Demorest*, 7 Gray (Mass.) 1; *Mayor* v. *Horn*, 2 Harring. (Del.) 190.

(*r*) This is a most important duty, but, it is believed, the most neglected of all duties imposed on Councils. It may be that if the Municipality lose the benefit of their security by reason of a neglect to perform this duty on the part of the members of the Council, the latter could be made liable to make good the loss. One of the sureties of a Treasurer being desirous of being relieved from his suretyship, the Treasurer offered to the Council a new surety in his place. The Council thereupon passed a resolution approving of the new surety, and declaring that on the completion of the necessary bonds the withdrawing surety should be relieved. No further act on the part of the Council took place. But the Treasurer and his new surety (omitting the second surety) joined in a bond conditioned for the due performance of the Treasurer's duties for the future, and the Treasurer executed a mortgage to the same effect. The Clerk, on receiving these, gave up to the Treasurer the old bond and the Treasurer destroyed it. Eight years afterwards a false charge was discovered in the accounts of the Treasurer of a date prior to these transactions, and it was held that the sureties on the first bond were responsible for it. *Frontenac* v. *Breden*, 17 Grant 645.

247. Every Treasurer shall receive and safely keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the laws of the Province and the lawful by-laws or resolutions of the Council of the Municipal Corporation, whose officer he is, direct; (*s*) but no member of the Council shall receive any money from

To receive and take care of and disburse moneys, etc.

(*s*) In an action by a Municipal Corporation against their Treasurer on his bond, charging him with not having paid over moneys received, it appeared that the Corporation had a contract with one E. to build bridges for them. E. wanting money, got the Reeve to endorse his note for $600, which was discounted by defendant at the Niagara District Bank, of which he was agent, as well as Treasurer of the Municipality. A few days afterwards another note for $400, made by E. and endorsed by other persons—one a member of the Corporation—was discounted at the same bank. When these notes were about to fall due, a meeting of the Council took place, at which defendant was present, and the Reeve swore that it was then understood that the Council should assume these two notes, and he thought the defendant was authorized to charge them both to the Corporation; but other Councillors examined did not agree with the Reeve in their recollection of what took place; and the only resolution or minute in writing was that the Council should give their note for $700, to be used in the Niagara District Bank by the defendant. This note was accordingly made by the Reeve, and endorsed by the other members. *Held*, that under these facts the treasurer had no right to charge the Council with the remaining $300. *Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278. In an account rendered by defendant to the Council, this $1,000 was charged as paid to E., and it was asserted the Council made subsequent payments to him, assuming the account to be correct. But, *held*, that assuming this to be the case, of which there was some question, the Council, by omitting to notice or object to this item, were not bound to pay it. *Ib.* If the Treasurer chooses to act upon the construction which he puts upon or the inferences which he draws from mere conversations among members of the Council which may take place in his presence, he does so at his own risk. He should be aware that no loose conversations of any one or more members of the Council can form a voucher that will acquit him for paying public money. *Ib.* 285, *per* Robinson, C. J. The Treasurer should not pay money on any or every draft and order which the Reeve for the time being may direct him to pay. The Township moneys will probably be considered as still in his hands unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the Municipality. *East Nissouri* v. *Horseman et al.*, 9 U. C. C. P. 191, *per* Draper, C. J. Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or By-law of a Corporation created by Act of Parliament, *per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481; and if a Treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution. *per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 580.

such Treasurer for any work performed or to be performed;

His liability limited.

(*t*) and such Treasurer shall not be liable to any action at law for any moneys paid by him in accordance with any by-law or resolution passed by the Council of the Municipality of which he is the Treasurer, unless where another disposition is expressly made of such moneys by statute. (*u*) 36 V. c. 48, s. 196.

Half-yearly statement of assets.

248. Every Treasurer shall also prepare and submit to the Council half yearly a correct statement of the moneys at the credit of the Corporation (*a*) whose officer he is; and in Cities, Towns, Incorporated Villages and Townships which have passed by-laws requiring this to be done, the Treasurer shall, on or before the twentieth day of December in each

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But where persons entrusted with the administration of a fund have incurred legitimate and proper expenses thrown upon them by their fiduciary situation they have a right to reimburse themselves out of the funds. See *The King* v. *The Inhabitants of Essex*, 4 T. R. 591. *The King* v. *The Commissioners of Sewers for the Tower Hamlets*, 1 B & Ad. 232; *Attorney-General* v. *Mayor of Norwich*, 2 M. & C. 406; *Regina* v. *The Mayor and Town Council of Sheffield*, L. R. 6 Q. B. 652. An attempted appropriation contrary to the terms of the trust may be restrained. *Attorney-General* v. *Aspinall*, 2 M. & C. 613. A by-law declaring that the officers of the Corporation shall be indemnified for all lawful acts done in an official capacity is not illegal. *Irwin* v. *Mariposa*, 22 U. C. C. P. 367.

(*t*) It is against the policy of the law that a member of a Council, who is a trustee for the people, should have any contracts with the Corporation, and so be in a position to make a profit out of his trust. See note *p* to sec. 74.

(*u*) The first part of the section makes it the duty of the Treasurer to pay out money in such manner as the laws of the Province and the *lawful* By-laws or resolutions of the Council direct. But in order, it is presumed, to relieve the Treasurer from the responsibility of deciding what By-laws or resolutions are or are not legal, it is here provided that he shall not be liable to any action for "*any* moneys paid by him in accordance with *any* By-law or resolution passed by the Council of the Municipality of which he is Treasurer." In other words, the By-law or resolution, whether legal or illegal, if requiring him to pay the money, is a protection to him. This part of the section is, it is believed, designed to relieve Treasurers from the embarrassment indicated, and if not so read will contradict the first part of the section.

(*a*) The moneys of the Municipality should be by the Treasurer deposited and kept to "the credit of the Corporation," and not to his own credit. They should be kept in a separate account and not be mixed up with the Treasurer's private money. *Peers* v. *Oxford*, 17 Grant. 472. Most of the losses which Municipalities have sustained have arisen through the misconduct of their Treasurers, being

year, (*b*) prepare and transmit to the Clerk of the Municipality a list of all persons who have not paid their municipal taxes on or before the fourteenth day of said month of December. (*c*) 36 V. c. 48, s. 197. *See* ss. 78, 461 (2) Annual list of persons in default for taxes.

249. In case any Treasurer is dismissed from office, or absconds, it shall be lawful for his successor to draw any moneys belonging to such Municipality. (*d*) 36 V. c. 48, s. 198. Provision on dismissal from office.

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tempted to use and using the money of the Corporation for purposes of speculation or otherwise as their own. The only safe course for a Treasurer to adopt is to keep strict account of the moneys entrusted to his charge, and on no account whatever to touch it, except for Corporation purposes. A County Treasurer had, through a misapprehension of what was the proper course, been allowed to mix all County money with his own, and had used for his private purposes a large sum of money received in that way. In this state of things he had occasion to give the Corporation a new bond, with two new sureties. Shortly afterwards it was ascertained that he was not able to pay his balance to the Corporation. The sureties filed a bill to be relieved from their bond, on the ground of the Treasurer's misconduct, and of the uncommunicated knowledge of that misconduct by the representatives of the Corporation at the time the bond was given; but the Court being of opinion that most of the facts relied on as proving misconduct were known to the sureties, and that no information had been withheld from them fraudulently, held the bond to be valid *Ib.* A surety cannot get rid of his liability on the ground of having become surety in ignorance of material facts, unless he can show the information was *fraudulently* withheld from him. *East Zorra* v. *Douglass*, 17 Grant 462. So the fact that the Council tacitly permits the Treasurer to mix the money of the Municipality with his own is not of itself any defence to the sureties. *Ib.* Plaintiffs declared on a bond conditioned that their Treasurer should pay over all moneys received since the 1st January, 1866, averring that on that day he had in his hands a large sum, and received further sums up to the 6th April, 1868, when he was dismissed. He accounted for all moneys received before the 1st January, 1866, but not for a large sum received since. The plea denied payment of all moneys since that date. The case was referred to an arbitrator, who found that the Treasurer admitted $3,031 to be due by him on the 1st January, 1866; that he had accounted for all moneys received since; and that of all the moneys received up to his dismissal, including this $3,031, the balance was $1,806. It was held, looking at the particular form of the breach, that the sureties were not liable. *Rawdon* v. *Ward et al.*, 27 U. C. Q. B. 609.

(*b*) See note *g* to sec. 240.

(*c*) The effect of this return is to deprive the persons in arrear for taxes of the right to vote. See sec. 78.

(*d*) The withdrawal of moneys after dismissal is not to affect the right of the Municipality against the sureties of the dismissed

Division IV.—Assessors and Collectors.

(*See also Rev. Stat.* c. 180, ss. 10, 11.)

Certain Councils to appoint. *Secs.* 250, 251.
Township Collectors to act for Provisional Corporations. *Secs.* 252, 253.

Assessors and collectors, appointment and qualification of.

250. The Council of every City, Town, Township, and incorporated Village shall, as soon as may be convenient after the annual election, (*e*) appoint as many Assessors and Collectors for the Municipality as the Assessment Laws from time to time authorize or require, (*f*) and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; (*g*) but the Council shall not appoint as Assessor or Collector a member of the Council. (*h*)

2. The same person may, in a City, Town or Township, be appointed Assessor or Collector for more than one Ward or polling sub-division.

3. In Municipalities which have passed by-laws requiring taxes to be paid on or before the fourteenth day of December, (*i*) it shall be the duty of the Collectors, on the fifteenth day

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Treasurer. But it is recommended that so soon as the dismissal takes place, the sureties be informed of the fact, and be thereby placed in a position, and as far as possible without detriment to the Municipality, to protect themselves.

(*e*) See note *g* to sec. 240.

(*f*) An assessment is not invalidated by reason of the want of qualification of the person appointed and acting as assessor. *Waterloo Bridge Co* v. *Cull*, 1 E. & E. 213.

(*g*) It was made a question whether the Council, once having appointed an Assessor, could cancel the appointment at their mere will and pleasure. *In re McPherson and Beeman*, 17 U. C. Q. B. 99; but now, see sec 274 of this Act. The Council, by resolution, appointed B. Assessor, who was sworn into office, and made the assessment. This appointment was made by a vote of three against two. The election of one of the three Councillors was afterwards set aside, and by a subsequent vote the resolution was rescinded, and a By-law passed appointing a different person Assessor. Both made assessments, and in consequence much confusion arose. The Court, under these circumstances, granted a *quo warranto* to determine the validity of the last appointment. *In re McPherson and Beeman*, 17 U. C. Q. B. 99.

(*h*) The offices are incompatible. See note *k* to sec. 172.

(*i*) See note *r* to sec. 78.

of December in each year, upon oath, to return to the Treasurer the names of all persons who have not paid their municipal taxes on or before the fourteenth day of the said month of December. (*j*) 36 V. c. 48, s. 199.

In cities, assessment commissioner may be appointed instead of such assessors, &c.

251. In Cities, the Council, instead of appointing Assessors under the foregoing section, may appoint an Assessment Commissioner, who, in conjunction with the Mayor for the time being, shall, from time to time, appoint such Assessors and Valuators as may be necessary, and such Commissioner, Assessors and Valuators shall constitute a Board of Assessors, and shall possess all the powers and perform the duties of Assessors appointed under the last preceding section; (*k*) and the Council shall also have power by-law to determine the number of Collectors to be appointed, and prescribe their duties, (*l*) and may by by-law require the payment of taxes to be made into the office of the Treasurer by a day to be named, and in default may in said by-law impose an additional percentage charge on every unpaid tax or assessment, which shall be added to such unpaid tax or assessment, and collected by the Collectors as if the same had originally been imposed and formed part of such unpaid tax or assessment;

On default of payment of taxes, addition percentage may be imposed.

(*j*) See sec. 248.

(*k*) This provision for the appointment of a Board of Assessors is restricted in its operation to Cities. The object of the provision is to secure, as much as possible, efficiency, economy and uniformity of assessment. Different men have different ideas as to value. Some men are gloomy and others hopeful. The temperament of the man often unconsciously governs the valuation; and it has been found that when Assessors in the different Wards of a City act independently of each other, property in some Wards is assessed higher than in others. For remedy provision is made for the constitution of a Board of Assessors. The Board is made to consist of an Assessment Commissioner, Assessors and Valuators. The Commissioner is appointed by the City Council, and the Assessors and Valuators by the Commissioner, acting in conjunction with the Mayor. There is no limit to the number of Assessors and Valuators. As many "as may be necessary" may be appointed; and the appointments may be made "from time to time." The Commissioner, Assessors and Valuators, like other officers of the Corporation, hold office during pleasure. It is not necessary, therefore, that they should, like members of the Council, be appointed or elected annually.

(*l*) It will be observed that the Collectors, like the Commissioner and Assessors, need not be annually appointed, and hold office during pleasure.

Tenure of office of commissioner, assessors, &c.

(*m*) and any Commissioner, Assessor or Collector to be appointed by any City need not be appointed annually, but shall hold office at the pleasure of the Council; (*n*) and all notices, in other Municipalities required to be given to the Clerk of the Municipality in matters relative to assessment, shall in such City be given to the Assessment Commissioner. (*o*) 36 V. c. 48, s. 200.

Collector of provisional council.

Payments.

252. The Collectors of the several Townships in a Junior County of a Union of Counties shall *ex officio* be Collectors in such Townships for the Provisional Council, and the Collectors shall pay over to the Provisional Treasurer the money they collect under any by-law of the Provisional Council. (*p*) 36 V. c. 48, s. 201.

(*m*) This provision is intended to meet a want. In the past it has been found that many tax-payers delay the payment of their taxes so long as to render it necessary for the Council to procure accommodation at the Banks, and pay considerable amounts as interest or discounts. See sec. 393 and notes. This was not fair to those who paid their taxes promptly. They not only lost the use of their money before the dilatory tax-payer did, but their property, in common with other property, became subject to bear the burden of increased taxation to meet Bank discounts and interest on advances. It may now, in Cities, by By-law be made the duty of all tax-payers to pay their taxes *by a day named*. Those in default may, under the operation of the By-law, be subjected to a percentage which will be sufficient, under any circumstances, to meet the increased burden arising from the payment of interest or discount on money borrowed to meet the current expenses and other obligations of the City by reason of the default to pay taxes by the day named. The effect will be to shift the burden from the general body of the ratepayers, and place it only on those whose neglect or default rendered necessary the creation of the burden. It is presumed that the percentage will be made as nearly as possible to correspond with the probable amount of the burden. If this were not the case—if the percentage were made larger than necessary for such a purpose—an annual surplus would arise in excess of the estimated wants of the Corporation. This would be contrary to all well understood principles of Municipal taxation.

(*n*) See sec. 274 and notes thereto.

(*o*) The office of Assessment Commissioner is one of considerable importance. Taxes should be as small as possible, collected at as little expense as possible, and as uniform as possible. It is believed by those who favour such an office as here authorized that there will be more efficiency, more economy, and more uniformity than under the old system.

(*p*) The powers of a Provisional Council are not in any way intended to interfere with the powers of the Council of the Union. Sec. 39. Any money raised by the Provisional Council in the Junior

253. The money so collected shall be deemed the money of the Union, so far as necessary to make the Collectors and their sureties responsible to the Union therefor; and in case the Corporation of the Union receives the same, such Corporation shall immediately pay the amount to the Provisional Treasurer, retaining the expenses of collection. (*q*) 36 V. c. 48, s. 202. Moneys, how to be disposed of.

DIVISION V.—AUDITORS AND AUDIT.

Appointment and duties. *Secs.* 254, 255.
Abstract of receipts and expenditures, *Sec.* 256.
Publication of audit. *Sec.* 257.
Council to finally audit. *Sec.* 258.
County Council to regulate and audit County moneys. *Sec.* 259.
Audit in Cities and Towns, etc. *Sec.* 260.
Special provisions relating to Toronto. *Secs.* 261–263.

254. Every Council shall, at the first meeting thereof in every year after being duly organized, (*a*) appoint two Auditors, one of whom shall be such person as the head of the Council nominates; (*b*) but no one who, at such time, or during the preceding year, is or was a member, or is or was Clerk or Treasurer of the Council, (*c*) or who has, or during such preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest Auditors. Disqualification for office of.

County is independent of any money raised therein by the Council of the Union. *Ib.*

(*q*) The Corporation of the Union is, as it were, a trustee of the money for the Corporation of the Provisional Council. But as between the former and its officers, it is no defence to the latter that the Corporation of the Union is not beneficially interested in the money. A demand of some kind ought to be made for the money before bringing suit for its recovery. *Caledon* v. *Caledon*, 12 U. C. C. P. 301.

(*a*) See note *p* to sec. 217.

(*b*) The Council is to appoint two Auditors annually, but one of them is to be a person nominated by the Head of the Council. Hence it will be seen that a nomination by the Head of the Council, though not in terms an appointment, is, under this section, in effect the same.

(*c*) The offices are incompatible. The disqualification extends to the holding of the incompatible office "during the preceding year." See *The Queen* v. *Hiorns*, 7 A. & E. 960.

in any contract or employment with or on behalf of the Corporation, (*d*) except as Auditor, shall be appointed an Auditor. 36 V. c. 48, s. 203.

Duties of.

255. The Auditors shall examine and report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction for the year ending on the thirty-first day of December preceeding their appointment. (*f*) 36 V. c. 48, s. 204.

To Prepare abstract and detailed statement of receipts and expenditure, &c.

256. The Auditors shall prepare an abstract of the receipts, expenditure, assets and liabilities of the Corporation, and also a detailed statement of the said particulars in such form as the Council directs, and report in duplicate on all the accounts audited by them, and make a special report of any expenditure made contrary to law, (*g*) and shall file the same

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(*d*) See note *p* to sec. 74.

(*e*) This is to permit the same individual to be reappointed to the office of Auditor. Audits in Cities and Towns may be daily (see sec. 252), and in other Municipalities monthly or quarterly, as directed by By-laws on that behalf. *Ib.*

(*f*) Negligence of the Auditors in examining and reporting upon accounts will not, under ordinary circumstances, relieve those indebted to the Corporation from the payment of their liabilities. See *In re Eldon and Ferguson*, 6 U. C. L. J. 207. "It seems to me to be a monstrous proposition, that an officer of the Corporation may wilfully or even negligently omit to enter the receipt of moneys; and because the Auditors have not been able to discover the omission, and the Corporation approves of the report, that when the omissions are discovered the officer may set up the audit to cover his own fraud or neglect." *Ib.* 209, *per* Richards, J. A surety for the due performance of a Treasurer's duties is not relieved from liability by the negligence of the Auditors in proving the Treasurer's accounts. *Frontenac* v. *Breden*, 17 Grant 645. The fact of the Treasurer having become reduced in his circumstances after the auditing and passing of his accounts, and before the discovery of an error in them, is no bar to a suit against the surety. *Ib.*

(*g*) The duties of Auditors, under this section, may be thus classed:

1. To prepare an abstract of the receipts, expenditures, assets and liabilities of the Corporation.

2. To prepare a detailed statement of the said particulars, in such form as the Council directs.

3. To report in duplicate on all accounts audited by them.

4. To make a special report of any expenditure made contrary to law.

5. To file the reports in the office of the Clerk of the Council within one month after appointment.

in the office of the Clerk of the Council within one month after their appointment, (*h*) and thereafter any inhabitant or ratepayer of the Municipality may inspect one of such duplicate reports at all seasonable hours, and may, by himself or his agent, at his own expense, take a copy thereof or extracts therefrom. (*i*) 36 V. c. 48, s. 205.

Clerks to publish abstracts and statements.

257. The Clerk shall publish the Auditors' abstract and report (if any), and shall also publish the detailed statement in such form as the Council directs, (*j*) and in case of a minor Municipality the Clerk shall transmit to the Clerk of the County Council a copy of such abstract and statement, and the same shall be kept by the Clerk of the County Council as a record of his office. 36 V. c. 48, s. 206; 40 V. c. 7, *Sched.* A (174).

The council to audit finally, &c.

258. The Council shall, upon the report of the Auditors, finally audit and allow the accounts of the Treasurer and Collectors, and all accounts chargeable against the Corporation; and in case of charges not regulated by law, the Council shall allow what is reasonable (*k*). 36 V. c. 48, s. 207.

Audit of moneys to be paid by Treasurer.

259. Unless otherwise provided, every County Council shall have the regulation and auditing of all moneys to be paid out of the funds in the hands of the County Treasurer (*l*). 36 V. c. 48, s. 208.

(*h*) See note *g* to sec. 240.

(*i*) The right to inspect the Auditors' report is extended to "any inhabitant *or* ratepayer." The difference between an inhabitant and a ratepayer is, that "inhabitant" means a resident, whether a ratepayer or not, and that a "ratepayer" is a person who pays taxes, whether a resident or not. See *The King* v. *North Curry*, 4 B. & C. 961. Mere colourable residence is insufficient to constitute a person an inhabitant. *The King* v. *Sargent*, 5 T. R. 466; *The King* v. *Duke of Richmond*, 6 T. R. 560; *Bruce* v. *Bruce*, 2 B. & P. 229, *n*; *The King* v. *Mitchell*, 10 East. 511; *Whithorn* v. *Thomas*, 7 M. & G. 1.

(*j*) The word shall, as here used, is imperative as regards the officer upon whom the duty is cast. See note *g* to sec. 240.

(*k*) Notwithstanding the use of the word "finally" in this section, it is believed that the Corporation may, on the discovery of fraud or mistake, recover moneys due to them on accounts audited, although according to the report of the Auditors nothing is due, and notwithstanding the allowance of the accounts upon the basis of the supposed correctness of the audit. See note *f* to sec. 255.

(*l*) The Council is to have the regulation and auditing of all moneys to be paid, &c. The word "regulation" appears to refer to an order prior to payment, as does the word "auditing" refer to an

Audit of accounts in cities.

260. In Cities and Towns the Council may also appoint an Auditor, who shall, daily or otherwise as directed by the Council, examine and report and audit the accounts of the Corporation, in conformity with any regulation or by-law of the Council (*m*); and in other Municipalities the Auditors shall also, monthly or quarterly, as directed by by-law, examine into and audit the accounts of the Corporation (*n*). 36 V. c. 48, s. 209.

In other Municipalities.

Appointment of auditors by the City of Toronto.

261. Notwithstanding anything in this Act, the Council of the Corporation of the City of Toronto shall, during the month of December in each year, appoint two Auditors. (*o*) 35 V. c. 77, s. 1.

Monthly audit.

262. Notwithstanding as aforesaid, (*p*) the Auditors for the said City shall every month, commencing at the end of the first month in the following year, and so on to the end of such year, examine and report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction. (*q*) 35 V. c. 77, s. 2.

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act done after payment. The Council have, under section 258, a general power to finally audit and allow all the accounts of the Treasurer, &c., and all accounts chargeable against the Corporation.

(*m*) There was nothing in the old law to prevent a daily audit; but as regards Cities and Towns, there is now in this section an express declaration that the Auditors shall, "daily or otherwise," as directed by the Council, examine, report and audit accounts. The person appointed would, it is presumed, be subject to the disqualifications mentioned in section 254. As to the effect of the audit, see note *f* to sec. 255.

(*n*) In rural Municipalities the accounts are not usually as numerous as in Cities and Towns. While in the case of the latter the audit may be "daily or otherwise," in the case of other Municipalities it may be "monthly" or "quarterly," as directed by by-law.

(*o*) The general power is for the Council of a City or Town to appoint an Auditor. Sec. 260. The exception, as two Auditors in the case of the City of Toronto, is because of the magnitude and multiplicity of the yearly accounts of that Municipality. One of the advantages of having two Auditors is, that where they act independently of each other they may check each other's work.

(*p*) See the last note.

(*q*) The words "under its control or within its jurisdiction" may give rise to some question. Thus, for example, it is the duty of the Council of the City to raise by taxation money required for public education or for police purposes, but the Council has no discretion as to the amount. This being so, it cannot well be said that Public School Board moneys or Police Board moneys are either under the

263. The said Auditors shall discharge the duties imposed upon Auditors by the two hundred and fifty-sixth section of this Act (*r*) within one month after the thirty-first day of December in each year. (*s*) 35 V. c. 77, s. 3. Annual report.

Division VI.—Valuators.

Appointment and Duties. Sec. 264.

264. The Council of every County may appoint two or more Valuators for the purpose of valuing the real property within the County, whose duty it shall be to ascertain, in every fifth year at furthest, the value of the same in the manner directed by the County Council; but such Valuators shall not exceed the powers possessed by the Assessors; and the valuation so made shall be made the basis of equalization of the real property by the County Council for a period not exceeding five years; and the equalization of personal property shall be as heretofore. (*a*) 36 V. c. 48, s. 210. County Council may appoint valuators, their duties, &c. Equalization of real property.

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control or within the jurisdiction of the City Council. Yet, in the interest of the ratepayers, it would seem only proper that the representative body who raise the money should have some control over its expenditure.

(*r*) See notes to sec. 256.

(*s*) See note *g* to sec. 240.

(*a*) Before the Act of 1866, a County Council arrived at the value of lands situate in the several local Municipalities of the County, merely by a process of equalization on an assumed or arbitrary valuation, with the object of producing a just relation between the different local Municipalities without reducing the aggregate valuation of the whole County. This was found unsatisfactory, and for remedy section 175 of the Act of 1866 was enacted. The appointment of County Valuators is the main feature of the remedy, and is left discretionary with the County Councils. The purpose of the appointment is "the valuing the real property" in the County. The duty of the Valuators, when appointed, is to ascertain the value "in the manner directed by the County Council," but on this stipulation: that they (the Valuators) are not to "exceed the powers possessed by Assessors." The valuing may be as often or as seldom as the County Council see fit, provided it be done in every fifth year at furthest. It is not supposed that a valuation will be necessary every year. But in some localities real property fluctuates in value more than in others, and so, within the limit mentioned, a discretion is vested in the County Council. The section has reference only to real property. The equalization of personal property remains as heretofore.

DIVISION VII.—DUTIES OF OFFICERS RESPECTING OATHS AND DECLARATIONS.

Declarations of office and qualification. *Secs.* 265–267.
Before whom made. *Sec.* 268.
Persons to administer oaths and declarations. *Sec.* 269.
Record and deposit of. *Sec.* 270.
Oaths respecting matters before Council. *Sec.* 271.
Penalty for refusing office, or not making or refusing to administer declarations. *Sec.* 272.

Declaration of office by certain officers.

265. Every person elected or appointed under this Act (*b*) to any office requiring a qualification of property in the incumbent (*c*) shall, before he takes the declaration of office, or enters on his duties, (*d*) make and subscribe a solemn declaration to the effect following: (*e*)

Declaration of qualification.

I, *A. B.*, do solemnly declare that I am a natural-born (*or* naturalized) subject of Her Majesty; and have and had to my own use and benefit, in my own right (*or* have and had in right of my wife, *as the case may be*), as proprietor (*or* tenant, *as the case may be*), at the time of my election (*or* appointment, *as the case may require*), to the office of hereinafter referred to, such an estate as does qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected or appointed*), and that such estate is (*the nature of the estate to be specified, as* an equitable estate of leasehold *or otherwise, as the case may require, and if land, the same to be designated by its local description, rents or otherwise*), and that such estate at the time of my election (*or* appointment, *as the case may require*) was of the value of at least (*specifying the value*) over and above all charges, liens and encumbrances affecting the same.

Form of.

36 V. c. 48, s. 211.

(*b*) "Elected *or* appointed." As to the difference see note *d* to sec. 178.

(*c*) This applies to members of the Council. See sec. 70.

(*d*) The election of a head of the Council is "a duty," within the meaning of this section. See *In re Hawk and Ballard*, 3 U. C. C. P. 241.

(*e*) Notwithstanding the use of the word "estate" in the form of declaration of office, a member of a Council is nevertheless qualified if the rating of the value on the roll be sufficient in amount. *Regina ex rel. Bole* v. *McLean*, 6 U. C. P. R. 249. It was attempted to unseat a member of a Council on the ground that he had not, in his declaration of office, specified the nature of the estate; but it was held that such an objection could not be made a ground for setting aside an election under the summary provisions of the statute. *The Queen ex rel. Halsted* v. *Ferris*, 6 U. C. L. J. N. S. 266. Besides, it is to be observed that there is no declaration in the statute to the

266. Every Returning Officer, Deputy Returning Officer and Poll Clerk, every member of a Municipal Council, every Mayor, and every Clerk, Assessor, Collector, Constable and other officer appointed by a Council, (*f*) shall also, before entering on the duties of his office, make and subscribe a solemn declaration to the effect following: Declaration of office by certain officers.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of *(inserting the name of the office)*, to which I have been elected (*or* appointed) in this Township *(or as the case may be)*, and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office, and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the said Corporation. Form of declaration of office.

36 V. c. 48, s. 212.

267. The solemn declaration to be made by every Auditor (*g*) shall be as follows: Auditor's declaration.

I, *A. B.*, having been appointed to the office of Auditor for the Municipal Corporation of , do hereby promise and declare that I will faithfully perform the duties of such office according to the best of my judgment and ability; and I do solemnly declare, that I had not directly or indirectly any share or interest whatever in any contract or employment (except that of Auditor, *if re-appointed*) with, by or on behalf of such Municipal Corporation, during the year preceding my appointment, and that I have not any such contract or employment, except that of Auditor for the present year. Form of.

36 V. c. 48, s. 213.

268. The head and other members of the Council, and the subordinate officers of every Municipality, shall make the Before whom declaration to be made.

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effect that an omission to take the declarations required shall be a forfeiture of office. See *The Queen* v. *Humphrey*, 10 A. & E. 335. A refusal to take the oaths of office has been held equivalent to a refusal of the office. *The King and Queen* v. *Larwood*, Carthew 306; *Exeter* v. *Starre*, 2 Show. 158; *S. C.* In Error, 3 Lev. 116. Upon the declarations being made, the office becomes full, *de facto*. *The King* v. *Sweyer*, 10 B. & C. 486; *The King* v. *Winchester*, 7 A. & E. 215. Before the Court will entertain an application for a *quo warranto*, it must be made to appear that the declarations required by the statutes were made. *The Queen* v. *Slatter*, 11 A. & E. 505; see, also, *The King* v. *Tate*, 4 East. 337. See further, note *n* to sec. 272.

(*f*) For corporate purposes there may be an implied power to appoint officers where appointment is not expressly authorized by the statute. See note *r* to sec. 235. This section extends to all officers appointed by the Council, whether officers named in the statute or not.

(*g*) See secs. 255, 256, 257.

declaration of office and qualification before some Court, Judge, Police Magistrate, or other Justice of the Peace having jurisdiction in the Municipality for which such head, members or officers have been elected or appointed, or before the Clerk of the Municipality; (*h*) and the Court, Judge, or other persons before whom such declarations are made, shall give the necessary certificate of the same having been duly made and subscribed (*i*). 36 V. c. 48, s. 214.

Certificate of declaration.

Certain officers may administer certain oaths, &c.; within municipality.

269. The head of any Council, any Alderman, Reeve or Deputy Reeve, any Justice of the Peace and Clerk of a Municipality may, within the Municipality, administer any oath, affirmation or declaration under this Act, relating to the business of the place in which he holds office, except where otherwise specially provided, and except where he is the party required to make the oath, affirmation or declaration (*j*). 36 V. c. 48, s. 215.

Oath or declaration to be subscribed and kept.

270. The deponent, affirmant, or declarant shall subscribe every such oath, affirmation or declaration, (*k*) and the person administering it (*l*) shall duly certify and preserve the same, and within eight days deposit the same in the office of the Clerk of the Municipality to the affairs of which it relates. (*ll*) 36 V. c. 48, s. 216.

(*h*) The administering of the declarations of office is so far obligatory as to be enforceable by a penalty. See sec. 272.

(*i*) The certificate is to the effect that the declaration has been made *and* subscribed—two things essentially different, but each necessary to complete the taking of the declaration. See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.

(*j*) The authority of the officers named, is not to administer all oaths, affirmations or declarations, but only such as relate to the business of the place in which the officer administering the oath, affirmation or declaration holds office, and thus is made subject to two obvious exceptions:

1. Where otherwise specially provided.

2. Where he is the party required to make the oath, affirmation or declaration.

(*k*) A deponent is one who makes a lawful oath; an affirmant is one who by law is permitted to affirm when otherwise he would be required to make an oath; and a declarant is a person who, instead of making either oath or affirmation, makes a solemn declaration.

(*l*) See note *h* to sec. 268.

(*ll*) The duty of a person administering an oath, &c., of the kind authorized is twofold:

271. The head of every Council, or in his absence the chairman thereof, may administer an oath or affirmation to any person concerning any account or other matter submitted to the Council. (*m*) 36 V. c. 48, s. 217.

Heads of council may administer certain oaths, &c.

272. Every qualified person duly elected or appointed (*n*) to be a Mayor, Alderman, Reeve or Deputy Reeve, Councillor, Police Trustee, Assessor or Collector of or in any Municipality, (*o*) who refuses such office, (*p*) or does not make

Penalty for refusing to accept office or administer declaration, &c.

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1. To certify and preserve the same.

2. Within eight days to deposit the same in the place mentioned.

As to computation of time, see note *a* to sec. 177.

(*m*) Heads of Councils may, under section 269, administer oaths, affirmations or declarations under the Act "relating to the business of the place in which he holds office." This extends the powers to oaths or affirmations "concerning *any* account or *other* matter submitted to the Council," and enables the Chairman of the Council, acting in the absence of the Head of the Council, to administer the last mentioned oaths or affirmations. The purpose, apparently, is to authorize some officer to act on the spur of the moment when deemed necessary to verify accounts or other matter submitted to the Council.

(*n*) It should be noticed that this section is only made obligatory upon *qualified* persons; so that persons really disqualified under section 74 of this Act or exempted under section 75, though elected, would not, it is believed, be bound to take the declarations of office and qualification. See *The King* v. *Leyland*, 3 M. & S. 186. The acceptance by an office-holder of another office incompatible with the first is *ipso facto* a vacation of the first office. *Stubbs* v. *Lee*, 18 Am. 251.

(*o*) The section only applies to particular officers named and to the case of a qualified person appointed or elected, and, when elected, himself returned as elected. *The Queen ex rel. Mackley* v. *Coaks*, 3 E. & B. 249. So that it would not apply to the case in which another was returned, though improperly. *Ib.* As to officers other than those named, see sec. 454, sub. 12 *a*.

(*p*) The acceptance of the office, when the person returned as elected or appointed is qualified, is obligatory. It is an offence at common law for a person to refuse to serve in an office when duly elected. *Vintner's Company* v. *Passey*, 1 Burr. 239; *The Queen* v. *May*, 20 L. J. Q. B. 268. A person so refusing may be indicted, *The King* v. *Burder*, 4 T. R. 778; *Vanacker's Case*, 1 Ld. Rayd. 496, or, in case of urgency, may be proceeded against by criminal information, *The King* v. *Woodrow*, 2 T. R. 731; *The King* v. *Leyland*, 3 M. & S. 186, or mandamus, *The King* v. *Whitwell*, 5 T. R. 85; *The King* v. *Bower*, 1 B. & C. 585, in the discretion of the Court, *The King* v. *Grosvenor*, 2 Str. 1193; *The Queen* v. *Hungerford*, 11 Mod. 142. But, in any event, it must appear that the person elected had notice of the election. *The Queen* v. *Preece*, 5 Q. B. 94; *The Queen* v. *Coaks*, 3 E. & B. 249.

the declarations of office and qualification within twenty days after knowing of his election or appointment, (*q*) and every person authorized to administer any such declaration, who upon reasonable demand refuses to administer the same, (*r*) shall, on summary conviction thereof before two or more Justices of the Peace, forfeit not more than eighty dollars, nor less than eight dollars, at the discretion of such Justices, to the use of the Municipality, together with the cost of prosecution. (*s*) 36 V. c. 48, s. 218.

How enforced.

DIVISION VIII.—SALARIES, TENURE OF OFFICE AND SECURITY.

If not otherwise settled, Council to fix salaries. Sec. 273.
Tenure of Office. Sec. 274.
Gratuities to retiring Officers. Sec. 275.
Security to be given by. Sec. 276.
Offences. 29–30 V. c. 51, s. 187, 188.

Salaries of officers.

273. In case the remuneration of any of the officers of the Municipality (*a*) has not been settled by Act of the Legisla-

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(*q*) Casual information is not sufficient. Before an elected officer can be visited with heavy penalties, imposed for neglecting to accept his office, he must have regular notice of his own election, either by being actually present when it is announced, or being apprised of the fact by some official authority. *Per* Denman, C. J., in *The Queen* v. *Preece*, 5 Q. B. 97 ; see also *London* v. *Vanacre*, 1 Salk. 142.

(*r*) The administering of the declaration is purely a ministerial act. But it has been held that the person administering it so far acquiesces as to disentitle himself to be a relator in proceedings to set aside the election. *The Queen* v. *Greene*, 2 Q. B. 460.

(*s*) This section does not declare that the payment of the fine shall be in lieu of service. Mere payment of the fine is not any excuse for non-acceptance of the office. See *The King* v. *Bower*, 1 B. & C. 585, and *The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101. Nor is it declared that the omission to take the declaration within the time limited shall be a forfeiture of office. *The Queen ex rel. Forsyth* v. *Dolsen*, 7 U. C. L. J. 71.

(*a*) Under a power to remunerate all "township *officers*," it was held that Municipal Councillors had no authority to remunerate themselves. *In re Wright and Cornwall*, 9 U. C. Q. B. 442 ; *Daniels* v. *Burford*, 10 U. C. Q. B. 478 ; *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 576 And it was made a question whether the Warden of a County, or Mayor of a City, is to be deemed an officer, so as to be entitled to remuneration as such. *The Queen* v. *Gore*, 5 U. C. Q. B. 357 ; *In re McLean and Cornwall*, 31 U. C. Q. B. 314. But now such questions are to some extent set at rest ; for the Council of every Township and County may pass By-laws for paying the mem-

ture, (*b*) the Council shall settle the same, and the Council shall provide for the payment of all municipal officers, whether the remuneration is settled by statute or by by-law of the Council. (*c*)

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bers of the Council for their attendance in Council, sec. 223, and so the head of the Council of every County, City, Town or Incorporated Village may be paid such annual sum or other remuneration as the Council sees fit. Sec. 224.

(*b*) Where a Municipal Council, in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary for that year "in lieu of all fees," it was held that this did not debar him from claiming fees allowed by the Jury Act, 13 & 14 Vict. cap. 55, which was passed subsequently in the same year. *Pringle* v. *McDonald*, 10 U. C. Q. B. 254. General powers to a Corporation to fix the compensation of its officers, does not authorize it to take away the fees of an officer specifically fixed by their Charter or Act of Incorporation. *Carr* v. *St. Louis*, 9 Mo. 190. So, if the Legislature provide that one board shall fix the remuneration of Corporation officers, it is not competent for another board to do so. *People* v. *Auditors of Mayne*, 13 Mich. 233; *In re Prince and Toronto*, 25 U. C. Q. B. 175.

(*c*) Municipal officers are not entitled to compensation unless the right to compensation is expressly given by statute, by-law, resolution or contract. *Jones* v. *Carmarthen*, 8 M. & W. 605; *Thomas* v. *Swansea*, 2 Dowl. N. S. 470; *The Queen* v. *Prest*, 16 Q. B. 32; *Rockford, Rock Island and St. Louis R. W. Co.*, v. *Sage*, 16 Am. 587; *Sikes* v. *Hatfield*, 13 Gray (Mass.) 347; *Barton* v. *New Orleans*, 16 La. An. 317; *Garnier* v. *St. Louis*, 37 Mo. 554; see also *Baker* v. *Utica*, 19 N. Y. 326; *People* v. *Supervisors*, 1 Hill (N.Y.) 362; *Cumming* v. *Brooklyn*, 11 Paige (N.Y.) 596; *Jersey* v. *Quaife*, 2 Dutch (N.Y.) 63; *Andrews* v. *United States*, 2 Story (C.C.) 202; *United States* v. *Brown*, 9 How. 487; *Barton* v. *New Orleans*, 16 La. An. 395; *Smith* v. *Commonwealth*, 41 Pa. St. 335; *McClung* v. *St. Paul*, 14 Min. 420; *Boyden* v. *Brookline*, 8 Vt. 284; *Langdon* v. *Castleton*, 30 Vt. 285. And where provision is made for their remuneration by salary, they have no claim for compensation, *extra* the salary, for services alleged to be outside of their official duties: *Andrews* v. *United States*, 2 Story (C.C.) 202; *Palmer* v. *New York*, 2 Sand. (N. Y.) 318; *Gilmore* v. *Lewis*, 12 Ohio 281; *Bussier* v. *Pray*, 7 Serg. & Rawle (Pa.) 447; see also *People* v. *Supervisors*, 1 Hill (N. Y.) 362; *Wendell* v. *Brooklyn*, 29 Barb. (N.Y.) 204; *Evans* v. *Trenton*, 4 Zabr. (N. J.) 764: but see *People* v. *Supervisors*, 12 Wend. (N.Y.) 257; *Mallory* v. *Supervisors of Cortland County*, 2 Cow. (N.Y.) 531; *Doubleday* v. *Supervisors of Broome County*, *Ib.* 533; *Bright* v. *Supervisors*, 18 Johns. (N.Y.) 242; *White* v. *Polk County*, 17 Iowa 413; *Carroll* v. *St. Louis*, 12 Mo. 444; and for this reason it has been held that a promise to pay *extra* the sum fixed by By-law or regulation on the subject, is not binding, though greater services have been rendered than could have been legally exacted, *Hatch* v. *Mann*, 15 Wend. (N.Y.) 44; *Batho* v. *Salter*, Latch 54; *Lane* v. *Sewell*, 1 Chit. 175; *Dew* v. *Parsons*, *Ib.* 295; *Morris* v. *Burdett*, 1 Camp. 218, *Bilke* v. *Havelock*, 3 Camp. 374; *Callagan* v. *Hallet*, 1 Caines. (N. Y.) 104; *Preston* v. *Bacon*, 4 Conn. 471; *Shattuck* v. *Woods*, 1 Pick. (Mass.) 175; *Bussier* v. *Pray*, 7 Serg. & Rawle. (Pa.)

Mode of appointment.

2. No Municipal Council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof, by tender or to applicants at the lowest remuneration. (*d*) 36 V. c. 48, s. 219.

447; *Smith* v. *Smith*, 1 Bailey 70; *Carroll* v. *Tyler*, 2 Har. & Gill. (Md.) 54; *Debolt* v. *Cincinnati*, 7 Ohio St. 237; *Pilie* v. *New Orleans*, 19 La. An. 272, and, indeed, in the interest of the public the rule has been carried so far as to prevent a Municipal officer recovering a reward for a service embraced within his official duties, such as the capture of a thief by a Constable. *Gilmore* v. *Lewis*, 12 Ohio 281; *Pool* v. *Boston*, 5 Cush. (Mass.) 219. Salaries, when voted, should be given as salaries, and not as acts of grace or mere rewards for merit. *In re McLean and Cornwall*, 31 U. C. Q. B. 314; *Heslep* v. *Sacramento*, 2 Cal. 580; *Smith* v. *Commonwealth*, 41 Pa. St. 335; *Devoy* v. *New York*, 39 Barb. (N.Y.) 160; *Bladen* v. *Philadelphia*, 60 Pa. St. 464; *Philadelphia* v. *Given*, *Ib.* 136. By-laws fixing salaries are not, *per se*, to be looked upon as contracts. *Commonwealth* v. *Bacon*, 6 Serg. & Rawle. (Pa.) 322; *Barker* v. *Pittsbury*, 4 Pa. St. 49; *University* v. *Walden*, 15 Ala. 655; *Carr* v. *St. Louis*, 9 Mo. 190; *Commonwealth* v. *Mann*, 5 W. & S. (Pa.) 418; *Madison* v. *Kelso*, 32 Ind. 79; *Smith* v. *County*, 2 Par. (Pa.) 293; *Conner* v. *New York*, 1 Seld. (N.Y.) 285; *Warner* v. *People*, 2 Denio. (N.Y.) 272; *Iowa* v. *Foster*, 10 Iowa 189; *Waldbaven* v. *Memphis*, 4 Coldw. (Tenn.) 431; *Hoboken* v. *Gear*, 3 Dutch. (N. J.) 265; but see *Chase* v. *Lowell*, 7 Gray (Mass.) 33; *Caverley* v. *Lowell*, 1 Allen (Mass.) 289; *Hiestand* v. *New Orleans*, 14 La. An. 330. The Corporation may indemnify its own officers in matters in which the Corporation is interested. *Pike* v. *Middleton*, 12 N. H. 278; *Briggs* v. *Whipple*, 6 Vt. 95; *Bancroft* v. *Lynnfield*, 18 Pick. (Mass.) 566; *Babbitt* v. *Savoy*, 3 Cush. (Mass.) 530; *Nelson* v. *Milford*, 7 Pick. (Mass.) 18; *Hasdell* v. *Hancock*, 3 Gray (Mass.) 526; *Page* v. *Frankford*, 9 Greenl. (Me.) 115; *Baker* v. *Windham*, 3 Maine 74. It is otherwise where the Corporation is not interested or concerned in the matter involved. *Halstead* v. *New York*, 3 Comst. (N. Y.) 430; *Morris* v. *People*, 3 Denio. (N.Y.) 381; *People* v. *Lawrence*, 6 Hill. (N.Y.) 244; *Bank* v. *Supervisors*, 5 Denio. (N.Y.) 517; *Merrill* v. *Plainfield*, 45 N. H. 126; *Vincent* v. *Nantucket*, 12 Cush. (N.Y.) 103; *Pike* v. *Middleton*, 12 N. H. 281. An indemnity to an officer for *lawful acts* gives him no claim for compensation against the consequences of unlawful acts. *Irwin* v. *Mariposa*, 22 U. C. C. P. 367; A By-law to indemnify a Councillor for the costs of a contested election would be illegal. *In re Bell and Manvers*, 2 U. C. C. P. 507, 3 U. C. C. P. 400. An agreement by a Corporation with one of its officers for an increase of the salary of an office retained by him as compensation for the loss of an office of which he was deprived, is not binding unless under the seal of the Corporation. *The Queen* v. *Stamford*, 6 Q. B. 433; see also *Cope* v. *Thames, &c., Dock and Railroad Company*, 3 Ex. 841. So the appointment of a Corporation Solicitor should be under the Corporation Seal. *Arnold* v. *Poole*, 4 M. & G. 860. A Town Clerk, if a solicitor, may have a lien on papers of the Corporation, with respect to which he has done work as an attorney or solicitor. *The King* v. *Sankey*, 5 A. & E. 423.

(*d*) The lowest tender is not always the most satisfactory for

274. All officers appointed by a Council (*e*) shall hold office until removed by the Council, and shall, in addition to the duties assigned to them in this Act, perform all c. .uties required of them by any other statute, or by the by-laws of the Council. (*f*) 36 V. c. 48, s. 220. Tenure of office. Duties.

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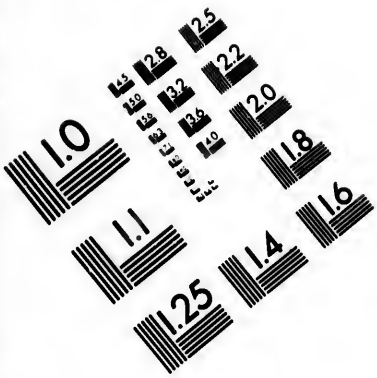
acceptance; and so much has this been found the case in the management of Municipal affairs, that the Legislature has been compelled to interfere, and make the declaration that "*No* Municipal Council *shall assume* to make *any* appointment to office, or *any arrangement* for the discharge of the duties thereof, by tender," &c. Poor pay, poor service, is generally the rule. Good servants are deserving of good pay; and good pay to good servants will, in the long run, be found to be true economy.

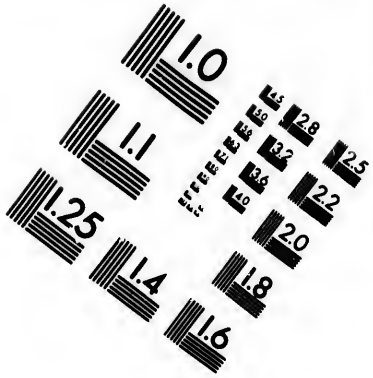
(*e*) This section applies to all officers appointed by the Council, no matter what their rank, condition, or duties. Their tenure is in effect during the pleasure of the Council. The declaration that they are to hold office "until removed by the Council," impliedly authorizes the Council to remove them at any time—in other words, at the pleasure of the Council. Unless, at all events, there be an appointment at a yearly salary under the corporate seal, or other appointment from which a yearly hiring must be inferred, there will be no holding except during the pleasure of the Council. See *In re Macpherson and Beeman*, 17 U. C. Q. B. 99; *Beverley* v. *Barton*, 10 U. C. C. P. 173. See further *Hammond* v. *McLay*, 28 U. C. Q. B. 463. Where the appointment is under seal, it may be held binding on the Corporation without proof of a By-law. *Broughton* v. *Brantford*, 19 U. C. C. P. 434. A person, therefore, who enters into the employment of a Municipal Corporation, must be taken to do so with the fullest knowledge of his dependence on the pleasure either of the present or every future Council. *Hickey* v. *Renfrew*, 20 U. C. C. P. 429. In such a case it is in the power of the Council to remove without notice or hearing. See *Bagg's Case*, 11 Coke 98 (*b*); *The King* v. *Coventry*, 1 Ld. Rayd. 391; *Gaskins's Case*, 8 T. R. 209; *The King* v. *Oxon*, 2 Salk. 428; *The King* v. *Mayor, &c.*, 1 Lev. 291; *The King* v. *Andover*, 1 Ld. Rayd. 710; *Field* v. *Commonwealth*, 32 Pa. St. 478; *Ex parte Hennen*, 13 Pet. (U.S.) 230; *Hoboken* v. *Gear*, 3 Dutch. (N.J.) 265; *Madison* v. *Kelso*, 32 Ind. 79; *Stadler* v. *Detroit*, 13 Mich. 346. But the officer removed, although not appointed under seal, should be paid for the time he served. *Dempsey* v. *City of Toronto*, 6 U. C. Q. B. 1. Where a Municipal Corporation appoints an officer, in obedience to a statute to perform a public service in which the Corporation has no private interest, and from which it derives no special benefit or advantage in its corporate capacity, such officer cannot be regarded as the servant or agent of the Corporation, so as to render the Corporation liable for his negligence. *Maxmilian* v. *Mayor*, 20 Am. 468.

(*f*) This provision is made for a twofold purpose.

1. To prevent the discharge of sureties by the imposition of additional duties.

2. To prevent claims being made or sustained for extra pay. See note c to sec. 273.





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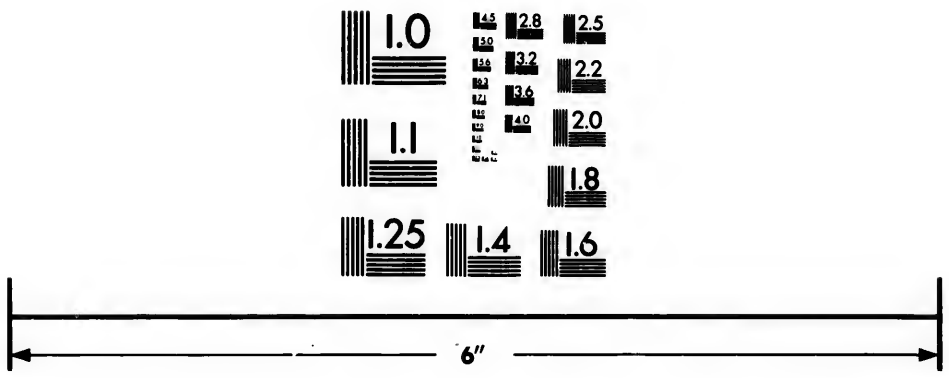

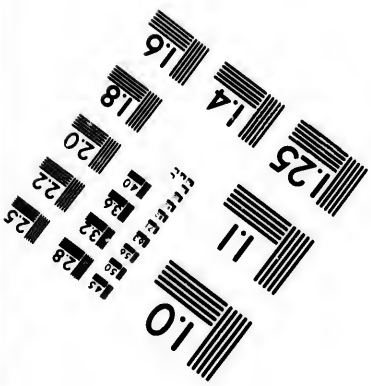

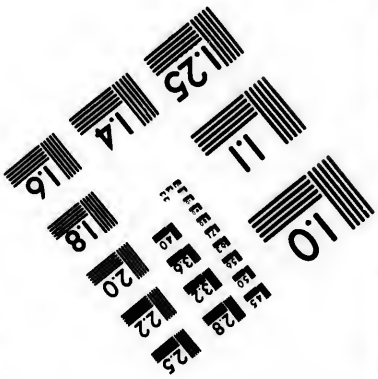

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A gratuity may be given in certain cases.

275. 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 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 service, as a gratuity upon his removal or resignation. (*g*) 36 V. c. 48, s. 221.

Corporations, &c., may accept security of certain Companies for their officers.

276. The bonds or policies of guarantee of any incorporated or Joint Stock Company, empowered to grant guarantees, bonds or policies for the integrity and faithful accounting of public officers and other like purposes, may be accepted instead of, or in addition to, the bond or security of any officer or servant of any Municipal Corporation, in all cases where, by the provisions of this or any other Act or of any by-law of such Corporation, such officer or servant is required to give security, either by himself, or by himself and a surety or sureties, and where the parties directed or authorized to

Provisions respecting such security to apply.

(*g*) As Municipal officers hold office until removed (sec. 274) a removal may be had for any cause, or without cause. See note *e* to sec. 274. If the power of removal were only for cause, old age would not be good cause. Bac. Abr. Corp. E. 9; *Hazard's Case*, 2 Rolle 11. But as the holding is different, an old servant might be dismissed simply because old and worn out in the service. In such a case without legislation, there is no power in a Municipal Corporation to grant a gratuity. The policy of enabling Municipal Corporations to make gratuities to servants is a doubtful one. This section is merely experimental, and the power intended to be conferred by it can only be exercised in the case of an officer—

1. Who has been in the service of the Municipality for at least twenty years;

2. And who has, while in such service, become incapable, through old age, of efficiently discharging the duties of the office.

Service for any period *less* than twenty years, or incapacity from any other cause than old age, gives no right to the exercise of the power. The amount of the gratuity, which is to be paid in bulk, must be a sum "not exceeding his aggregate salary, or other remuneration, for the last three years." The gratuity is only to be paid on removal or resignation. The decision as to a gratuity, when made under the circumstances and within the limits prescribed, will not be subject to be reviewed by any Court. *Re The Queen* v. *Sandwich*, 2 Q. B. 895, *S. C. In Error*, 10 Q. B. 563. There is a distinction between gratuity and annuity. See *Gibson* v. *East Indian Co.*, 5 Bing. N. C. 262; *Clarke* v. *Imperial Gas Co.*, 4 B. & Ad. 315; *Innes* v. *East Indian Co.*, 17 C. B. 351; *Marchant* v. *Lee Conservancy Board*, L. R. 8 Ex. 290.

take such security see fit to accept the bond or policy of such Company as aforesaid, and approve the terms and conditions thereof; and all the provisions in any such Act relating to such security, to be given by any such officer or servant, or his sureties, shall apply to the bonds and policies of guarantee of such Company as aforesaid, which may be taken instead of, or in substitution of, any existing securities, if the parties directed or authorized as aforesaid see fit, whereupon such existing securities shall be delivered up to be cancelled. (*h*) 27-8 V. c. 7, s. 2.

Existing bonds may be cancelled.

[*The following enactments, creating criminal liabilites,* (*i*) *are made by sections* 187 *and* 188 *of* 29-30, *V. c.* 51.]

EMBEZZLEMENT OF BOOKS, MONEYS, ETC.

187. All books, papers, accounts, documents, moneys, and valuable securities respectively, by any person or officer appointed or employed by or on behalf of any Council, kept or received by virtue of his office or employment, shall be the property of the Corporation; (*j*) and in case any such person or officer refuses or fails to deliver up or pay over the same respectively to the Corporation, or to any person authorized by the Council to demand them, he shall be deemed guilty of a fraudulent embezzlement thereof, (*k*) and may be prosecuted and punished in the same manner as a servant fraudulently embezzling any chattel, money or valuable security of his master; (*l*) but nothing herein shall affect any remedy of the Corporation or of any other person against the offender or his sureties,

Embezzlement by municipal officers.

(*h*) See notes to s. 246.

(*i*) The subjects of crime and criminal procedure are, since the passage of the B. N. A. Act, for the Legislature of the Dominion. The enactments here annotated were passed before Confederation. They have not been repealed by the Legislature of the Dominion, and are therefore properly treated by the Legislature of the Province as still in force.

(*j*) So as to enable the Corporation to prosecute criminally when the offence of embezzlement is committed.

(*k*) This is a most important provision. It is in the first place declared that all books, papers, accounts, documents, moneys, and valuable securities, by any person or officer appointed by or on behalf of the Council, &c., kept or received, are the property of the Corporation. In the next place it is declared that if any *such* person refuse or fail to deliver up or pay over *the same*, he *shall* be guilty of a *fraudulent embezzlement thereof*, &c. Refusal or failure apparently constitutes the offence, regardless of intention. See *Regina* v. *Prince*, L. R. 2 C. C. 154.

(*l*) See 32-33 Vict. c. 21 s. 69. D.

or any other party; nor shall the conviction of such offender be receivable in evidence in any suit, at law or in equity, against him. (*m*)

STEALING WRITS OF ELECTION, POLL-BOOK, ETC.

Stealing or destroying, &c., certain documents relating to municipal elections to be felony.

188. If any person steals, or unlawfully or maliciously, either by violence or stealth, takes from any Deputy Returning Officer or Poll Clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated, or makes or causes to be made any erasure, addition of names or interlineation of names, into or upon, or aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names or interlineation of names into or upon any writ of election or any return to a writ of election, or any indenture, poll-book, certificate or affidavit, or any other document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of the law in regard to municipal elections— (*n*) every such offender shall be guilty of felony, and shall be liable to be imprisoned in the Provincial Penitentiary for any term not exceeding seven nor less than two years, or to be imprisoned in any other place of confinement for any term less than two years, or to suffer

Punishment.

(*m*) The civil remedy is to be distinct from, and independent of, the criminal procedure for punishment of the offender.

(*n*) If any person—

1. Steals
2. Unlawfully or maliciously, either by violence or stealth, takes from any Deputy Returning Officer, or poll clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being;
3. Unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated;
4. Makes or causes to be made any erasure, addition of names, or interlineation of names, into or upon;
5. Aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names, or interlineation of names, into or upon;

Any writ of election, or any return to a writ of election, or any indenture, poll-book, certificate or affidavit, or any other document or paper, made, prepared or drawn out, according to or for the purpose of meeting the requirements of the law in regard to Municipal elections, shall be guilty, &c.

The words, "any other document," &c., do not include the assessment roll, which is the foundation of the poll-book and several of the other documents mentioned. *The Queen* v. *Preston*, 21 U. C. Q. B. 86. So that it has been held that an indictment will not lie for forging or altering the assessment roll for a township deposited with the Township Clerk. *Ib.*

such other punishment by fine or imprisonment, or both, as the Court shall award; (o) and it shall not in any indictment for any such offence be necessary to allege that the article in respect of which the offence has been committed, was or is the property of any person, or that the same was or is of any value.

Value of document need not be stated.

PART VI.

GENERAL PROVISIONS APPLICABLE TO ALL MUNICIPALITIES.

TITLE I.—GENERAL JURISDICTION OF COUNCILS.
II.—RESPECTING BY-LAWS.
III.—RESPECTING FINANCE.
IV.—ARBITRATIONS.
V.—DEBENTURES AND OTHER INSTRUMENTS.
VI.—ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS.

TITLE I.—GENERAL JURISDICTION OF COUNCILS.

DIVISION I.—NATURE AND EXTENT.

Confined to Municipality. *Sec.* 277.
General Regulations. *Sec.* 278.
May not grant monopolies. *Sec.* 279.
Except as to Ferries. *Sec.* 280.

277. The jurisdiction of every Council (a) shall be confined to the Municipality the Council represents, ex-

Jurisdiction of councils.

(o) Two years common gaol would be illegal. *The Queen* v. *Powell*, 21 U. C. Q. B. 215.

(a) The word "jurisdiction" is here used in the sense of power. Municipal Corporations are the creatures of the Legislature. "They can exercise no powers but those which are conferred upon them by the Act under which they are constituted, or such as are necessary to the exercise of their corporate powers, the performance of their corporate duties, and the accomplishment of the purpose of their association. This principle is derived from the nature of Corporations, the mode in which they are organized, and in which their affairs must be conducted. In aggregate Corporations, as a general rule, the act and will of the majority is deemed in law the act and will of the whole, or as the act of one corporate body; the consequence is, that a minority must be bound not only without but against their consent. Such an obligation may extend to every onerous duty, to pay money to an unlimited amount, to perform services, to surrender lands and the like. It is obvious, therefore, that if this liability were to extend to *unlimited* and *indefinite* objects, the citizen, by being a member of a Corporation, might be deprived of his most valuable personal rights and liberties. The security

cept where authority beyond the same is expressly given, (*b*) and the powers of the Council shall be exer-

against this danger is in a steady adherence to the principle stated, viz., that Corporations can only exercise their power over their respective members for the accomplishment of limited and defined objects." *Per* Shaw, C. J., in *Spaulding* v. *Lowell*, 23 Pick. (Mass.) 71. See further, *Bangs* v. *Snow*, 1 Mass. 181; *Willard* v. *Newburyport*, 12 Pick. (Mass) 227; *Stetson* v. *Kempton*, 13 Mass. 272; *Keyes* v. *Westford*, 17 Pick. (Mass.) 273; *Commonwealth* v. *Turner*, 1 Cush. (Mass.) 493; *Coolly* v. *Grenville*, 10 Cush. (Mass.) 56; *Merriam* v. *Moody*, 25 Iowa 163; *Lafayette* v. *Cox*, 5 Ind. 38; *Minturn* v. *Larue*, 23 How. 435; *Bain* v. *Spratley*, 5 Kansas 525; *Vincent* v. *Nantucket*, 12 Cush. (Mass.) 103; *Commissioners* v. *Mighels*, 7 Ohio St. 109; *Gallia Co.* v. *Holcomb*, *Ib.* 232; *Fitch* v. *Pinckard*, 4 Scam. (Ill.) 78; *Caldwell* v. *Alton*, 33 Ill. 416; *Trustees* v. *McConnell*, 12 Ill. 140; *State* v. *Mayor*, 5 Port. (Ala.) 279; *State Bank* v. *Orleans Nav. Co.*, 3 La. An. 294; *Head* v. *Ins. Co.*, 2 Cranch. (U.S.) 168; *De Russey* v. *Davis*, 13 La. An. 468; *People* v. *Bank*, 1 Doug. (Mich.) 282; *City Council* v. *Plank Road Co.*, 31 Ala. 76; *Ex parte Burnett*, 30 Ala. 461; *Le Conteulx* v. *Buffalo*, 33 N.Y. 333; *People* v. *Railroad Co.*, 12 Mich. 389; *Petersburg* v. *Metzker*, 21 Ill. 205; *New London* v. *Brainard*, 22 Conn. 552; *Hodge* v. *Buffalo*, 2 Denio, (N.Y.) 110; *Mayor* v. *Yuille*, 3 Ala. 137; *Harris* v. *Intendant*, 28 Ala. 577; *Intendant* v. *Chandler*, 6 Ala. 899; *Clark* v. *Davenport*, 14 Iowa 495; *Nichol* v. *Mayor, &c.*, 9 Hump. (Tenn.) 252; *Leonard* v. *Canton*, 35 Miss. 189; *Douglas* v. *Placerville*, 18 Cal. 643; *Argenti* v. *San Francisco*, 16 Cal. 255; *Wallace* v. *St. Jose*, 29 Cal. 180; *Collins* v. *Hatch*, 18 Ohio 523; *Willard* v. *Killingworth*, 8 Conn. 247; *Kyle* v. *Malin*, 8 Ind. 34. See further, note *k* to sec. 8.

(*b*) A Municipality, whether a County, City, Township or Village, is a locality; and the Municipal Council is the governing body of that locality. Beyond the limits of the locality the Council has not in general any authority whatever. For this reason, the section begins by declaring that "the jurisdiction of every Council shall be confined to the Municipality the Council represents." See note *f* to sec. 14, and note *u* to sec. 18. Thus a Township Council has no power to impose any regulations on a Township of which it is not the Council. So of every other local Municipality. The proposition is so reasonable and so self-evident that no authorities are needed to sustain it. Nor can one Municipal Council, in general, benefit another Municipality at the expense of its own; for instance, build a school-house in a Township of which it is not the representative. This too is an unmistakable proposition, but as between Townships and Counties, not so clear as the preceding. For many purposes a Township is within the jurisdiction of the Council of the County in which it is situate, and is subject to be taxed for County purposes by the County Council; but the right of a Township Council to tax itself in aid of the County is limited. It would seem that a Township Council has no right voluntarily to pass a By-law imposing a rate in aid of a County rate. *Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129. So the right of a Township Council to pass a By-law in aid of the cost of a school-house ordered by the County Council is doubtful. *Kennedy* v. *Sandwich*, 9 U. C. Q. B. 326. A Township By-law wa

cised by by-law (*c*) when not otherwise authorized or provided for. (*d*) 36 V. c. 48, s. 222.

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quashed as to so much of it as related to the raising of a sum of money to defray the demands of the County Council on the Township, and as an equivalent to the Government school grant, &c., it not appearing on the face of the By-law that it was directed to the purpose of meeting a deficiency, nor even that there was any, if that would have authorized the By-law. *Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129.

(*c*) The jurisdiction of every Council is not only to be confined to the Municipality the Council represents, but is to be exercised, when not otherwise provided for, by By-law. When a Corporation is duly erected, the law tacitly annexes to it the power of making By-laws or private statutes. This power is included in every Act of Incorporation; for, as is quaintly observed by Blackstone, "as natural reason is given to the natural body for the governing it, so By-laws or statutes are a sort of political reason to govern the body politic." 1 Bl. Com. 476. Though the power to make By-laws is unquestionably an incident of every Corporation, it is rarely left to implication; but is usually, as in the present case, conferred by the express terms of the Act of Parliament. According to Lord Coke, the word "by" or "bye" signifies a habitation. Willcock on Municipal Corporations, 73. Hence *By*-law or *Bye*-law may be defined as being the law of the inhabitants of some Corporate place or district, as distinguished from the general law of the Province in which the Municipality is situate. A By-law is a rule obligatory over a particular district, not being at variance with the general laws, and being reasonably adapted to the purposes of the Corporation. *Gosling* v. *Veley et al.*, 19 L. J. Q. B. N. S. 135. A By-law has the same force, within the limits of the Municipality, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the people at large. *Hopkins* v. *Swansea*, 4 M. & W. 621; see also *The Queen* v. *Osler*, 32 U. C. Q. B 324; *Heeland* v. *Lowell*, 3 Allen (Mass.) 407; *Presbyterian Church* v. *New York*, 5 Cow. (N.Y.) 538; *St. Louis* v. *Boffinger*, 19 Mo. 13; *McDermott* v. *Board of Police*, 5 Abb. Pr. 422; *Taylor* v. *Carondelet*, 22 Mo. 105; *Baker* v. *Portland*, 10 Am. Law Reg. N. S. 559. The Courts, upon general principles, recognize judicially what Municipal Councils are competent to do, and hold that it is not necessary for them to recite in a By-law all that is requisite to show that they have proceeded regularly in passing it. *Grierson* v. *Ontario*, 9 U. C. Q. B. 623; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492; see further, *The King* v. *Harrison*, 3 Burr. 1328; *Roman Catholic Church* v. *Baltimore*, 6 Gill (Md.) 394; *Stuyveysant* v. *New York*, 7 Cow. (N.Y.) 588.

(*d*) It is a common belief that a Municipal body can do by resolution whatever may be done by By-law. Nothing can be more erroneous, or more tend to the insecurity of Municipal government. See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 U. C. P. R. 219. The general principle known to the common law is that a Corporation can only act through its seal, and the express declaration of the Legislature here is that "the powers of the Council *shall* be exercised by By-law when *not otherwise* authorized or provided for." But among people generally, and among that class composing Municipal Councils

General power to make regulations;

278. Every Council may make regulations (*e*) not specifically provided for by this Act, and not contrary to law, for

particularly, there is a dislike of formality, and, in consequence, the too frequent abandonment of By-laws for mere orders or resolutions. Now, the proceedings of a Municipal Council that may be lawfully had by order or resolution, are comparatively few and unimportant. A By-law should not be dispensed with unless in a very clear case. In fact, whenever a Municipal Council is in doubt whether it can or cannot do a particular thing by order or resolution, it would be much safer and wiser, owing to the doubt, to use a By-law. Were this, as a rule, understood and followed, it would prevent much confusion in the administration of Municipal affairs. Another common but erroneous belief is, that a Municipal Council can by order or resolution do that which, if done through a By-law, would be illegal. This it cannot do. No Municipal Council can do that informally which it has no power to do directly and formally. *Daniels* v. *Burford*, 10 U. C. Q. B. 478. A By-law, order or resolution, which revives an illegal By-law, is of course itself illegal. *Canada Company* v. *Oxford*, 9 U. C. Q. B. 567. An order or resolution duly signed and sealed is virtually a By-law; but many orders and resolutions pass by mere vote, without being thus authenticated. The Municipal rules of proceeding generally require more formal steps to be taken in passing a By-law than in adopting an order or resolution. Municipal Corporations, however, may become liable as wrong-doers for things done by direction of the Councils without By-laws. *Croft* v. *Peterborough*, 5 U. C. C. P. 35; *Nevill* v. *Ross*, 22 U. C. C. P. 487: *Darby* v. *Cromland*, 38 U. C. Q. B. 338; *Lewis* v. *City of Toronto*, 39 U. C. Q. B. 343. The power to make By-laws necessarily supposes the power to enforce them by pecuniary penalties, competent and proportionable to the offence. See sec. 454, sub. 11. In construing a By-law, &c., the Court will look at the whole of it, to ascertain its meaning, and construe one part with another or other parts, so as, if possible, to give full effect to the whole. *In re Cameron and East Nissouri*, 13 U. C. Q. B. 190.

(*e*) The word "regulations" may be used in a general sense as laws, or in a particular sense as informal resolutions. See *In re Snell and Belleville*, 30 U. C. Q. B. 81. It is not clear in which sense the word is here used.

The regulations may be for the following purposes:

1. The governing of the proceedings of the Council.
2. The conduct of its members.
3. Appointing special meetings of the Council.
4. For calling such meetings.

And generally such other regulations as the good of the inhabitants requires. See *Ross* v. *York and Peel*, 14 U. C. C. P. 171; *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580.

Provided the regulations be not contrary to law.

It is a principle applicable to every regulation of a Municipal Corporation, first, that it be not contrary to the Municipal Acts or

governing the proceedings of the Council, the conduct of its members, the appointing or calling of special meetings of the

law authorizing the formation of the Corporation, and, secondly, that it be not contrary to the general law of the land.

First—The regulations of the Municipal Council must not be inconsistent with the Municipal Acts, for these Acts create it an artificial being, impart to it its power, designate its object, and prescribe its mode of operation: they are in short the constitution of the Corporation. Hence all laws in contravention of them are void. "The true test of all By-laws," says Mr. Justice Wilmot, "is the intention of the Crown in granting the charter, and the apparent good of the Corporation." *The King* v. *Spencer*, 3 Burr. 1838. So of a Municipal Council; it may be said that the true test of a By-law is the intention of the Legislature in incorporating the Council, and the apparent good of the Municipality affected. Mr. Justice Yates, in the same case, said, "Corporations cannot make By-laws contrary to their constitution, If they do so, they act without authority." *Ib.* 1839; but see "The Case of Corporations," 4 Co. R. 77, 78. As transcending the Municipal Acts, By-laws creating a new office, imposing an oath of office where none is required by the Acts, giving a vote to a class of persons not entitled to vote by law, qualifying persons to be candidates not qualified by the Acts, giving a casting vote to an officer not entitled to it by the Acts, restricting or extending the right of admission or eligibility to office, altering the prescribed mode of election, or imposing new or additional tests or qualifications either on members or voters, would be void. See Angell & Ames on Corporations, 345; see also *The King* v. *Miller*, 6 T. R. 277; *The King* v. *Barber Surgeons*, 1 Ld. Rayd. 584; *State* v. *Bruder*, 38 Mo. 450; *Thompson* v. *Carroll*, 22 How. 422; *Andrews* v. *Insurance Co.*, 37 Maine 256. *In re Bell* v. *Manvers*, 3 U. C. C. P. 399.

Second—The law of a country being as well a rule for the proceedings of Corporations as for the conduct of individuals, all By-laws contrary to the common or statute law of the country are void. "All By-laws," says Hobart," "must ever be subject to the general law of the realm, and subordinate to it." *Norris* v. *Staps*, Hob. 210. For this reason, a By-law "impairing the obligation of contracts," or taking "private property for public uses without just compensation," would be void. Angell & Ames on Corporations. 333. But where a Statute authorized the Corporation of a City to make By-laws "regulating," or, if necessary, "preventing," the interment of the dead within the city, it was held that though that Corporation had granted lands for the purpose of interment, and had covenanted that they should be quietly enjoyed for that purpose, yet that the Corporation was not thereby estopped from passing a By-law forbidding such interment, under a penalty. *Ib.* The case was decided on the ground that the legislative power of the Corparation over this subject was delegated to it *for the good of the City*, and that the By-law passed was to be regarded as if passed by the Legislature; that no person is entitled to use his property so as to injure another, and that no covenant could give him power so to do, even though made with the Corporation; since, as tending to control and embarrass the exercise of its important powers as a *local Legislature*,

To repeal, alter, &c., by-laws.

Council, and generally such other regulations as the good of the inhabitants of the Municipality requires, and may repeal, alter and amend its by-laws, save as by this Act restricted. 36 V. c. 48, s, 223.

Granting monopolies prohibited.

279. No Council shall have the power to give any person an exclusive right of exercising within the Municipality any

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the covenant, when it came in competition with them, must give way or was repealed. *Ib.* The legislative power of a Corporation is not only restricted by the statute law, but by the general principles and policy of the common law. Indeed, whenever a By-law seeks to alter a well-settled and fundamental principle of the common law, or to establishing a rule interfering with the rights or endangering the security of individuals or the public, a statute or other special authority emanating from the creating power must be shown to legalize it, either expressly or by implication. It is upon this principle that, though many By-laws passed by the ancient Municipal Corporations in England for the *regulation* of trade have been adjudged good, yet many were adjudged void as in *restraint* of trade and an oppression of the subject. See sec. 279 and notes; see further *Collins* v. *Hatch*, 18 Ohio 523; *Roberts* v. *Ogle*, 30 Ill. 459; *Adams* v. *Mayor*, 29 Geo. 56; *Sill* v. *Corning*, 1 E. P. Smith (N. Y.) 297; *Cincinnati* v. *Gwynne*, 10 Ohio 192; *Wood* v. *Brooklyn*, 14 Barb. (N.Y.) 425; *Markle* v. *Akron*, 14 Ohio 586; *Huddleston* v. *Ruffin*, 6 Ohio St. 604; *Rogers* v. *Jones*, 1 Wend. (N.Y.) 237; *Marietta* v. *Fearing*, 4 Ohio 427.

It need hardly be mentioned that the Municipal body which has power to make has power to repeal By-laws; it being of the very nature of legislative power that, by timely changes in the rule it prescribes, it should be enabled to meet the exigencies of the occasion. *The King* v. *Bird*, 13 East. 379; *Bloomer* v. *Stolley*, 5 McL. (U.S.) 158. Repeals cannot be made to operate retrospectively to the prejudice of vested rights. *The King* v. *Ashwell*, 12 East. 22; *State* v. *City Clerk*, 7 Ohio St. 355; *Stoddard* v. *Gilman*, 22 Vt. 568; *Pond* v. *Negus et al.*, 3 Mass. 230; *Maryland ex rel. McLellan* v. *Grares*, 19 Md. 351; *Bigelow* v. *Hillman et al.*, 37 Maine 52; *Reid* v. *Conner*, 5 Eng. (Ark.) 241; *Road in Augusta*, 17 Pa. St. 71; unless for the purpose of abating an actual nuisance, or something of that character. *New Orleans* v. *St. Louis Church*, 11 La. An. 244; *Musgrove* v. *Catholic Church*, 10 La. An. 431. The power does not extend to all By-laws. There are certain By-laws, such as those authorizing the issue of debentures, &c., upon the faith of which third persons act and change their circumstances, and from which the Municipality in general derives an immediate benefit—these being in the nature of securities, rather than ordinary regulations, cannot be repealed until the loan or debt arising thereout or dependent thereupon is satisfied. Sec. 336. Hence it is that in the section here annotated the power given is to repeal, alter or amend By-laws, in general, "save as is by this Act restricted." See further, *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459. *In re Great Western R. W. Co. and North Cayuga*, 23 U. C. C. P. 28.

trade or calling, (*f*) or to impose a special tax on any person

(*f*) Monopolies are odious to the law. A monopoly is when the sale of any merchandise or commodity is restrained to one or to a certain number, 11 Co. 86, and has three inseparable consequents—the increase of the price, the badness of the wares, the impoverishment of others. *Ib.* By statute 21 Jac. 1, c. 3, all monopolies and all commissions, grants, licenses, &c., to any person, &c., for any sale, buying, selling, making, working, using of a thing, &c., are void. And any one grieved, &c., may have an action on the statute, and recover treble damages and double costs. So monopolies are contrary to Magna Charta. 2 Inst. 63. By statute 38 Edw. 3, a merchant may freely deal in all manner of merchandise. The statute of 21 Jac. 2, does not extend to letters patent for inventions, &c. The first part of this section is simply a declaration of the common law. Whenever a By-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights of individuals or the public, the power to do so must come from plain and direct legislative enactment. *Taylor* v. *Griswold*, 2 Green. (N. J.) 222. Legal restraints, in the form of regulations, may, however, be imposed upon the few for the benefit of the many. *City Council* v. *Ahrens*, 4 Strob (S. Car.) 241; *Charleston* v. *Baptist Church*, *Ib.* 306; *Peoria* v. *Calhoun*, 29 Ill. 317; *St. Paul* v. *Coulter*, 12 Minn. 41. It is sometimes difficult to determine when a By-law is in restraint of trade, and when it is a mere regulation of trade. The former is illegal; the latter legal. The following have been held to be mere regulations and so valid: That no butcher or any other person should, within the walls of the city, slaughter any beast, &c., to forfeit, &c. *Pierce* v. *Bartrum*, Cowp. 269. That no butcher or other person should keep any swine within the walls of the city, upon pain, &c. *Ib.* That no commoner should keep any sheep in the bounds below the weir, under the pain, &c. *James* v. *Tutney*, Cro. Car. 497. That none of the Company of Silk Throwsters should have above such a number of spindles in one week. *Freemantle* v. *The Company of Silk Throwsters*, 1 Lev. 229. And *per* Cur. "This is not a monopoly, but a restraint of a monopoly, that none might ingross the whole trade, being rather to provide for an equality of trade, according to what is convenient and good." *Ib.* That no master of any boat, &c., from place to place, &c., should unload or send on shore any goods but by such persons as are of Company and Fellowship of Porters. *Culdon* v. *Eastwick*, 1 Salk. 192. That no person should exercise the trade of a joiner unless free of the Company of Joiners. *Warinel* v. *London*, 1 Str. 675; See also *Green* v. *Durham*, 1 Burr. 127; *The King* v. *Master, &c. of the Co. of Surgeons in London*, 2 Burr. 892; *The King* v. *Harrison*, 3 Burr. 1322. That no drayman or brewer's servant should be abroad in the streets, with his dray or cart, after one of the clock in the afternoon between Michaelmas and Lady Day, and from thence after eleven in the forenoon, under the penalty, &c. *Bosworth* v. *Hearne*, 2 Str. 1085; See further, *Shaw* v. *Pope*, 2 B. & Ad. 465. That no person using the art of a butcher, and inhabiting and dwelling within the city or suburbs thereof, or within two miles of the same city, should keep open any shop, or offer for sale any fresh meat, on the Lord's Day, commonly called Sunday. *The Butchers' Company* v. *Morey*, 1 H. Bl. 370. That

exercising the same, (*g*) or to require a license to be taken for

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no stranger or foreigner should use or exercise the craft or mystery of a taylor within the said city, except he should first be made free of the said city. *Woolley et al.* v. *Idle*, 4 Burr. 1951; see also *Bosworth* v. *Budgen*, 7 Mod. 459. By-laws may, under certain circumstances, be passed exempting manufacturing establishments, in whole or in part, from taxation for a term of years. See sec. 349. The following have been held to be bad, as in restraint of trade: That no member should sell the barrel of any hand gun, &c., ready proved, to any person of the trade not a member in London, or within four miles thereof. *The Master, &c., of Gunmakers, &c.* v. *Fell*, Willes. 384. No member should strike his stamp or mark or the barrel of any person not a member of the Company, &c. *Ib.* That every person not being already free of the city, occupying, using or exercising, or who shall occupy, use or exercise the art, trade or mystery of a butcher within the said city or its liberties, shall take upon himself the freedom of the Company of Butchers, and that if any person or persons (except such as are already free, &c.) shall use the trade of a butcher, not being free of this Company, he shall pay, &c. *Harrison* v. *Godman*, 1 Burr. 12. So as "to persons using the occupation of music and dancing." *Robinson* v. *Groscourt*, 5 Mod. 104. That no person should erect any booth, for the purpose of any show or public entertainment, in any public place within the borough, without license from the Mayor, which license should not be given at or for any other time than during the annual fairs, if three inhabitant householders, residing within 100 yards of the place intended to be used, should have previously memorialized the Mayor to withhold such license, &c. *Elwood* v. *Bulloch*, 6 Q. B. 383. Where a particular building was designated for the slaughtering of all animals intended for sale or consumption in the city, the owners of which were granted the exclusive right, for a specified period, to have all such animals slaughtered at their establishment, the By-law was held bad. *Chicago* v. *Rumpff*, 45 Ill. 90. So where it was provided that those only to whom licenses were granted should have slaughter-houses within the city. *Re Nash and McCracken*, 33 U. C. Q. B. 181. Or that none but three persons appointed by the City should sweep for hire or gain any chimney or flue in the city. *The Queen* v. *Johnson*, 38 U. C. Q. B. 549. So By-laws requiring hucksters, without legislative authority, to pay a license fee: *Dunham* v. *Rochester*, 5 Cow. (N. Y.) 462; druggists to make returns under oath as to the quality and kinds of spirituous liquors sold by them: *Clinton* v. *Phillips*, 11 Am. 52; prohibiting the use of canals on Sundays: *The Calder and Hebble Navigation Co.* v. *Pilling*, 14 M. & W. 76; prohibiting licensed tavern keepers from having a light in their bars: *Regina* v. *Belmont*, 35 U. C. Q. B. 298; requiring the owners of theatres to pay the City Constable a certain sum: *Waters* v. *Leech*, 3 Ark. 110; requiring a Railroad Company to keep a flagman by day and a red lantern by night at a point where its track crossed a street: *Toledo, Wabash, and Western Railway Co.* v. *Jacksonville*, 16 Am. 611; authorizing the arrest of free negroes in the street after ten o'clock at night: *Mayor, &c., of Memphis* v. *Winfield*, 8 Hump. (Tenn.) 707.

(*g*) Taxes must be general. A tax levied on a particular occupation is therefore bad. *Savannah* v. *Hartridge*, 8 Ga. 23; *Liming* v.

exercising the same, (*h*) unless authorized or required by statute so to do ; (*i*) but the Council may direct a fee, not exceeding one dollar, to be paid to the proper officer for a certificate of compliance with any regulations in regard to such trade or calling. (*j*) 36 V. c. 48, s. 224. Proviso.

280. A Council may grant exclusive privileges in any ferry which may be vested in the Corporation (*k*) repre- Privileges of ferry.

Charleston, 1 McCord (S. Car.) 345. A regulation "that any person wishing to sell fresh meat in quantities less that a quarter in a shop or stall, in Coleman or in Baldwin Wards, shall, before the first of March in each year, apply, in writing, to the Chairman of the Market Committee, stating the annual sum he or she will pay in addition to the sum of $40 to obtain a certificate from the proper authority, authorizing the holder of the certificate to expose for sale and sell fresh meat in one stall in Coleman Ward, or in Baldwin Ward, for one year, from first of March of the year in which the certificate is obtained," is bad. *In re Snell and Belleville*, 30 U. C. Q. B. 93.

(*h*) The power to license carries with it the right to require payment of a reasonable sum as a consideration for the license, but such power must not be so used as to be the imposition of a tax. *State* v. *Herod*, 29 Iowa 123. The difficulty is to draw the line. "We cannot assent to the position that if the sum required for a license exceeds the expense of issuing it, the Act transcends the licensing power and imposes a tax." By such a theory the statute would be shorn of all its efficiency. *Per* Paine, J., in *Tenney* v. *Lenz*, 16 Wis. 566 ; see also, *Carter* v. *Dow*, *Ib.* 298 ; *Fire Department* v. *Helfendein*, *Ib.* 136 ; *Ash* v. *People*, 11 Mich. 347 ; *Chilvers* v. *People*, *Ib.* 43. By-laws requiring a license fee so heavy as to amount to a prohibition are to be considered in restraint of trade. *Mobile* v. *Yuille*, 3 Ala. 137.

(*i*) The import of these words deserves special attention. The meaning is, that in the absence of some statute authorizing or requiring the creation of a monopoly, the imposition of a special tax on any person exercising a trade or calling, or requiring a license to be taken for the exercise of the same, no Council shall have the power to do any of the things mentioned. If there be such a statute it must be plain in its terms, and direct in its language. See note *f* to this section.

(*j*) The issue of such a certificate as here mentioned cannot lead to any abuse, for the fee to be paid for it is not "to exceed one dollar." It is not said for what purpose it is to be issued, or what effect is to be given to it when issued. It is apparently a nondescript sort of thing that will not do much harm to the receiver or much good to the issuer. See note *h* to this section.

(*k*) A ferry is a franchise which cannot be set up without the license of the Crown, or the authority of some body corporate or person empowered by the Crown or the Legislature to grant the same.

Exception as to certain ferries.

sented by such Council, (*l*) other than a ferry between a Province of the Dominion of Canada and any British or foreign country, or between two Provinces of the Dominion. (*m*) 36 V. c. 48, s. 225. *See* B. N. A. Act, 1867, s. 91, (13); *Rev. Stat.*, c. 112; *and sec.* 465 (4), *post.*

Com. Dig. "Piscary." B. It is the exclusive privilege to carry passengers across a river, lake or arm of the sea, from one village to another, or to connect a continuous line of road leading from one township or village to another. *Newton* v. *Cubitt*, 12 C. B. N. S. 32. Where the Legislature has conferred upon a Municipal Corporation its whole power to establish and regulate ferries within the corporate limits, then and then only can the Corporation grant exclusive privileges of ferry. *East Hartford* v. *Hartford Bridge Co.*, 10 How. (U. S.) 511. The exclusive power must appear by express words or necessary inference. Mere power to establish and regulate ferries within the corporate limits would not, it seems, be sufficient to enable the Corporation to confer on others an exclusive right of ferry. *Harrison* v. *State*, 9 Mo. 526; *Minturn* v. *Larue*, 23 How. (U. S.) 435; *McEwan* v. *Taylor*, 4 G. Greene (Iowa) 532. The grant by the Legislature is, in the interest of the public, one which may if necessary be repealed or altered. *East Hartford* v. *Hartford Bridge Co.*, 10 How. (U. S.) 511; See also *Charles River Bridge* v. *Warren Bridge*, 11 Pet. (U. S.) 420; *Hartford Bridge Co.* v. *Ferry Co.*, 29 Conn. 210; *Kerby* v. *Lewis*, 6 O. S. 207; *The Queen* v. *Davenport*, 16 U. C. Q. B. 411. As to the right of a Municipal Corporation in the public interest to derogate from its own grant of a ferry, and other points as to the right of Municipal Corporations as to ferries. See *Foy Petitioner*, 15 Pick. (Mass.) 243; *Fanning* v. *Gregoire*, 16 How. (U. S.) 524; *East Hartford* v. *Hartford Bridge Co.*, 16 Conn. 149, 17 Conn. 79, 10 How. (U. S.) 511; *Chilvers* v. *People*, 11 Mich. 43; *O'Neill* v. *Police Jury*, 21 La. An. 586; *Aiken* v. *Western R. R. Co.*, 20 N. Y. 370; *Benson* v. *The Mayor, &c., of New York, Pierrepont, and LeRoy*, 10 Barb. (N. Y.) 223; *Harris* v. *Nesbit*, 24 Ala. 398; *United States* v. *Fanning*, Morris (Iowa) 348; *Conner* v. *New Albany*, 1 Blackf. (Ind.) 43; *City* v. *Ferry Co.*, 27 Ind. 100; *Shallcross* v. *Jeffersonville*, 26 Ind. 193; *Duckwall* v. *New Albany*, 25 Ind. 283; *Harrison* v. *State*, 9 Mo. 526. As to the responsibility of ferrymen, see *Walker* v. *Jackson*, 10 M. & W. 161; *Willoughby* v. *Horridge*, 12 C. B. 742; *Fisher* v. *Clisbee*, 12 Ill. 344; *Wilson* v. *Hamilton*, 4 Ohio St. 722; *White* v. *Winnisnomet Company*, 7 Cush. (Mass.) 155; *Le Barron* v. *East Boston Ferry Company*, 11 Allen (Mass.) 312; *Harvey* v. *Rose*, 7 Am. 595; *Wyckoff* v. *The Queen's County Ferry Co.*, 11 Am. 650.

(*l*) See note *k* to sec. 8.

(*m*) Ferries between a Province and any British or foreign country, or between two Provinces, are subject to the exclusive legislative authority of the Parliament of Canada. B. N. A. Act s. 91 subs. 13.

TITLE II.—RESPECTING BY-LAWS.

DIV. I.—AUTHENTICATION OF BY-LAWS.
DIV. II.—OBJECTIONS BY RATEPAYERS.
DIV. III.—VOTING ON BY ELECTORS.
DIV. IV.—CONFIRMATION OF BY-LAWS.
DIV. V.—QUASHING OF BY-LAWS.
DIV. VI.—BY-LAWS CREATING DEBTS.
DIV. VII.—BY-LAWS RESPECTING YEARLY RATES.
DIV. VIII.—ANTICIPATORY APPROPRIATIONS.

DIVISION I.—AUTHENTICATION OF BY-LAWS.

Original and Copies. *Secs.* 281, 282.
Proof of facts for Lieutenant-Governor. *Sec.* 283.

How by-laws to be authenticated.

281. Every by-law shall be under the seal of the Corporation, and shall be signed by the head of the Corporation, or by the person presiding at the meeting at which the by-law has been passed, and by the Clerk of the Corporation. (*a*) 36 V. c. 48, s. 226.

(*a*) The formalities prescribed in this section are indispensable. The By-law must be—

1. Under the seal of the Corporation.

2. Signed by the head of the Corporation.

Or by the person who presided at the meeting at which the By-law passed.

3. Signed by the Clerk of the Corporation.

Unless the By-law be sealed it is not a legal By-law. *In re Croft and Brooke*, 17 U. C. Q. B. 269; see also, *In re Mottashed and Prince Edward*, 30 U. C. Q. B. 74. Signature under this section would seem to be as essential as seal. See *Blanchard* v. *Bissell*, 11 Ohio St. 95; see also, *State* v. *Newark*, 1 Dutch (N. J.) 399. Where the head of the Corporation, either from caprice or obstinacy, refuses to do his duty in passing a By-law which is required for the benefit of his township or a part of it, it would seem that the remaining members of the Council would be justified in requiring another member of the Council to take the chair, and do that which the head of the Council perversely refuses to do. *Preston and Manvers*, 21 U. C. Q. B. 626; see further, *Brock* v. *Toronto and Nipissing Railway Co.*, 17 Grant 425. No action can be sustained, as for a breach of duty, against the head of a Municipal Corporation for not applying the seal to make a contract between the Corporation and the plaintiff, founded upon a refusal, which, if there had been a previous contract, would have constituted a breach of it. There cannot be a remedy against the head of the Corporation equivalent to a remedy on the contract against the Corporation itself, had the contract been duly made, so as to make a valid contract where there is none. *Fair* v. *Moore*, 3 U. C. C. P. 484. By-laws of Police Commisaioners need not be sealed. See sec. 416.

Proof of.

282. A copy of any by-law, written or printed, without erasure or interlineation, and under the seal of the Corporation, and certified to be a true copy by the Clerk, and by any member of the Council, shall be deemed authentic, and be received in evidence in any Court of justice without proof of the seal or signatures, unless it is specially pleaded or alleged that the seal or one or both of the signatures have been forged. (*b*) 36 V. c. 48, s. 227.

By-laws requiring assent of the Lieut-Governor.

283. The facts required by this Act to be recited in any by-law which requires the approval of the Lieutenant-Governor in Council, shall, before receiving such approval, be verified by solemn declaration, by the head of the Council, and by the Treasurer and Clerk thereof, and by such other person and such on other evidence as to the Lieutenant-Governor in Council satisfactorily proves the facts so recited ; or in case of the death or absence of any such municipal officer, upon the declaration of any other member of the Council, whose declaration the Lieutenant-Governor in Council may accept. (*c*) 36 V. c. 48, s. 228.

(*b*) In the absence of some provision of this kind, it would in general be necessary, in order to prove a By-law, to produce and prove the original By-law. See *Re Thetford*, 12 Vin. Abr. 90; *Lumbard* v. *Aldrich*, 8 N. H. 31 ; *Stevens* v. *Chicago*, 48 Ill. 498; *Moor* v. *Newfield*, 4 Greenl. (Me.) 44 ; *Hallowell and Augusta Bank* v. *Hamlin*, 14 Mass. 178.

A copy is, under this section, made evidence in any Court of Justice without proof of seal or signatures when—

1. Without erasure or interlineation.

2. Under the seal of the Corporation.

3. And certified to be a true copy by the Clerk, and by any member of the Council.

On a motion to quash a By-law, order or resolution, it is only necessary to produce a copy, certified under the hand of the Clerk alone, and under the Corporate seal, together with an affidavit of the party applying, that the copy was received from the Clerk. Sec. 322. The latter section is framed for a special purpose, while the section here annotated is meant to provide generally for all cases. *Per* Draper, C. J., in *In re The Board of School Trustees and Corporation of Sandwich*, 23 U. C. Q. B. 639.

(*c*) This section applies only to By-laws requiring "the approval of the Lieutenant-Governor in Council."

To procure the approval, it is made necessary that—

1. The By-law be verified by solemn declaration.

2. The declaration be made by the head of the Council, the Treasurer, and the Clerk of the Council.

DIVISION II.—OBJECTION BY RATEPAYERS.

When and how made. *Sec.* 284.
When successful. *Sec.* 285.

Opposition to by-laws.

284. In case any person rated on the assessment roll of any Municipality, or of any locality therein, objects to the passing of a by-law, the passing of which is to be preceded by the application of a certain number of the ratable inhabitants of such Municipality or place, he shall, on petitioning the Council, be at liberty to attend in person, or by counsel or attorney, before the Council at the time at which the by-law is intended to be considered, or before a committee of the Council appointed to hear evidence thereon, and may produce evidence that the necessary notice of the application for the by-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect statements, and that the proposed by-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the by-law. (*d*) 36 V. c. 48, s. 229.

How to be made.

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3. *And* by such other *persons* and on such other *evidence* as, to the Lieutenant-Governor in Council, satisfactorily proves the facts recited.

The Lieutenant-Governor acts, as it were, judicially in the matter.

(*d*) The right to object does not extend to the passing of *all* By-laws, but only such as are "to be preceded by the application of a certain number of the ratable inhabitants of the Municipality or place." The right to attend for the purpose mentioned exists only "on petitioning the Council." The persons so attending may raise all or any of the following objections :

1. That the necessary notice of the application for the By-law was not given.

2. That any of the signatures to the application are not genuine.

3. That some of the signatures were obtained upon incorrect statements.

4. That the proposed By-law is contrary to the wishes of the persons whose signatures were so obtained.

5. *And* that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the by-law.

In re Montgomery and Raleigh, 21 U. C. C. P. 394, where the application was to quash a drainage By-law, Gwynne, J., said, "We are not prepared to say, that if a Municipal Council, in violation of the apparent fact that a sufficient number to put the Council in motion

When by-laws shall not pass.

285. If the Council is satisfied upon the evidence that the application for the by-law did not contain the names of a sufficient number of persons whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having the by-law passed, or if the Council is satisfied that the notice required by law was not duly given, the Council shall not pass the by-law. (*e*) 36 V. c. 48, s. 230.

DIVISION III.—VOTING ON BY ELECTORS.

Proceedings preliminary to the Poll. *Secs.* 286–297.
The Poll. *Secs.* 298–304.
Who to Vote. *Secs.* 301, 302.
Freeholders. *Sec.* 301.
Leaseholders. *Sec.* 302.
Oath of Freeholder. *Sec.* 303.
Oath of Leaseholder. *See.* 304.
Proceedings after close of Poll. *Secs.* 305–310.
Secrecy of Proceedings. *Secs.* 311–312.
Scrutiny. *Secs.* 313–316.
Council must pass when carried. *Sec.* 317.
Unless petitioned against. *Sec.* 318.

If a by-law requires the assent of the a

286. In case a by-law requires the assent of the electors of Municipality before the final passing thereof, (*f*) the fol-

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had not petitioned, such fact being made apparent in the manner indicated in sections 194 and 195 (same as 284 and 285 of this Act) of the Municipal Institutions Act, should nevertheless proceed to pass a By-law imposing rates, that such a By-law could be sustained upon a motion, shewing these facts, made to quash it. But in the absence of all suggestion of fraud and all opposition to the By-law when before the Council, upon the ground taken, I think that a By-law which recites that a sufficient number had petitioned should be taken to be true, unless, at least, the recital be clearly established to be glaringly untrue, so as to afford a presumption of fraud in the proceedings of the Council." See further the following note.

(*e*) The By-law should in every case be passed subsequently to and consequent upon the presentation of the required petition praying the particular By-law to be passed, and after the fullest opportunity given to every ratepayer to be effected by the By-law to object to its being passed. *Per* Gwynne, J., *In re Morrell and Toronto*, 22 U. C. C. P. 326. See further, the previous note.

(*f*) By-laws for creating debts not payable in the same Municipal year are here notably intended. See sec. 330 and notes thereon.

lowing proceedings shall be taken for ascertaining such assent, (*g*) except in cases otherwise provided for :

electors, mode of obtaining same.

1. The Council shall by the by-law fix the day and hour for taking the votes of the electors, and such places in the Municipality as the Council shall in their discretion deem best, and where the votes are to be taken at more than one place, shall name a Deputy Returning Officer to take the votes at every such place ; (*h*) and the day so fixed for taking the votes shall not be less than three, nor more than five weeks after the first publication of the proposed by-law. (*i*) 36 V. c. 48, s, 231 (1) ; 40 V. c. 8, s. 51.

Time and place of voting to be fixed by by-law.

2. The Council shall, before the final passing of the proposed by-law, publish a copy thereof in some public newspaper published within the Municipality, or if there is no such newspaper, in some public newspaper published nearest the Municipality, or in the County Town, the publication to be continued in at least one number of such paper each week for three successive weeks, (*j*) and shall also put up a copy of

By-law requiring assent of electors to be published.

(*g*) If the proceedings prescribed be not taken, or be not duly taken, the By-law may be held invalid. See *Barnett* v. *Newark*, 28 Ill. 62 ; *Higley* v. *Bunce*, 10 Conn. 567 ; *Conboy* v. *Iowa*, 2 Iowa 90 ; see also sec. 323 at the end. Besides where the By-law if approved would be illegal the proceedings may be restrained. *Helm* v. *Port Hope et al.*, 22 Grant 273.

(*h*) It has been held sufficient if the manner of ascertaining the assent of the electors be prescribed by a notice attached to the proposed By-law when published, though the Act says that it shall be determined by the By-law. *Boulton* v. *Peterborough*, 16 U. C. Q. B. 380.

(*i*) Where publication was required for four consecutive weeks, in some newspaper published weekly or oftener in the Municipality, with a notice that, on some day within the week next after such four weeks, a poll would be demanded, and the first publication was on Thursday, 12th January, and Tuesday, 7th February, was appointed for the polling, it was held too soon. *Coe* v. *Pickering*, 24 U. C. Q. B. 439 ; *In re Miles and Richmond*, 28 U. C. Q. B. 333. Where it was required that the By-law should be published for the space of twenty days, in at least one newspaper, before it should go into effect, it was held that the By-law would go into effect twenty days after its publication in the first number of the newspaper. *Hoboken* v. *Gear*, 3 Dutch. (N. J.) 265.

(*j*) The publication is required to be made in some newspaper published within the Municipality, and if no such newspaper, then in some public newspaper published nearest the Municipality, or in a newspaper published in the County Town. The Municipality of Kingston proposed to take £7,500 in a road company, and published

the by-law at four or more of the most public places in the Municipality. (*k*) 37 V. c. 16, s. 6.

Notice.

3. Appended to each copy so published and posted shall be a notice signed by the Clerk of the Council, stating that

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a By-law (No. 6) to authorize a loan, containing the usual recitals, imposing a rate, and directing the issue of debentures, &c. When the By-law came on for discussion, a clause was added reducing the sum to £5,000, and directing the rates to be altered accordingly, and, thus amended, it passed in June, 1854. In December following another By-law was passed (No. 8), providing for the issuing of debentures (authorized by No. 6), and directing a rate to be levied for the payment of the interest thereon, but making distinct provisions for meeting the principal out of the profits of the stock to be taken, and from other funds. This By-law did not repeal No. 6, but the enactments in it showed clearly that the rates imposed by that By-law were meant to be dispensed with. *Held*, that the last mentioned By-law was bad, for it was a new and independent By-law, and not a mere supplement to No. 6, and should, therefore, have been published before the passing, and have contained the usual recitals and enactments required in By-laws for creating a loan. *Held*, also, that By-law No. 6 was bad, though not moved against, for it was not published beforehand in the form in which it ultimately passed. *In re Bryant and Pittsburg*, 13 U. C. Q. B. 347; but see *per* Spragge, C., in *Brock* v. *Toronto and Nipissing R. Co.*, 17 Grant 433. Where the statute required publication in each newspaper published in the Municipality, an omission to publish it in one of the local newspapers was held to avoid the By-law. *Simpson* v. *Lincoln*, 13 U. C. C. P. 48. All that the section here annotated requires is publication "in some newspaper published, weekly or oftener, in the Municipality," in conjunction with the posting of the By-law at "four or more of the most public places in the Municipality." Where the statute simply required the By-law to be promulgated, it was held sufficient to publish it in the newspaper in which the By-laws of the city were usually published. *City Council* v. *Truchelut*, 1 Nott & McC. (South Car.) 227. It is not necessary that the By-law should be, before publication, signed and sealed, as required by sec. 281 of this Act. The word "By-law" is used in the statute not merely to designate an instrument containing all that is stated in sec. 281, but the same instrument which is still in the hands of the Council and under consideration. *Paffard and Lincoln*, 24 U. C. Q. B. 16. Where the statute provided for alternate modes of publication, and empowered the Corporation to determine which mode should be adopted, it was held that publication in the mode directed by the Clerk, without the intervention of the Corporation, was insufficient. *Higly* v. *Bunce*, 10 Conn. 436, *Ib.* 567. It is not, of course, for the Court, on application, summarily to set aside a By-law for defective publication. In such a case the Court will exercise its discretion, and set aside or refuse to set aside the By-law, according to circumstances. *Boulton and Peterborough*, 16 U. C. Q. B. 380; *In re Gibson* v. *Bruce*, 20 U. C. Q. B. 398.

(*k*) It is to be observed that publication in the newspapers is not

such copy is a true copy of a proposed by-law which will be taken into consideration by the Council after one month from the first publication in the newspaper, stating the date of the first publication, and that at the hour, day and place or places therein fixed for taking the votes of the electors, the polls will be held. (*l*) 36 V. c. 48, s. 231 (3).

Ballot papers to be printed.

287. Forthwith (*m*) after the day has been fixed as aforesaid, for taking the votes of electors, with respect to the by-law the Clerk of the Municipal Council which proposed the by-law shall cause to be printed, at the expense of the Municipality, such a number of ballot papers as will be sufficient for the purposes of the voting. (*n*) 39 V. c. 35, s. 1.

Form of.

288. The ballot papers shall be according to the form of Schedule J. to this Act. (*o*) 39 V. c. 35, s. 2.

Council to fix a day for appointment of persons to attend at polling places and for summing up votes.

289. The Council shall by the by-law fix a time when, and a place where the Clerk of the Council which proposed the by-law shall sum up the number of votes given for and against the by-law, and a time and place for the appointment of persons to attend at the various polling places, and at the final summing up of the votes by the Clerk respectively, on behalf of the persons interested in, and promoting or opposing the passage of the by-law respectively. (*p*) 39 V. c. 35, s. 3.

Selection of agents.

290. At the time and place named the head of the Municipality shall appoint, in writing signed by him, two persons

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alone made sufficient. Posting of the By-law at four or more of the most public places in the Municipality is also required.

(*l*) The notice may be in this form:

Take notice, that the above is a true copy of a proposed By-law, which will be taken into consideration by the Council of the Municipality after one month from the first publication in the (*naming the newspaper*), the date of which first publication was (*stating the day of the week, month and year*), and that the votes of the electors of the said Municipality will be taken thereon at (*naming the place or places*), on (*naming the day, &c.*), at (*naming the hour.*)

D. C., *Clerk.*

(*m*) See note *q* to sec. 174.

(*n*) The system of ballot already applied to ordinary elections is now to be applied to the passing of By-laws, which is also a mode of election. See *In re Johnson and Lambton*, 40 U. C. Q. B. 297. See sec. 117 *et seq.*

(*o*) See note *p* to sec. 117.

(*p*) See sec. 120 *et seq.* and notes thereto.

to attend at the final summing up of the votes, and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of the by-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of the by-law. (*q*) 39 V. c. 35, s. 4.

Agent to make declaration

291. Before any person is so appointed he shall make and subscribe before the head of the Municipality a declaration in the form of Schedule K to this Act, that he is interested in and desirous of promoting or opposing (as the case may be) the passing of the by-law. (*r*) 39 V. c. 35, s. 5.

Admission of agents to polling place, etc.

292. Every person so appointed, before being admitted to the polling place or the summing up of the votes, as the case may be, shall produce to the Deputy Returning Officer or Clerk of the Municipality, as the case may be, his written appointment. (*s*) 39 V. c. 35, s. 6.

Appointment in absence of agent.

293. In the absence of any person authorized as aforesaid to attend at any polling place, or at the final summing up of the votes, any elector in the same interest as the person so absent may, upon making and subscribing before the Deputy Returning Officer at the polling place or the Clerk of the Municipality a declaration in the form of Schedule K to this Act, be admitted to the polling place to act for the person so absent. (*t*) 39 V. c. 35, s. 7.

Exclusion from polling place.

294. During the time appointed for polling no person shall be entitled or permitted to be present in any polling place other than the officers, clerks and persons or electors

(*q*) This is for the purpose of preventing all appearance of partiality, and if possible of satisfying all parties that there is no partiality or appearance of it. See sec. 147 and notes thereto. The mode of appointment deserves attention. It must not only be in writing but signed.

(*r*) This is to secure the good faith of the persons appointed as well as of the person appointing them.

(*s*) See note *q* to sec. 290.

(*t*) The right to make an appointment under this section is dependent on the absence of the persons appointed under the previous sections. The appointment when necessary may be made by any elector "in the same interest as the person absent." Of course there must be *bona fides* on the part of the person appointing as well as the person appointed. The declaration required by the section is designed to secure the necessary good faith.

authorized to attend as aforesaid at such polling place. (*u*) 39 V. c. 35, s. 8.

Deputy returning officers, poll clerks and agents may vote at polling place where they are employed,

295. The Clerk of the Municipality, on the request of any elector entitled to vote at one of the polling places, who has been appointed Deputy Returning Officer or Poll Clerk, or who has been named as the person to attend at any polling place other than the one where he is entitled to vote, shall give to such elector a certificate that such Deputy Returning Officer, Poll Clerk or person is entitled to vote for or against such by-law at the polling place where such elector is stationed during the polling day, and such certificate shall also state the property or other qualification in respect to which he is entitled to vote. (*v*)

on certificate from the clerk of the municipality.

2. On the production of such certificate, such Deputy Returning Officer, Poll Clerk or person shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling place of the Ward or polling sub-division where he would otherwise have been entitled to vote; and the Deputy Returning Officer shall attach the certificate to the voters' list; but no such certificate shall entitle any such elector to vote at such polling place unless he has been actually engaged as such Deputy Returning Officer, Poll Clerk or person during the day of polling.

Who to administer oath in such case.

3. In case of a Deputy Returning Officer voting at the polling place at which he is appointed to act, the Poll Clerk, or in the absence of the Poll Clerk, any one authorized to be present at such polling place, may administer to such Deputy Returning Officer the oath required to be taken of voters qualified to vote on the by-law. 39 V. c. 35, s. 9.

Who to conduct the poll in municipalities divided into wards.

296. In the case of Municipalities which are divided into Wards or polling sub-divisions, the Clerk of the Municipality shall, before the poll is opened, prepare and deliver to the Deputy Returning Officer for every Ward or polling sub-division, a voters' list in the form of Schedule C to this Act, containing the names, arranged alphabetically, of all male persons appearing by the then last revised assessment roll to be entitled, under the provisions of the three hundred and first and three hundred and second sections of this Act,

(*u*) See note *l* to s. 142.

(*v*) See s. 137 and notes thereto.

to vote in that Ward or polling sub-division, and shall attest the said list by his solemn declaration in writing under his hand. 40 V. c. 12, s. 18 (1).

In municipalities not divided into wards.

297. In the case of Municipalities which are not divided into Wards or polling sub-divisions, the Clerk shall provide himself with the necessary ballot papers, the materials for marking ballot papers, printed directions to voters, and a list of electors for the Municipality similar to the list mentioned in the preceding section; and the Clerk shall perform the like duties with respect to the whole Municipality as are imposed upon a Deputy Returning Officer in respect of a Ward or polling sub-division. 40 V. c. 12, s. 18 (2).

The Poll.

Voting to be by ballot.

298. At the day and hour affixed as aforesaid, a poll shall be held and the votes shall be taken by ballot. (*a*) 39 V. c. 35, s. 10.

Proceedings to be as at municipal elections.

299. The proceedings at such poll, and for and incidental to the same, and the purposes thereof, shall be the same, as nearly as may be, as at municipal elections, and all the provisions of sections one hundred and sixteen to one hundred and sixty-nine inclusive, of this Act, so far as the same are applicable, and except so far as is herein otherwise provided, shall apply to the taking of votes at such poll, and to all matters incidental thereto. (*b*) 39 V. c. 35, s. 11.

Form of directions for guidance to voters.

300. The printed directions to be delivered to the Deputy Returning Officers shall be in the form of Schedule L. to this Act. (*c*) 39 V. c. 35, s. 12.

Freeholders who may vote on by-law.

301. Any person shall be entitled to vote on any by-law requiring the assent of the electors, who is a male ratepayer, and, at the time of tender of the vote, of the full age of

(*a*) See s. 114 and notes thereto.

(*b*) The application of the sections named, not only to the taking of the poll, but "to all matters incidental thereto," is a very wide, but not too wide, application of them. The purpose being to secure secrecy in the vote, not only at the time of voting, but subsequent. The sections which prevent the inspection of ballot papers, except under the order of the Court or a Judge, and for the destruction of the ballot papers after a limited time, are necessarily embraced.

(*c*) The omission to deliver these directions would not necessarily avoid the election; but this does not exculpate the officers concerned for neglect of duty.

twenty-one years, and a natural born or naturalized subject of Her Majesty, (*d*) and who has neither directly nor indirectly received, nor is in expectation of receiving, any reward or gift for the vote which he tenders, (*e*) and is at the time of such tender a freeholder, either at Law or in Equity, in his own right or in right of his wife, of real property within such Municipality of sufficient value to entitle him to vote at any municipal election, and is rated on the last revised assessment roll as such freeholder, and is named or purported to be named in the voters' list of electors. (*f*)

In case of new municipality where there has been no assessment roll.

2. In case of a new Municipality in which there has not been any assessment roll, the qualification of being named on such list and of being rated on the roll shall be dispensed with, but in such case such person offering to vote shall not be entitled to vote unless he possesses the other qualifications above mentioned, and has, at the time of tender of his vote, sufficient property to have entitled him to vote if he had been rated for such property, and unless at such time he names such property to the Deputy Returning Officer; and the Deputy Returning Officer shall note such property in the voters' list opposite the voter's name, at the request of any one entitled to vote on such by-law. (*g*) 36 V. c. 48. s. 232; 39 V. c. 35, s. 26.

Leaseholders who may vote on by-laws.

302. Any person shall be entitled to vote on any by-law requiring the assent of the electors, who is a male ratepayer, and at the time of tender of the vote is of the full age of twenty-one years, and a natural born or naturalized subject of Her Majesty, and who has neither directly nor indirectly received, nor is in expectation of receiving, any reward or gift for the vote which he tenders, and is resident within the Municipality for which the vote is taken for one month next before the vote, and who is or whose wife is a leaseholder of real property within such Municipality of sufficient value to

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(*d*) See sec. 78 and notes thereto.

(*e*) See sec. 201 and notes thereto.

(*f*) See note *d* to sec. 76.

(*g*) This is a necessary provision. The general rule is to require both the possession of property and the rating of it on the roll; but the latter requirement presupposes the existence of a roll. In the case of a new municipality during the first year there can be no roll. In such a case the possession of the property qualification is sufficient.

entitle him to vote at a municipal election, and who is rated on the last revised assessment roll therefor, and which lease extends for the period of time within which the debt to be contracted or the money to be raised by such by-law is made payable; in which lease the lessee has covenanted to pay all municipal taxes in respect of the property leased, and which person is named, or purported to be named, in the voters' list. (*h*)

In case of new municipality where there has been no assessment roll.

2. In case of a new Municipality in which there has not been any assessment roll, the qualification of being named on such list and of being rated on the roll, and of residence for one month, shall be dispensed with, but in such case the person offering to vote shall not be entitled to vote unless possessing the other qualifications above mentioned, and unless he is at the time of tender of his vote a resident of the Municipality, and then has sufficient property to have entitled him to vote if he had been rated for such property, and unless at such time he names such property to the Deputy Returning Officer; and the Deputy Returning Officer shall note such property in the voters' list, opposite the voter's name, at the request of any one entitled to vote on such by-law. (*i*) 36 V. c. 48, s. 233; 39 V. c. 35, s. 26.

Oath of freeholder voting on by-law.

303. Any ratepayer offering to vote in respect of a freehold on any such by-law, may be required by the Deputy Returning Officer or any ratepayer entitled to vote on any such by-law, to make the following oath or affirmation, or any part thereof, or to the effect thereof, before his vote is recorded :— (*j*)

You swear that you are of the full age of twenty-one years, and a natural born (*or* naturalized) subject of Her Majesty;

That you are a freeholder in your own right (*or* in the right of your wife, *as the case may require*), within the Municipality for which this vote is taken;

That you have not voted before on the By-law in this Township (*or* Ward, *as the case may be*);

(*h*) The voters under a By-law are not in all cases the same as ordinary electors. By-laws creating debts, not payable in the same Municipal year, usually provide for the payment of the debt in a term of years mentioned in the By-law. Leaseholders whose leases are for a less term than the term mentioned in the By-law, or in which the lessee is not bound to pay Municipal taxes, have no right to vote. See *Erwin and Townsend*, 21 U. C. C. P. 330.

(*i*) See note *g* to the preceding section.

(*j*) See sec. 99 and notes thereto.

That you are, according to law, entitled to vote on the said By-law;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender;

That you are the person named, or purporting to be named, in the voters' list of electors;

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote on this By-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or refrain from voting;

(In case of a new Municipality in which there has not been any assessment roll, then instead of referring to being named in the voters' list, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote);

And no enquiries shall be made of any voter except with respect to the facts specified in such oath or affirmation. 36 V. c. 48, s. 234; 40 V. c. 8, s. 50.

Oath of leaseholder voting on by-law.

304. Any ratepayer offering to vote in respect of a leasehold on any such by-law, may be required by the Deputy Returning Officer, or any ratepayer entitled to vote on any such by-law, to make the following oath or affirmation, or any part thereof, or to the effect thereof, before his vote is recorded :—(*jj*)

You swear that you are of the full age of twenty-one years, and a natural born or naturalized subject of Her Majesty;

That you have been a resident within the Municipality for which this vote is taken for one month next before the vote;

That you are (*or* your wife is), a leaseholder within this Municipality and the lease extends for the period of time within which the debt to be contracted or the money to be raised by the By-law now submitted to the ratepayers is made payable, and that you have (*or* the lessee in said lease has) covenanted in such lease to pay all municipal taxes;

That you have not before voted on the By-law in this Township (*or* Ward, *as the case may be*);

That you are, according to law, entitled to vote on the said By-law;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender;

That you are the person named, or purporting to be named, in the voters' list;

That you have not received anything, nor has anything been pro-

(*jj*) See sec. 100 and notes thereto.

mised to you directly or indirectly, either to induce you to vote on this By-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or refrain from voting;

(*In case of a new Municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the vote, and of referring to being named in the voters' list, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote, and that he is a resident of such Municipality*);

And no enquiries shall be made of any voter, except with respect to the facts specified in such oath or affirmation. 36 V. c. 48, s. 235; 40 V. c. 8, s. 50.

Form of statement to be made by deputy returning officers of result of the polling.

305. The written statement to be made by each Deputy Returning Officer at the close of the polling shall be made under the following heads: (*k*)

(*a*) Name or number of Ward or polling subdivision, and of the Municipality, and the date of the polling;

(*b*) Number of votes for and against the by-law;

(*c*) Rejected ballot papers. 39 V. c. 35, s. 13.

Objections to ballot papers.

306. The Deputy Returning Officer shall take a note of any objection made by any person authorized to be present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection. Each objection to a ballot paper shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the Deputy Returning Officer. (*l*) 39 V. c. 35, s. 14.

To be numbered.

Deputy returning officers duties after votes are counted.

307. Every Deputy Returning Officer, at the completion of the counting of votes after the close of the poll, shall, in the presence of the persons authorized to attend, make up into separate packets, sealed with his own seal, and the seals of such persons authorized to attend as desire to affix their seals, and marked upon the outside with a short statement of of the contents of such packet, the date of the day of the polling, the name of the Deputy Returning Officer, and of the Ward or polling subdivision and Municipality— (*m*)

(*k*) See sec. 150 and notes thereto.

(*l*) See sec. 150 and notes thereto.

(*m*) See sec. 150 and notes thereto.

(*a*) The statemen law and of th

(*b*) The used ball to and have b

(*c*) The ballot pa which have b Officer;

(*d*) The rejected

(*e*) The spoiled b

(*f*) The unused b

(*g*) The voters' lis dule G annex ber of voters Returning Of pacity" and " of inability; a to ballot pape 35, s. 15.

308. Every Deputy of the poll, certify und full words the total nu the polling place at wh and shall before placin as aforesaid, make an Municipality, a Justice solemn declaration that ner prescribed by law, to be made therein wer shall be in the form of thereafter be annexed t with return the ballot b 39 V. c. 35, s. 16. (*n*)

309. Every Deputy quested so to do, shall attend at his polling p votes given at the polli and of the number of 35, s. 17.

(*n*) See sec. 150 and note

(*o*) The duty arises on

(*a*) The statement of votes given for and against the by-law and of the rejected ballot papers;

(*b*) The used ballot papers which have not been objected to and have been counted;

(*c*) The ballot papers which have been objected to, but which have been counted by the Deputy Returning Officer;

(*d*) The rejected ballot papers;

(*e*) The spoiled ballot papers;

(*f*) The unused ballot papers;

(*g*) The voters' list, with the oath in the form of Schedule G annexed thereto; a statement of the number of voters whose votes are marked by the Deputy Returning Officer, under the heads "Physical incapacity" and "Unable to read," with the declarations of inability; and the notes taken of objections made to ballot papers found in the ballot box. 39 V. c. 35, s. 15.

Certificate and declaration of deputy returning officer and return of voters' list and of ballot box.

308. Every Deputy Returning Officer shall, at the close of the poll, certify under his signature on the voters' list in full words the total number of persons who have voted at the polling place at which he has been appointed to preside, and shall before placing the voters' list in its proper packet as aforesaid, make and subscribe before the Clerk of the Municipality, a Justice of the Peace or the Poll Clerk, his solemn declaration that the voters' list was used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made; which declaration shall be in the form of Schedule G to this Act, and shall thereafter be annexed to the voters' list: he shall also forthwith return the ballot box to the Clerk of the Municipality. 39 V. c. 35, s. 16. (*n*)

Deputy returning officer to certify as to number of votes and rejected ballot papers.

309. Every Deputy Returning Officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place a certificate of the number of votes given at the polling place for and against the by-law, and of the number of rejected ballot papers. (*o*) 39 V. c. 35, s. 17.

(*n*) See sec. 150 and notes thereto.

(*o*) The duty arises only upon request, and the request must

Clerk to cast up votes and declare result.

310. The Clerk, after he has received the ballot papers and statements before mentioned of the number of votes given in each polling place, shall, at the time and place appointed by the by-law, in the presence of the persons authorized to attend or such of them as may be present, without opening any of the sealed packets of ballot papers, sum up from such statements the number of votes for and against the by-law, and shall then and there declare the result, (*p*) and forthwith certify to the Council under his hand whether the majority of the electors voting upon the by-law have approved or disapproved of the by-law. (*q*) 39 V. c. 35, s. 18.

Secrecy of Proceedings.

Maintaining secrecy of proceedings at polling.

311. Every officer, clerk and person in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place. (*r*)

Voter not to be interfered with.

2. No officer, clerk or other person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to the manner in which any voter at such polling place is about to vote or has voted.

No information to be given as to how any one voted.

3. No officer, clerk, or other person shall communicate at any time to any person any information obtained at a polling place as to the manner in which any voter at such polling place is about to vote or has voted.

Secrecy to be maintained at counting.

4. Every officer, clerk and person in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting as to the manner in which any vote is given in any particular ballot paper.

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proceed from a person or persons authorized to attend at the polling place.

(*p*) See sec. 151 and notes thereto.

(*q*) The majority required is that of the electors voting on the By-law, and not a majority of all the electors in the Municipality. See *In re Jenkins and Elgin*, 21 U. C. C. P. 325; See further, *People* v. *Morris*, 13 Wend. (N.Y.) 325; but see also *In re Billings and Gloucester*, 10 U. C. Q. B. 273; *In re McAvoy and Sarnia*, 12 U. C. Q. B. 102.

(*r*) See sec. 162 and notes thereto.

5. No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the manner in which he has marked his vote. Voters not to be induced to disclose votes.

6. Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour. 39 V. c. 35, s. 19. Penalty for contravening this section.

312. The Clerk of the Municipality, and every officer, clerk or person authorized to attend a polling place, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the Clerk of the Municipality, of a Justice of the Peace, and if he is any other officer, or a clerk, or an agent, in the presence of a Justice of the Peace or the Clerk of the Municipality or a Deputy Returning Officer; and such statutory declaration of secrecy shall be in the form given in Schedule M to this Act, or to the like effect. (*s*) 39 V. c. 35, s. 20. Statutory declaration of secrecy to be made by officers, etc., before a poll.

Scrutiny.

313. If within two weeks after the Clerk of the Council which proposed the by-law has declared the result of the voting, (*a*) any elector applies upon petition to the County Judge, after giving such notice of the application and to such persons as the Judge directs, and shows by affidavit to the Judge reasonable grounds for entering into a scrutiny of the ballot papers, (*b*) and the petitioner enters into a recognizance before the Judge in the sum of one hundred dollars, with two sureties (to be allowed as sufficient by the Judge upon affidavit of justification) (*c*) in the sum of fifty dollars each conditioned to prosecute the petition with effect, and to pay the party against whom the same is brought any costs which Scrutiny may be had on application to County Judge.

(*s*) This is in affirmanance of the rules laid down in the preceding section, as to which see note *w* to sec. 162.

(*a*) As to computation of time see note *a* to sec. 177, and note *h* to sec. 180.

(*b*) The affidavits must shew *prima facie* grounds for the belief that the result ought to be different, and these grounds must be such as can be said to be reasonably sufficient to support the motion.

(*c*) See note *m* to sec. 180.

may be adjudged to him against the petitioner, (*d*) the Judge may appoint a day and place within the Municipality for entering into the scrutiny. (*e*) 39 V. c. 35, s. 21.

Notice of time of scrutiny.

314. At least one week's notice of the day appointed for the scrutiny shall be given by the petitioner to such persons as the Judge directs, and to the Clerk of the Municipality. (*f*) 39 V. c. 35, s. 22.

Proceedings.

315. At the day and hour appointed, the Clerk shall attend before the Judge with the ballot papers in his custody, and the Judge, upon inspecting the ballot papers (*g*) and and hearing such evidence as he may deem necessary, and on hearing the parties, or such of them as may attend, or their counsel, shall in a summary manner determine whether the majority of the votes given is for or against the by-law, and shall forthwith certify the result to the Council. (*h*) 39 V. c. 35, s. 23.

Powers of Judge.

Costs.

316. The Judge shall on such scrutiny possess the like powers and authority as to all matters arising upon such scrutiny as are possessed by him upon a trial of the validity of the election of a member of a Municipal Council; (*i*) and in all cases costs shall be in the discretion of the Judge, as in the case of applications to quash a by-law, or he may apportion the costs as to him seems just. (*j*) 39 V. c. 35, s. 25.

By-law carried by voters to be passed by Council.

317. Any by-law which is carried by a majority of the duly qualified electors voting thereon, (*k*) shall within six weeks thereafter be passed by the Council which submitted the same. (*l*) 36 V. c. 48, s. 236.

(*d*) See note *n* to sec. 180.

(*e*) See sec. 158 and notes thereto.

(*f*) As to computation of time, see note *a* to sec. 111.

(*g*) See notes to sec. 147 as to what ballot papers should be rejected.

(*h*) The decision of the Judge as to the result is final. He is, in a summary manner, to *determine* whether the majority of the votes given is for or against the By-law. He is also to certify the *result* to the Council.

(*i*) See sec. 180 *et seq.* and notes.

(*j*) See sec. 198 and notes, and note *l*, sec. 322.

(*k*) See note *q* to sec. 310.

(*l*) The statute does not state after what time the Council shall pass the By-law, and, according to the usual rule adopted in such

318. In case of a petition being presented, (*m*) the by-law shall not be passed by the Council until after the petition has been disposed of; (*n*) and the time which intervenes between the presenting of the petition and the final disposal thereof shall not be reckoned as part of the six weeks within which the by-law is to be passed. (*o*) 39 V. c. 35, s. 24. The passing of the by-law stayed on presenting of the petition.

DIVISION IV.—CONFIRMATION OF BY-LAWS.

By publication. *Sec.* 319.
Notice. *Sec.* 320.
Consequent validity. *Sec.* 321.

319. Every promulgation of a by-law (*p*) shall consist in the publication, through the public press, of a true copy of the by-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by law for applications to the Courts to quash the same or any part thereof; and the publication aforesaid shall be in a public newspaper published within the Municipality, or if there is no such newspaper, then in the public newspaper published nearest the Municipality, or in the County Town; (*q*) and Promulgation of by-laws.

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cases, the Council are entitled to a reasonable time. See *per* Morrison, J., in *Re Peck and Peterborough*, 34 U. C. Q. B. 134. The duty is one which may be enforced by *mandamus* after the lapse of a reasonable time, and after demand and refusal. *Ib.* If the Council, whose duty it is made to pass the By-law, be incompetent to pass any By-law, the By-law may, notwithstanding the vote the electors, be set aside. *Re Baird and Almonte*, 41 U. C. Q. B. 415.

(*m*) See sec. 313.

(*n*) See sec. 315.

(*o*) The general rule in the case of a By-law approved by a majority of the electors is, that it shall be passed within six weeks thereafter. This section creates a necessary exception to the general rule. It excludes from the six weeks whatever time may intervene between the presenting of the petition and the final disposal thereof.

(*p*) Promulgation ordinarily means publication; but it is intended by this Act to give peculiar effect to a promulgated By-law. The notice appended to the By-law as published gives the time within which application must be made to the Court to quash the By-law. If the By-law promulgated be within the proper competence of the Council, it is to be deemed, notwithstanding any want of substance or form either in the By-law itself or in the time or manner of passing the same, a valid By-law. Sec. 321.

(*q*) See note *j* to sec. 286.

the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week for three successive weeks. (*r*) 37 V. c. 16, s. 7.

Notice to be given.

320. The notice to be appended to every copy of the by-law for the purpose aforesaid, shall be to the effect following: (*s*)

Form of such notice.

NOTICE.—The above is a true copy of a by-law passed by the Municipal Council of the Township of A, in the County of B, one of the United Counties of B, C and D (*or as the case may be*), on the day of , 18 , and (*where the approval of the Lieutenant-Governor in Council is by law required to give effect to such by-law*) approved by His Honour the Lieutenant-Governor in Council, on the day of , 18 ; and all persons are hereby required to take notice, that any one desirous of applying to have such by-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty's Superior Courts of Common Law at Toronto, before the end of the Term of the said Superior Courts next after the special promulgation thereof by the publication of this notice in three consecutive numbers of the following newspapers, viz. (*here name the newspapers in which the publication is to be made*), or he will be too late to be heard in that behalf; and take notice that such term commences on the day of next. (*t*)

G. H.,
Township Clerk.

36 V. c. 48, s. 238.

If not moved against within the time limited, to be valid.

321. In case no application to quash any by-law is made before the end of the Term next after the third publication of such by-law and notice as aforesaid, the by-law or so much thereof as is not the subject of any such application, or not

(*r*) A By-law requiring the assent of the electors must be published in *some* newspaper published *within* the Municipality; and if no such newspaper, in some public newspaper published nearest the Municipality, or in the County Town. See sec. 286, sub. 2. Promulgation, under this section, is made to consist of publication "through the public press." This afterwards is defined as being publication in *a* (i. e. *any*) public newspaper published *within* the Municipality. If none such, then in *the* public newspaper published nearest the Municipality, or in the County Town.

(*s*) Where an Act of Parliament expressly provides that a thing is to be done in a given form, that form should be strictly followed. *Warren* v. *Love*, 7 Dowl. P. C. 602; *Codrington* v. *Curlewis*, 9 Dowl. P. C. 968. But where the direction is that the form given, or one "to the same effect" or to "the effect following," shall be followed, similar strictness is not required. *Bacon* v. *Ashton*, 5 Dowl. P. C. 94; *Smith* v. *Wedderburne*, 4 D. & L. 296.

(*t*) In the case of a By-law imposing a rate, the application to quash cannot be entertained after the next term of the Superior Courts of Common Law after promulgation. See sec. 324.

quashed upon such application, so far as the same ordains, prescribes or directs anything within the proper competence of the Council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the by-law itself, or in the time and manner or passing the same, be a valid by-law. (*u*) 36 V. c. 48, s. 239.

DIVISION V.—QUASHING BY-LAWS.

How to proceed. *Sec.* 322.
Time limited for application. *Secs.* 323, 324.
Motion against for corrupt practices. *Secs.* 325, 326.
No action till after quashing and notice. *Sec.* 327.
Liability of Municipality for acts under illegal by-law. *Sec.* 328.
Tender of amends. *Sec.* 329.

Quashing by-laws.

322. In case a resident of a Municipality, or any other person interested (*a*) in a by-law, order or resolution of the

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(*u*) Neglect to make an application within the time prescribed has the effect of curing any *want* of substance or form, either in the By-law, &c., itself, or in the *time* or *manner* of passing the same, provided what is ordained or directed by the By-law, &c., be within the proper competence of the Council. If not of the proper competence of the Council, a By-law affords under no circumstances protection for what is done under it. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626.

(*a*) The applicant, in strictness, should state that he is a resident of the Municipality in which the By-law was passed, or has an interest in the provisions of the By-law. *Babcock* v. *Bedford, &c.*, 8 U. C. C. P. 527; *Bogart* v. *Belleville*, 6 U. C. C. P. 425; *Kinghorn and Kingston*, 26 U. C. Q. B. 130. Where an applicant, who moved against a By-law of the United Counties of Peterborough and Victoria, swore that during all the year 1850 he had been, and was at the time of the separation, a resident of and within the limits and boundaries of the Town of Peterborough, a corporation within the County of Peterborough, it was held that the applicant was sufficiently described as a resident, so as to be entitled to make the application. *In re Conger and Peterborough*, 8 U. C. Q. B. 349. Where a freeholder of a Township, though not a resident, applied to quash a By-law, and it was objected that, being a non-resident, he could not do so; it was held that, as a freeholder of the Township, he had an *interest* in all the By-laws passed by the Township Council sufficient to enable him to move to quash any of its By-laws. *In re De la Haye* v. *Toronto*, 2 U. C. C. P. 317. So it has been held that the owner of real estate in the Municipality which had been assessed, though not himself named on the Assessment Roll, had a sufficient interest. *In re Boulton and Peterborough*, 16 U. C. Q. B. 380. Where the affidavit stated deponent to be a ratepayer and a resident householder, it was

Council thereof, (*b*) applies to either of the Superior Courts of Common Law, (*c*) and produces to the Court a copy of the by-law, order or resolution, (*d*) certified under the hand of the Clerk and under the corporate seal, (*e*) and shows by

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held unnecessary to give any further description of him. *Baker* v. *Paris*, 10 U. C. Q. B. 621. Acquiescence of the applicant cannot be properly used against him on an application to quash a By-law proved contrary to law, when other interests, both public and private, than those of the applicant are affected. *Per* Wilson, J., *In re Fairbairn and Sandwich East*, 32 U. C. Q. B. 582.

(*b*) The power delegated to the Courts summarily to quash illegal By-laws, &c., is one, so far as Municipal Institutions are concerned, peculiar to this country. *Re Brodie and Bowmanville*, 38 U. C. Q. B. 580. It does not exist, so far as the editor is aware, either in Great Britain or the United States of America. See note *k* to this section. Before the statute 12 Vict. ch. 81, sec. 165, the Courts of Upper Canada had not any power summarily to quash *By-laws* of a Municipality, see *In re McGill and Peterborough*, 9 U. C. Q. B. 562, and that power was not extended to *orders* and *resolutions* till 22 Vict. ch. 99, sec. 194. See *In re Daniels and Burford*, 10 U. C. Q. B. 478; *In re Cæsar and Cartwright*, 12 U. C. Q. B. 341. "Regulations" for a public market, adopted by the Council, may be moved against as orders and resolutions under the meaning of this section. *In re Snell and Belleville*, 30 U. C. Q. B. 81. See further, note *k* to this section.

(*c*) It was held that Practice Court, when that Court existed, had not power to entertain such an application. *In re Sams and Toronto*, 9 U. C. Q. B. 181.

(*d*) The applicant must produce to the Court a copy of *the* By-law, order or resolution, that is, of an *existing* By-law, &c. So that if before application the operation of the By-law be spent, *In re Terry and Haldimand*, 15 U. C. Q. B. 380, or expressly repealed, *In re McGill and Peterborough*, 9 U. C. Q. B. 562, the rule will be discharged. *Ib.* But where the repeal is after application to quash the By-law, and so a tacit acknowledgment of the illegality of the By-law, the Municipality may be ordered to pay the costs of the application. *In re Coyne and Dunwich*, 9 U. C. Q. B. 309; *In re Coleman*, 9 U. C. C. P. 146. See further, *Patterson and Hope*, 31 U. C. Q. B. 360.

(*e*) It is not necessary that the copy should be sealed with wax. An impression made in ink with a wooden block in the place of a seal would seem to be a sufficient seal, *The Queen* v. *St. Paul, Covent Garden*, 7 Q. B. 232; see also *Hamilton* v. *Dennis*, 12 Grant 325, especially if made on the implication that such is the seal of the Corporation. *Kinghorn and Kingston*, 26 U. C. Q. B. 133. See also *In re Miles and Richmond*, 28 U. C. Q. B. 336. See further, *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant 551; *In re Scott and Harvey*, 26 U. C. Q. B. 32. Where the seal of the Corporation, though not mentioned in the Clerk's certificate, was on the same page with the certificate, immediately above it and opposite to the signature of the Reeve and Clerk, the By-law was

affidavit (*f*) that the same was received from the Clerk, (*g*)

held to be sufficiently complied with. *Baker* v. *Paris*, 10 U. C. Q. B. 621. The Court will discharge a rule to quash a By-law, moved on a copy of the By-law, verified in a manner different from that prescribed by the statute, unless the reason for the variance is clearly and satisfactorily explained. *Buchart* v. *Brant and Carrick*, 6 U. C. C. P. 130. Where the By-law was one passed by the Corporation of two United Townships, and after dissolution of the union the applicant produced a copy of the By-law certified under the hand of the Clerk of the Senior Township and under the Corporate Seal of that Township, the statute was held to have been sufficiently complied with and the By-law quashed. *In re Scott and Harvey*, 26 U. C. Q. B. 32. Where the copy of the By-law put in, not being certified as the Act directs, could not be read, but the same was set out at length in affidavits filed, the deponent swearing that a By-law was passed by the Town Council in words following (setting out the By-law), the materials before the Court were held sufficient. *In re School Trustees of Sandwich and Sandwich*, 23 U. C. Q. B. 639. A copy of the By-law filed was under the seal of the Municipality and sworn to have been received from the Clerk, and opposite the seal was the signature "M. F., City Clerk," with the words, "a true copy," above. *Held*, sufficient. *Kinghorn and Kingston*, 26 U. C. Q. B. 130. It will be observed that the statute is silent as to the right of the Clerk to charge fees for the certified copy or seal, while the statute 12 Vict. ch. 81, s. 155, made it the duty of the Clerk only to give the copy "upon payment of his fees therefor." See *In re Township Clerk of Euphrasia*, 12 U. C. Q. B. 622.

(*f*) The affidavit ought to be intituled of the Court to which the motion is made: *Fraser* v. *Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 286; but if it appear from the jurat to have been sworn before a Commissioner of that Court, the objection will not avail. *Ib.* See also *Kinghorn* v. *Kingston*, 26 U. C. Q. B. 130. If however, the Commissioner merely describe himself as "a Commissioner," &c., without stating of what Court, the affidavit must be intituled. *In re Hirons et al. and Amherstburgh*, 11 U. C. Q. B. 458. It need not be intituled "The Queen *v.* The Municipal Council of," &c., but may be "In the matter of W. S. C. and the Municipal Council of," &c. *In re Couger and Peterborough*, 8 U. C. Q. B. 349. Affidavits in answer must, it is apprehended, be entitled in the same way as the rule is which they are produced to oppose. See Tapping on Mandamus, 413. "In the matter of A. B., appellant, and C. D., respondent, held unobjectionable. *In re McLean and St. Catharines*, 27 U. C. Q. B. 603.

(*g*) The procedure pointed out by this section is plain and simple. And yet it is often disregarded, and something more difficult adopted in substitution. This seems strange. See *per* Richards, C. J., in *Mottashed and Prince Edward*, 30 U. C. Q. B. 77. Where deponent swore that the copy produced was received by one T. from the Clerk of the Council, and by T. was delivered to the deponent, the affidavit was held sufficient. *In re Fisher and Vaughan*, 10 U. C. Q. B. 492. But where the applicant swore that he received the copy of the By-law from the Clerk of the Council through R. J. F., his attor-

and that the applicant is resident or interested as aforesaid, (*h*) the Court, after at least four days' service (*i*) on the Corporation of a rule (*j*) to show cause in this behalf, may quash the by-law, order or resolution, (*k*)

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ney, the sufficiency of the affidavit was doubted. *In re Mottashed and Prince Edward*, 30 U. C. Q. B. 77. The statute does not require that the affidavit should refer to the copy of the By-law as annexed, or that it should in fact be annexed, but only that it be shown that the copy produced is the copy received from the Clerk. *Bessey and Grantham*, 11 U. C. Q. B. 156. But the Court will not, without sufficient cause shewn on affidavit, dispense with the production of the copy of By-law, certified as the section requires. *In re Buchart and Brant*, 6 U. C. C. P. 134.

(*h*) see note *a* to this section.

(*i*) The meaning is that the Corporation shall have four full days *at least* to answer the rule. See note *a* to sec. 111. The time under the old Act was at least *eight* days. Where, under the old Act, the rule *nisi* was obtained near the end of the term, and made returnable eight days after service, and defendants appeared during the following term and objected that the rule should have been to shew cause on a day certain held that the objection, even if good, was waived by appearance. *Perry* v. *Whitby*, 13 U. C. Q. B. 564.

(*j*) The rule need not be intituled "The Queen *v.* The Municipal Corporation of," &c., but may be "In the matter of A. B. and The Corporation," &c. *In re Conger and Peterborough*, 8 U. C. Q. B. 349. *McLean and St. Catharines*, 27 U. C. Q. B. 603. The service is to be "on the Corporation," and, therefore, where the motion was to quash a By-law for taking stock in a railway company, on the return of the rule, and though the Corporation did not shew cause, the Court declined to hear counsel for the railway company. *In re Billings and Gloucester*, 10 U. C. Q. B. 273. In a subsequent case, where the Corporation declined to shew cause, the Court refused to hear counsel for some of the ratepayers of the Corporation. *In re Webb* v. *Yarmouth*, Q. B. H. T. 1866. See further, *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502.

(*k*) A superintending power of a judicial character is necessary to be exercised in order to keep Municipal bodies, as well as corporate bodies of all other kinds, within legal and reasonable limits in the exercise of their powers. There has always been such a power where the English law has prevailed; without it great oppression might be exercised and great confusion created. It is a description of control from which any Court to whom it is committed would rather be relieved. In the nature of things the Supreme Legislature could not exercise such a control so as to meet the exigency of each case; it is, however, in their power to vest the authority where they think best. As the law stands, it can only be summarily exercised in the Superior Common Law Courts. These, while they retain it, must exercise it in each case under the same sense of responsibility as they discharge their other duties. *Per* Robinson, C. J., in *In re Barclay and Darlington*, 12 U. C. Q. B. 92. The power, so far

in whole or in part, for illegality, and, according to the

as the quashing of By-laws, orders and resolutions is concerned, depends wholly on this statute: *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626; and that power will in general be exercised only when there is some illegality apparent on the face of the By-law, &c. *In re Hill and Walsingham*, 9 U. C. Q. B. 310; *Grierson* v. *Ontario*, *Ib.* 623; *In re Standley and Vespra and Sunnidale*, 17 U. C. Q. B. 69; *In re Scarlett and York*, 14 U. C. C. P. 161; *In re Secord and Lincoln*, 24 U. C. Q. B. 142; or where the By-law, order or resolution is shewn to have been passed under circumstances which, by the express terms of the statute make it illegal. *In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 232; *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. The exercise of the power is in every case discretionary; for it is not said the Court *shall* quash, but that it *may* quash, &c. *In re Hodgson and York, Peel and Ontario*, 13 U.C. Q. B. 268. In other words, the statute confers an authority with a discretion to abstain from its exercise. *Per* Draper, C. J., in *In re Michie and Toronto*, 11 U. C. C. P. 386; see also *Bogart and Belleville*, 6 U. C. C. P. 428; *In re Simmons and Chatham*, 21 U. C. Q. B. 75. And where the By-law is legal on its face, and a great length of time has been allowed to elapse unexplained, between the passing of the By-law and the motion, the Court will abstain from the exercise of its discretionary power. *In re Hill and Tecumseth*, 6 U. C. C. P. 297; *In re Cotter and Darlington*, 11 U. C. C. P. 265; *In re Grant and Toronto*, 12 U. C. C. P. 357; *In re Leddingham and Bentinck*, 29 U. C. Q. B. 206; especially if it be shown that work has been done under the By-law, money explained thereunder, or that the By-law has been otherwise so acted upon that its repeal would cause much inconvenience: *In re Hodgson and York, Peel and Ontario*, 13 U. C. Q. B. 268; *In re Ianson and Reach*, 19 U. C. Q. B. 591; *In re Michie and Toronto*, 11 U. C. C. P. 379; *In re Scarlett and York*, 14 U. C. C. P. 161; *In re Drope and Hamilton*, 25 U. C. Q. B. 363; *In re Platt and Toronto*, 33 U. C. Q. B. 53; *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502; and where a party complaining of a By-law permits a term of the Courts of Common Law to elapse without moving to quash it, the Court of Chancery will refuse to interfere by injunction to restrain the Municipality from proceeding to enforce the provisions of the By-law. *Carroll* v. *Perth*, 10 Grant 64; *Grier* v. *St. Vincent*, 12 Grant 330; *S. C.* 13 Grant 512, 518. But of course a By-law substantially illegal cannot (subject to the provisions of sec. 321 of this Act) afford any protection for what has been done under it, and so incidentally its validity may, in an action, be decided upon at Common Law by Common Law Courts. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. So on an application to quash a conviction for something done contrary to a By-law, the legality of the By-law, though not quashed, may be questioned. *The Queen* v. *Osler*, 32 U. C. Q. B. 324. If the By-law be not void without being quashed, all proceedings duly had under it while in force may be justified under it. *Barclay* v. *Darlington*, 5 U. C. C. P. 432. No action can be brought for anything done under it till the By-law is quashed. See sec. 328. It is no ground of illegality for quashing a By-law that it is not sealed with the seal of the Municipality, for unless so sealed it is not a legal By-law, and

result of the application, award costs for or against the Corporation. (*l*) 36 V. c. 48, s. 240.

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there is no jurisdiction to quash it as such. *In re Croft and Brooke*, 17 U. C. Q. B. 269. But in some cases that which was intended to be a By-law, and not in fact a By-law for the want of the corporate seal, may be looked upon as a "resolution or order," and so now subject to the summary jurisdiction of the Courts on application to quash. The Court has refused to quash a By-law on the ground that a quorum of the Council was not present at its passing. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. Where mere errors of calculation are charged, unless clearly made out, the Court will not quash the By-law. *Paffard and Lincoln*, 24 U. C. Q. B. 16. And even if shown to exist and to be extensive, the Court will lean strongly to the support of the By-law where it appears to have been acted upon. *Grierson and Ontario*, 9 U. C. Q. B. 623; *Secord and Lincoln*, 24 U. C. Q. B. 142. Where an enquiry is sought as to corrupt practices in the passing of a By-law, with a view to setting it aside, the proceeding must be by summons and be confined to the particulars finally given by the applicant. *Re Credit Valley Railway Co. and County of Peel Bonus*, 6 U. C. P. R. 62.

(*l*) The Court awards costs "*for* or *against* the Corporation" according "to the *result* of the application." See *Brown and York*, 9 U. C. Q. B. 453. But the rule is not imperative. Where it was shown that the applicant himself was a petitioner for the particular resolution moved against, costs were refused him though the resolution was quashed. *In re Morell and Toronto*, 22 U. C. C. P. 323. Where a Municipal Corporation, on being served with a rule *nisi*, repealed the By-law complained of, the Court, notwithstanding, obliged them to pay the costs of the application. *In re Coyne and Dunwich*, 9 U. C. Q. B. 309; *In re Coleman*, 9 U. C. C. P. 146. Where Municipal Councils act with an anxious desire to comply with the provisions of the Act, and with a view to the promotion of the public benefit, applications made in the interest of private individuals to quash a By-law, if unsuccessful, should be visited with costs to be paid to the Municipality. *Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 397, 398. Where, however, it appears that the Corporation by its defective By-law induced the application, costs will be refused to them. *Re Platt* v. *Toronto*, 33 U. C. Q. B. 53. Where the By-law moved against is confirmed by the Legislature before argument, the Legislature should make some provision for costs incurred. *In re Holden and Belleville*, 39 U. C. Q. B. 88. If the Corporation do not, when called upon, show cause to the rule, though the rule be discharged, no costs will be given to them. *Kelly and Toronto*, 23 U. C. Q. B. 425; *In re Wycott and Ernestown*, 38 U. C. Q. B. 533. Where the applicant only partially succeeds, it is not usual to give him costs. *Patterson and Gray*, 18 U. C. Q. B. 189; *Ex rel. McMullen and Caradoc*, 22 U. C. C. P. 356. The Court may apportion the costs between the parties according to the result. *Snell and Belleville*, 30 U. C. Q. B. 94; *Re Brodie and Bowmanville*, 38 U. C. Q. B. 580; *In re Holden and Belleville*, 39 U. C. Q. B. 88. Where the point raised was doubtful, the Court discharged the rule without costs. *In re Storms and Ernestown*, 39 U. C. Q. B. 353.

323. No application t
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Time within which application must be made.

323. No application to quash any such by-law, order or resolution, in whole or in part, shall be entertained by any Court unless such application is made to such Court within one year from the passing of such by-law, order or resolution, (*m*) except in the case of a by-law requiring the assent of electors or ratepayers, when such by-law has not been submitted to, or has not received the assent of such electors or ratepayers, and in such case an application to quash such by-law may be made at any time. (*n*) 36 V. c. 48, s. 241.

Exception.

Where, owing to the mistake of the application, the Christian name of the applicant was incorrectly stated in the copy of rule served, and the affidavits in answer were styled in like manner, and subsequently the mistake having been discovered, the Court, in making absolute the rule to quash the By law with costs, directed the costs incurred by the Corporation in consequence of the error to be deducted. *In re Thompson and Bedford et al.*, 21 U. C. Q. B. 545. Where the rule was discharged because the By-law was not sealed, it was discharged without costs. *In re Mottashed and Prince Edward*, 30 U. C. Q. B. 74.

(*m*) This is a limitation of the power conferred on the Superior Courts of Common Law by the preceding section. Before any limit was enacted by the Legislature, and without any reference thereto, the Courts required applications to quash to be made within a reasonable time. *Walton* v. *Monaghan*, 13 U. C. C. P. 401; *In re Bogart* v. *Belleville*, 6 U. C. C. P. 425; *Standley and Vespra*, 17 U. C. Q. B. 69; see further *Scarlett* v. *York*, 14 U. C. C. P. 161; *In re Drope and Hamilton*, 25 U. C. Q. B. 363; *In re Sheley and Windsor*, 23 U. C. Q. B. 569; *Leddingham and Bentinck*, 29 U. C. Q. B. 206; *In re Richardson and Board of Commissioners of Police for Toronto*, 38 U. C. Q. B. 621. The application under this section must be made "*within* one year after the passing of the By-law," &c. If not so made, *it shall not be entertained*. See *Smith* v. *Rooney*, 12 U. C. Q. B. 661, as to the meaning of similar words. It is in the discretion of the Court to require great promptness of application, and to refuse to quash a By-law, even though the application be made within the year. See remarks of Richards, C. J., in *Taylor and West Williams*, 30 U. C. Q. B. 348; see further *Carroll* v. *Perth*, 10 Grant 64; *Grier* v. *St. Vincent*, 12 Grant 330. It was at all times in the discretion of the Court to refuse to accede to an application to quash a By-law when great inconvenience would arise from the quashing. *In re Grant and Toronto*, 12 U. C. C. P. 357; see further note *k* to sec. 322. In the case of a By-law imposing a rate and specially promulgated, the application is not to be entertained after the term next after the third publication of the By-law. See sec. 321. Certain By-laws may be quashed in vacation. See sec. 326.

(*n*) If a By-law require the assent of the electors or ratepayers to render it valid, and no such assent be obtained, the By-law will be held void. See note *g* to sec. 286. And in such a case the application to quash the By-law "may be made at any time."

Time after which by-law cannot be quashed, if promulgated.

324. In case a by-law by which a rate is imposed has been promulgated in the manner herein before specified, (*o*) no application to quash the by-law shall be entertained (*p*) after the next Term of the Superior Courts of Common Law after the promulgation. (*q*) 36 V. c. 48, s. 242.

Quashing by-laws obtained by bribery, etc.

325. Any by-law the passage of which has been procured through or by means of any violation of the provisions of sections two hundred and first and two hundred and second of this Act, (*r*) shall be liable to be quashed upon any application to be made in conformity with the provisions hereinbefore contained. (*s*) 36 V. c. 48, s. 243.

Procedure in such case.

326. Before determing any application for the quashing of a by-law upon the ground that any of the provisions of the said two hundred and first and two hundred and second sections of this Act have been contravened in procuring the passing of the same, and if it is made to appear to a Judge of one of the Superior Courts of Law that probable grounds exist for a motion to quash such by-law, the Judge may make an order for an enquiry to be held, upon such notice to the parties affected as the Judge may direct concerning the said grounds, before the Judge of the County Court of the County in which the Municipality which passed the by-law is situate, and require that upon such enquiry all witnesses, both against and in support of such by-law, be orally examined and

Inquiry by County Judge.

(*o*) See secs. 319 and 320.

(*p*) See note *m* to sec. 323.

(*q*) The inconvenience of quashing a By-law imposing a rate, after it has been acted upon for months, is generally more than equal to the inconvenience of allowing a By-law, though technically defective, to exist. The effect of this section will be important, in curing technical defects in By-laws imposing rates. The limitation applies to By-laws which have been specially promulgated, and commences at the time of such promulgation. Per Draper, C. J., in *Bogart* v. *Belleville*, 6 U. C. C. P. 425; and where the By-law imposes a rate, it would be well for the applicant moving against it more than a Term after its passing, to shew that it has not been specially promulgated. *In re Grant and Toronto*, 12 U. C. C. P. 357; but see also remarks of Draper, C. J., in *Bogart* v. *Belleville*, 6 U. C. C. P. 425. If the By-law moved against be one requiring the assent of electors or ratepayers, and it be shown that such By-law was not submitted to the electors or ratepayers, the application to quash it may be made at any time. Ser note *n* to sec. 323.

(*r*) See notes to secs. 201 and 202.

(*s*) See sec. 322.

cross-examined upon oath before the said County Court Judge. (*t*)

2. The said County Court Judge shall thereupon return the evidence so taken before him to the Clerk of the Crown and Pleas at Toronto; and after the return of said evidence, and upon reading the same, any Judge of the said Superior Courts may, upon notice to such of the parties concerned as he thinks proper, proceed to hear and determine the question; (*u*) and if the grounds therefor appear to him to be satisfactorily established, he may make an order for quashing said by-law, and he may order the costs attending said proceedings to be paid by the parties or any of them who have supported said by-law; and if it appears that the application to quash said by-law ought to be dismissed, the said Judge may so order, and in his discretion award costs, to be paid by the persons applying to quash said by-law. (*v*) 36 V. c. 48, s. 244.

Return of evidence.

Judgment.

Costs.

327. After an order has been made by a Judge directing an inquiry, and after a copy of such order has been left with the Clerk of the Corporation of which the by-law is in question, all further proceedings upon the by-law shall be stayed until after the disposal of the application in respect of which the enquiry has been directed; (*a*) but if the matter is not prosecuted to the satisfaction of the Judge he may remove the stay of proceedings. 36 V. c. 48, s. 245.

Stay of proceedings on the by-law.

(*t*) This section provides for an "inquiry," and afterwards for "a hearing and determination." The inquiry is to be held before the Judge of the County Court, and the hearing and determination before any Judge of one of the Superior Courts of Law; but before an inquiry can be ordered, "probable grounds" for a motion to quash the By-law must be shown to the Superior Court Judge to whom the application is made. On such inquiry all witnesses, both against and in support of the By-law, shall be orally examined and cross-examined before the County Judge; but apparently no express provision is made for compelling the attendance of witnesses on the inquiry; in all probability their attendance may be compelled by subpœna issued out of the Court in which the application is pending.

(*u*) As to what is a hearing and determination, see *The King* v. *Justices of Kent*, 9 B. & C. 283, and *In re Judge of Perth and Robinson*, 12 U. C. C. P. 252.

(*v*) See note *l* to sec. 322.

(*a*) A stay of proceedings on an application to quash a By-law is a novelty. No provision is made for it on an ordinary application to quash a By-law. It is not stated in what manner the stay of proceedings under this section is to be enforced. The ordinary mode of

Municipality to be liable for acts done under illegal by-law.

328. In case a by-law, order or resolution is illegal in whole or in part, (*b*) and in case anything has been done under it (*c*) which, by reason of such illegality, gives any person a right of action, (*d*) no such action shall be brought until one month has elapsed after the by-law, order or resolution has been quashed or repealed, nor until one month's notice in writing of the intention to bring such action has been given to the Corporation, (*e*) and every such action shall

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enforcing a rule of the Queen's Bench or Common Pleas, is by attachment, in the nature of contempt. See *In re Allen*, 31 U. C. Q. B. 458.

(*b*) It is not necessary that the illegality should appear on the face of the By-law in order to bring into operation the provisions of this section. If, for example, in the case of a road, it be run through an orchard contrary to the statute, there can be no question about the By-law being illegal. In such a case the party must apply and have the By-law quashed, before he can sue for anything done under the By-law. There may be cases where parties might maintain actions without taking that course; but it is apprehended the effect of the section is to deprive parties of any action whatever against any one, so long as the By-law has neither been quashed nor repealed, whenever it is made to appear that what is complained of was done under a By-law. *Black* v. *White et al.*, 18 U. C. Q. B. 371; *Smith* v. *Toronto*, 7 U. C. L. J. 239. Whenever the By-law be quashed or repealed, the action must be brought against the Corporation alone, and not against the person acting under it. *Black* v. *White et al.*, 18 U. C. Q. B. 371. The quashing or repeal of the By-law is not to be regarded as taking the defence from parties acting under the By-law while in force; for all proceedings had under it while in force, if legalized by it, may, notwithstanding its repeal or being quashed, be justified under it. *Per* Macaulay, C. J., in *Barclay* v. *Darlington*, 5 U. C. C. P. 438.

(*c*) Are these words to be held to mean only anything done in the execution of the By-law or for the purpose of carrying it out, or are they not to be construed to mean also anything done in reliance on the legality of the By-law, as, entering upon land which, if the By-law be valid, is a public highway, but which, if the By-law be not valid, leaves the parties exposed to be treated as trespassers? Unless the latter construction be adopted, the Act will in this respect fail in many cases of the effect which must have been intended. *Per* Robinson, C. J., in *Black* v. *White et al.*, 18 U. C. Q. B. 369.

(*d*) The right of action intended is a right of action for the recovery of damages, in which it may be important to tender amends. It does not therefore apply to actions of replevin, when brought merely to try the right to the property replevied. *Wilson* v. *Middlesex*, 18 U. C. Q. B. 348; *Haynes* v. *Copeland et al.*, 18 U. C. C. P. 150.

(*e*) The section declares that no action shall be brought until the By-law, &c., has been quashed or repealed for one calendar month,

be brought against the corporation alone, and not against any person acting under the by-law, order or resolution. (*f*) 36 V. c. 48, s. 246. Notice of action.

329. In case the Corporation tenders amends to the plaintiff or his attorney, (*g*) if such tender is pleaded and (if Tender of amends.

and this, as already mentioned, precludes the bringing of the action while the By-law, &c., subsists, see *Carmichael* v. *Slater*, 9 U. C. C. P. 423; but it does not follow that the Statutes of Limitations only begin to run from the time of quashing or repealing. It is clear that actions may be brought (though only against the Corporation) for things done under the illegal By-law, &c., that is things done in pursuance of, or in execution of it, or under its authority while in force. The right of action may be held to vest the moment the thing is done, and, if so, every statute limiting a right of action of the particular kind would begin to run forthwith. Were it not so, very stale matters might be made grounds of action against Municipal Councils, and which (in the case of individuals) would be outlawed.

(*f*) It appears, therefore, that if anything has been done under a By-law, &c., which, being illegal, gives any person a right of action—

1. The action shall be brought against the Corporation that passed the By-law, &c., and not against any person who acted under it.

2. The action is not to be brought while the By-law, &c., is in force, nor until one calendar month has elapsed after the By-law, &c., is quashed or repealed.

3. Before bringing it, one calendar month's notice in writing of the intention to bring it must first be given to the Corporation.

4. Whether notice of action can be given *before* the By-law, &c., is quashed or repealed is a question, but material only in case the time for bringing the action is limited, and the time about to expire. See *McKenzie* v. *Kingston*, 13 U. C. Q. B. 634.

(*g*) The law as to tender is not much understood by the general public.

1. *Definition.*—A tender in this section means the offering of money in satisfaction of a cause of action arising out of something done under a By-law, order or resolution, quashed or repealed.

2. *How made.*—A tender must be unqualified and unconditional. *Mitchell* v. *King*, 6 C. & P. 237; *Jennings* v. *Major*, 8 C. & P. 61; *Strong* v. *Harvey*, 3 Bing. 304. Whether conditional or not, is a question for the jury. *Marsden* v. *Goode*, 2 C. & K. 133; *Milburn* v. *Milburn*, 4 U. C. Q. B. 179. Strictly speaking, the tender ought to be of specie; but a tender of bank notes, if not objected to on the ground of being notes, will be good. *Blow* v. *Russell*, 1 C. & P. 365. The precise sum intended, or more, must be tendered, without requiring change. *Brady* v. *Jones*, 2 D. & R. 305. The money ought to be actually produced, *Kraus* v. *Arnold*, 7 Moo. 59; *Leatherdale* v. *Sweepstone*, 3 C. & P. 342; *Thompson* v. *Hamilton*, 5 O. S. 111; but this may be dispensed with by the party to whom the tender is made, as, where defendant said he had the money in his

traversed) proved, (*h*) and if no more than the amount tendered is recovered, the plaintiff shall have no costs, but costs shall be taxed to the defendant, and set off against the verdict, and the balance due to either party shall be recovered as in ordinary cases. (*i*) 36 V. c. 48, s. 247.

DIVISION VI.—BY-LAWS CREATING DEBTS.

Requisite formalities. *Secs.* 330-332.
Assent of electors, when required. *Sec.* 333.
When special Council meeting sufficient. *Sec.* 334.
When repealable and when not. *Secs.* 335, 336.
Illegal repeal to be ignored. *Sec.* 337.
Purchase of Public Works. *Sec.* 338.
Rates to be imposed therefor. *Sec.* 339.

By-laws for contracting debts.

330. Every Municipal Council may, under the formalities required by law, pass by-laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the rateable property of the Municipality, for

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pocket, and plaintiff said, "You need not give yourself the trouble of offering it, for I will not take it." *Douglass* v. *Patrick*, 3 T. R. 684; *Jackson* v. *Jacob*, 3 Bing. N. C. 869; *Llado* v. *Morgan*, 23 U. C. C. P. 517; *Matheson* v. *Kelly*, 24 U. C. C. P. 598. A receipt for the money cannot be insisted upon. *Richardson* v. *Jackson*, 8 M. & W. 298; *Cole* v. *Blake*, 1 Peak 179.

3. *To whom made.*—Under this section the amends may be tendered "to the plaintiff or his attorney." A tender, strictly speaking, ought to be made before the writ is sued out, and if made to the plaintiff himself would be more satisfactory than if made to his attorney. But if the attorney is authorized to settle the business, and writes to defendants previous to suing out the writ warning them of the action unless they pay him the money or the like, the tender may clearly be made to the attorney. Sellon, Pr. I. 315. The attorney must, under any circumstances, be one employed in the particular action, and not merely one generally employed by plaintiff. *Ib.*

(*h*) It is not enacted that the tender may be given in evidence under the general issue, and it is apprehended that it ought to be specially pleaded.

(*i*) The object of the tender is to prevent useless litigation. The tender admits a cause of action, but limits the amount of damages arising therefrom. The party tendering in effect says, "I admit you have a right to bring this action, but I do not admit that you are entitled to any damages beyond the amount tendered." If plaintiff decline the tender, and recover no more than the amount tendered, he loses his costs, and, worse still, is compelled to pay the costs of defendant, which may be set off against his verdict.

any purpose within the jurisdiction of the Council, (*k*) but no such by-law shall be valid which is not in accordance with the following restrictions and provisions, (*l*) except in so far as is otherwise provided in the next two sections of this Act: Terms of.

1. The by-law, if not for creating a debt for the purchase of public works, (*m*) shall name a day in the financial year When to take effect.

(*k*) The power here conferred is under the formalities required by law.

1. To pass By-laws for contracting debts by borrowing money or otherwise.

2. And for levying rates for the payment of such debts on the ratable property of the Municipality, for any purpose within the jurisdiction of the Council.

In ordinary trading, Corporations have clearly an implied power to borrow money for the purposes of their business, and to give securities for the repayment of the same. *Curtis* v. *Leavitt*, 15 N. Y. 9; *Barry* v. *Merchants' Exchange*, 1 Sandf. Ch. (N.Y.) 280; *Beers* v. *Phœnix Glass Co.* 14 Barb. (N. Y.) 358; *Fay* v. *Noble*, 12 Cush. (Mass.) 1; *Lucas* v. *Pitney*, 3 Dutch. (N. J.) 221; *Stratton* v. *Allen*, 16 N. J. Eq. 229; but whether such a power is to be implied in the case of a Municipal Corporation is not so clear. See *Bank* v. *Chillicothe*, 7 Ohio, Part II. 31; *State* v. *Maddison*, 7 Wis. 582; *Mills* v. *Gleason*, 11 Wis. 470; *City* v. *Lamson*, 9 Wall. (U. S.) 477; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Canal Bank* v. *Supervisors*, 5 Denio. (N.Y.) 517; *Barker* v. *Loomis*, 6 Hill. (N. Y.) 463; *People* v. *Brennan*, 39 Barb. (N. Y.) 522. The power, however, is here in express terms conferred subject to certain limitations. Express power to borrow implies the power to give security to the lender. *Railroad Co.* v. *Evansville*, 15 Ind. 395; *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496; *Middleton* v. *Alleghany Co.*, 37 Pa. St. 237; *Seybert* v. *Pittsburg*, 1 Wall. 272; *De Voss* v. *Richmond*, 18 Gratt. (Va.) 338; *Rogers* v. *Burlington*, 3 Wall. 654; *Galena* v. *Corwith*, 48 Ill. 423. It has been held that a Municipal Corporation has no power to borrow at a greater rate of interest than six per cent. See *Wilson and The County of Elgin*, 13 U. C. Q. B. 218; but see now *North Gwillimbury* v. *Moore*, 15 C. P. 445; *In re Nichol and Alnwick*, 41 U. C. Q. B. 577. Where the money is borrowed for one purpose it cannot in general be applied by the Municipal Council to a different purpose. *Brogdin* v. *The Bank of Upper Canada*, 13 Grant 544; see further *Baxter* v. *Kerr*, 23 Grant 367.

(*l*) The power to raise money by Municipal taxation is liable to abuse. For the security of the creditor, as well as for the protection of the ratepayers, restrictions are necessary. It is here expressly declared that no such By-law as authorized shall be valid if not in accordance with the restrictions and provisions following. The statute is not simply, as formerly, directory. See *In re Sells and St. Thomas*, 3 U. C. C. P. 286, 291; see further *Baltimore* v. *Gill*, 31 Md. 375; *Weston* v. *Syracuse*, 17 N. Y. 110; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Smith* v. *Morse*, 2 Cal. 524; *Galena* v. *Corwith*, 48 Ill. 423.

(*m*) As to which see sec. 338.

in which the same is passed, when the by-law is to take effect; (*n*)

When debt to be redeemed.

2. If not contracted for gas or water-works, or for the purchase of public works, according to the statutes relating thereto, the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such by-law takes effect; and if the debt is contracted for gas or water-works, the same shall in like manner be paid in thirty years at furthest from the day on which the by-law takes effect; (*o*)

If for gas or water works, etc.

To provide a yearly rate.

3. The by-law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year for paying the debt and interest; (*p*)

(*n*) It seems that the Legislature intend that in the body of every By-law shall be stated a day on which the same is to take effect. The date on which a By-law is to take effect does not necessarily form a part thereof, though it may be the practice of some officer of the Corporation to mark the day of its passing on it. "The Legislature, however, meant that it should not be necessary to refer to any thing extrinsic to the By-law for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the By-law under which it was issued were legal, and might, on that account, require to see when the By-law took effect." *Per* Draper, C. J., *In re Michie and Toronto*, 11 U. C. C. P. 384. But where no day is named and nothing has been done under the By-law, it ought to be quashed. *In re Nichol and Alnwick*, 41 U. C. Q. B. 577. The day named in the By-law for it to take effect must be in the same financial year in which the By-law is passed. It is not intended that the Municipal Council shall have power to postpone the operation of such a By-law to the next or any subsequent year.

(*o*) The power to contract a debt payable at a future period, and to secure its payment at that period by the ratepayers then living, is founded on the principle that the object for which the debt is contracted is one which will benefit future ratepayers as well as those living at the time the debt is contracted. This is quite consistent with the policy of Municipal law, as explained in notes to sec. 340. But, unless provided to the contrary, as in the case of public works, &c., the debentures must be payable in twenty years at furthest from the day on which the By-law takes effect, and the By-law must be made to take effect in the same financial year in which it was passed. See preceding note. If the debt be contracted for gas or water works thirty years are allowed.

(*p*) The By-law is to "settle" the rate, and not leave it to a Municipal officer to be computed. See *The Canada Co.* v. *Middlesex*, 10 U. C. Q. B. 93. And when so settled it is to be a special rate. *Mellish* v. *Brantford*, 2 U. C. C. P. 35. And not only so, but "an *equal* special *rate per annum*," that is, the rate is to be equal in each

4. Such special rate shall be sufficient, according to the amount of rateable property appearing by the last revised assessment roll, to discharge the debt and interest when respectively payable; (*q*) Amount thereof.

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succeeding year. The rate under this subsection must be equal and uniform. See *In re Grierson and Ontario*, 9 U. C. Q. B. 623. "The statute says a special rate per annum to be levied in each year—not special rates to be yearly imposed, but a rate indicative of uniformity." *Per* Macaulay, C. J., *In re Sells and St. Thomas*, 3 U. C. C. P. 291. "The rate is throughout spoken of as a rate, not rates, implying uniformity, although for two objects, namely—the payment of the interest becoming due annually, and a sinking fund to defray the principal when the same shall become due." *Ib.* 292. "Otherwise an arbitrary distribution of the burthen might be made, and numerous debts be deferred and loaded upon Municipalities at distant periods." *Ib.* 291. "I think that the whole spirit of the statutes shows, that whatever the rate is, it must be equal in each successive year, and not fluctuating according to the arbitrary discretion of the Municipality creating the debt, or raising the loan and passing the By-law for the liquidation thereof." *Ib.* 292. Therefore a By-law providing for payment of the debt created, as per the following schedule—

1852 . . .	£0	1	$0\frac{1}{2}$	in the pound	£311	3 $11\frac{1}{2}$
1853. . . .	0	0	$4\frac{1}{2}$	" "	111	18 $4\frac{1}{2}$
1854 . . .	0	0	$4\frac{3}{4}$	" "	118	1 2
1855. . . .	0	0	$4\frac{5}{6}$	" "	119	1 $7\frac{1}{2}$
1856 . . .	0	0	$6\frac{1}{4}$	" "	155	11 $11\frac{3}{4}$
					£815	17 $1\frac{1}{4}$

—was held bad. *In re Sells and St. Thomas*, 3 U. C. C. P. 288. The enactment is applicable to By-laws granting to Trustees of School Sections authority to issue debentures for the erection of a School House. *In re McIntyre and Elderslie*, 27 U. C. C. P. 58. But it is now by statute provided that the Municipal Council may, in its discretion, make the principal of the debt repayable by annual instalments (sec. 332), in which case, however, the instalments are "to be of such amounts that the aggregate amount payable for principal and interest in any year shall be *equal*, as nearly as may be, to what is payable for principal and interest during each of the other years" of the period within which the debt is to be paid. It has been held that Municipal Corporations cannot raise money at a rate of interest exceeding six per cent. *Wilson and The Municipal Council of Elgin*, 13 U. C. Q. B. 218; but see now *North Gwillimbury* v. *Moore*, 15 U. C. C. P. 445; *In re Nichol and Alnwick*, 41 U. C. Q. B. 577. See sec. 332.

(*q*) It does not appear to be necessary that the By-law should set forth the *estimates* on which it is founded. The Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. If the rate is demonstrated to be insufficient the By-law may be quashed. The Corporation has no power by resolution to appropriate money from the investment of the sinking

To be irrespective of future increase of rateable property, etc.

5. The amount of rateable property shall be ascertained irrespective of any future increase of the rateable property of the Municipality, and of any income in the nature of tolls, interest or dividends, from the work, or from any stock, share or interest in the work, upon which the money to be so raised or any part thereof is intended to be invested, and also irrespective of any income from the temporary investment of the sinking fund or of any part thereof; (*r*)

Recitals in;

6. The by-law, unless it is for a work payable by local assessment, (*s*) shall recite: (*t*)

(1) Amount and object of the debt;

(*a.*) The amount of the debt which such new by-law is intended to create, and, in some brief and general terms, the object for which it is to be created;

(2) Amount to be raised annually;

(*b.*) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest;

(3) The value of the rateable property:

(*c.*) The amount of the whole rateable property of the Municipality according to the last revised, or revised and equalized assessment roll;

(4) Amount of existing debt;

(*d.*) The amount of the existing debt of the Municipality, showing the interest and principal separately, and how much (if any) principal or interest is in arrear; and

(5) Special rate for interest and sinking fund.

(*e.*) The annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal of the new debt, according to this Act, or—in case the debt is payable under the provisions of section three

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fund to any other purpose. *Re Barber and Ottawa*, 39 U. C. Q. B. 406.

(*r*) It does not appear to be necessary that the By-law should state the rate to be calculated at so much in the dollar on the *actual* value of the rateable property of the Municipality. *Tylee* v. *Waterloo*, 9 U. C. Q. B. 572. In the absence of anything to the contrary, the Court will intend that the Council has acted according to law. *Ib.* The Council is empowered to apply surplus income and other surplus funds to the payment of the debt. Sec. 359.

(*s*) As to which see sec. 331.

(*t*) It was at one time held that the omission of a prescribed recital did not invalidate the By-law; that the statute was directory and not imperative. See *In re Sells and St. Thomas*, 3 U. C. C. P. 291; see, however, the following note.

hundred and thirty-two—for paying the instalments of principal and interest as they respectively become payable. (*u*) 36 V. c. 48, s. 248.

331. If the by-law is for a work payable by local assessment, it shall recite: (*a*)

By-law for a work payable by local assessment must recite—

(*u*) The By-law should describe the debts and their amounts. See *Canada Co.* v. *Middlesex*, 10 U. C. Q. B. 93; *Ex parte Hayes and Toronto*, 7 U. C. C. P. 255. These may be shown in the recitals of the By-law. Where a By-law recited that the amount of the whole ratable property of the Township, according to the last assessment returns, was £114,756, and that it would require the annual rate of 2½d. in the pound as a special rate for payment, &c., and then enacted that a special rate of 2½d. should be levied to pay the principal and interest of the loan to be raised under the By-law, and that the proceeds of such special rate should be applied solely to the payment, &c., until the same be fully paid and satisfied: *Held*, that the recital as to the amount of ratable property and the assessment returns was sufficient, and that it sufficiently appeared that the amount was to be raised in each year. *In re Cameron and East Nissouri*, 13 U. C. Q. B. 190. In one part of the By-law the Reeve was empowered to issue debentures for such sums as should be from time to time required for the purposes mentioned, but not to exceed in the whole £10,000. In subsequent clauses a special rate was imposed to pay "the said sum of £10,000," and the application of "the said sum of £10,000" was pointed out. The debentures were directed to be made payable "within twenty years of the time that this By-law shall come into operation." *Held*, that the amount of the loan, and the time when the debentures were to be made payable, was stated with sufficient certainty. *Ib.* Where a By-law provided that the site of an old town-hall should be disposed of, and any money above the proceeds of the old hall required for the erection of a new one, should be levied on the ratable property in the Municipality, but did not fix the amount or the rate to be levied, this part of the By-law was held bad. *In re Hawke and Wellesley*, 13 U. C. Q. B. 636. When errors in computation only are shown in a By-law, though extensive, the Court will lean strongly to support it, especially when it has been acted upon. *Secord and Lincoln*, 24 U. C. Q. B. 142; *Grierson and Ontario*, 9 U. C. Q. B. 623. Not only the rate must be mentioned in the By-law, but the amount to be raised thereby, see *Tylee and Waterloo*, 9 U. C. Q. B. 572, and also the purpose or object for which it is required. *Ib.* Thus, "to pay . . . two debentures held by William Allan, for erecting the court-house in said district," *Ib.* 588, or "for the purpose of liquidating the sum of £1,500 due to the Gore Bank, and the sum of £500 due by the District to Alexander Drysdale, Esquire." *Ib.* Besides, the By-law must recite the amount of the whole ratable property of the Municipality, according to the last revised or revised and equalized assessment roll. See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345.

(*a*) See note *t* to section 330.

Amount and object of debt;

(*a.*) The amount of the debt which such by-law is intended to create, (*b*) and, in some brief and general terms, the object for which it is to be created;

Amount to be raised annually;

(*b.*) The total amount required by this Act to be raised annually by special rate for paying the debt and interest under the by-law;

Value of real property rateable;

(*c.*) The value of the whole real property rateable under the by-law, as ascertained and finally determined as aforesaid;

Special rate for interest and sinking fund, etc.

(*d.*) The annual special rate in the dollar or per foot frontage, or otherwise, as the case may be, for paying the interest, and creating a yearly sinking fund for paying the principal of the debt, or for discharging instalments of principal, according to the foregoing provisions of this Act, or—in case the debt is payable under the provisions of section three hundred and thirty-two—for paying the instalments of principal and interest as they respectively become payable;

That debt created on security of special rate.

(*e.*) That the debt is created on the security of the special rate settled by the by-law, and on that security only. 36 V. c. 48, s. 249.

Municipal council may make principal repayable by equal annual instalments.

332. In any case of passing a by-law for contracting a debt, by borrowing money for any purpose, (*c*) the Municipal Council may in its discretion make the principal of such debt repayable by annual instalments during the currency of the period (not exceeding thirty years, if the debt is for gas or water works, and not exceeding twenty years if the debt is for any other purpose) within which the debt is to be discharged; such instalments to be of such amounts that the aggregate amount payable for principal and interest in any year shall be equal, as nearly as may be, to what is payable for principal and interest during each of the other years of such period; and may issue the debentures of the Municipal Corporation for the amounts, and payable at the times, corresponding with such instalments, together with interest, annually or semi-annually, as may be set forth and provided in such by-law. (*d*)

(*b*) See note *u* to sec. 330.

(*c*) See note *k* to sec. 330.

(*d*) The ordinary mode is to provide for the raising of a certain amount for the annual interest and a certain amount for the annual sinking fund, so as, within the period specified in the By-law, to discharge the debt and interest. See sub-s. 3 & 4 of sec. 330, and notes

What by-law shall set out.

2. Such by-law shall set forth the annual special rate to be raised in each year during the period of the currency of the debt which shall be sufficient according to the amount of rateable property, appearing by the last revised or revised and equalized assessment rolls before the passing of the by-law, to discharge the several instalments of principal and the interest accruing due on said debt, as the said instalments and interest become respectively payable, according to the terms of said by-law; (*e*) and, in cases within this section, it shall not be necessary that any provision be made for the creation of a sinking fund. 36 V. c. 48, s. 250. (*f*)

By-laws for raising money not for ordinary expenses must (with certain exceptions) receive assent of electors.

333. Every By-law (except for drainage, as provided for under the five hundred and twenty-ninth section of this Act, or for a work payable entirely by local assessment) (*g*) for raising upon the credit of the Municipality any money not required for its ordinary expenditure, and not payable within the same municipal year, shall, before the final passing thereof, receive the assent of the electors of the Municipality in the manner provided for in the two hundred and eighty-sixth and following sections of this Act; (*h*) except that in Counties the

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thereto. But the Council in its discretion may now, under this section, make the principal repayable by annual instalments. When this mode is adopted, it obviates the necessity for the accumulation and investment of the sinking fund. But still there is the limitation that the instalments shall be "of such amounts that the aggregate amount payable for principal and interest in any year shall be *equal*, as nearly as may be, to what is payable for principal and interest during each of the other years" of such period. Had the limitation been that the instalments should be equal in each year, it would have been more easily understood; but it applies as well to the interest as the principal, and it is declared that the aggregate amount for principal and interest in any year shall be equal, as nearly as may be, to what is payable for principal and interest during each of the *other* years. With each payment of an instalment for principal, the interest would, under ordinary circumstances, be reduced, and so fluctuate from year to year. Whether this would be a compliance with the provision that the aggregate in each year for principal and interest shall be equal, "as nearly as may be," remains to be decided.

(*e*) See notes *p* and *q* to s. 330.

(*f*) For reasons already explained in note *d* to this section.

(*g*) See secs. 331.

(*h*) "I incline to think that any appropriation of moneys for other than ordinary purposes, whether payable within the year or not, requires the express sanction of the ratepayers. I am led to

Exception as to county by-law for contracting extra debts not exceeding in any year $20,000.

County Council may raise by by-law or by-laws, without submitting the same for the assent of the electors of such County or Counties, for contracting debts or loans, any sum or sums not exceeding in any one year twenty thousand dollars over and above the sums required for its ordinary expenditure. (i) 36 V. c. 48 s. 251.

Certain by-laws of county council not to be

334. No such by-law of a County Council for contracting any such debt or loan for an amount not exceeding in any one year twenty thousand dollars over and above the sums

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this conclusion from the exception in regard to County Councils." *Per* Spragge, V.C., in *Edinburgh Life Assurance Co.* v. *St. Catharines*, 10 Grant 388. By an Act of the Legislature the Town of St. Catharines was authorized to issue debentures to the amount of £45,248, for the liquidation of which a special rate was directed to be levied, the proceeds of which were directed to be invested and form a sinking fund for this purpose. By the same Act the Town was prohibited from passing any By-law to create any new debt extending beyond the year in which the By-law was passed, except for the construction of water works, until the debt was reduced to £25,000. The special rate authorized to be imposed had been duly levied and collected, but instead of investing the same to form a sinking fund for the payment off of the debentures, it was alleged it had been applied to the general purposes of the Town. The defendants denied the misapplication of the fund, but did not shew how it had been applied. And, and with a view of inducing the County Council to remove the County Town of Lincoln from Niagara to St. Catharines, the Town Council of St. Catharines, without any By-law authorizing the same, contracted with certain builders to erect a gaol and court house for the use of the County, at an outlay of £3,000, to be completed in two years. Upon an application made at the instance of the holders of the debentures issued under the first mentioned Act, the Court restrained the Town from suffering or permitting the buildings to be proceeded with. On an appeal to the full Court the injunction was dissolved, it appearing that the contract which had been entered into between the Corporation and the contractor had been cancelled, and that no liability had been incurred by the Corporation extending beyond the current year. *Ib.* If it had been shown that any Act of the Corporation would have had the effect of incurring a liability payable in a future year, the injunction would have been retained to the hearing. *Ib.*

(*i*) It will be observed that the exception only extends to the raising of any sum or sums, not exceeding in any one year $20,000 "over and above the sums required for ordinary expenditure." The general rule would appear to be that a By-law of any Municipal Council, to raise money not required for ordinary expenditure, must be submitted to the electors. See preceding note. To that rule an exception is created in favour of a County Municipality under the circumstances here stated, and subject to the restrictions contained in the next section.

required for its ordinary expenditure, (*k*) shall be valid, (*l*) unless (*m*) the same is passed at a meeting of the Council specially called for the purpose of considering the same, (*n*) and held not less than three months after a copy of such by-law, as the same is ultimately passed, (*o*) together with a notice of the day appointed for such meeting, has been published in some newspaper issued weekly or oftener within the County (as constituted for judicial purposes), or if there is no such public newspaper, then in a public newspaper published nearest to the County, (*p*) which said notice may be to the effect following :— (*q*)

valid unless passed at meeting specially called and held three months after notice, &c.

The above is a true copy of a proposed by-law to be taken into consideration by the Municipality of the County (*or* United Counties), of , at , in the said County (*or* United Counties), on the day of , 18 , at the hour of o'clock in the noon, at which time and place the members of the Council are hereby required to attend for the purpose aforesaid.

Form of notice.

G. H.,
Clerk.

37 V. c. 16, s. 8. 40 V. c. 7, *Sched.* A (175.)

335. Where part only of a sum of money provided for by a by-law has been raised, the Council may repeal the by-law as to any part of the residue and as to a proportionate

When part only of money raised, by-

(*k*) See note *h* to sec. 333.

(*l*) In other words, shall be illegal. As to setting aside a By-law for illegality, see sec. 322 and notes thereto.

(*m*) The requisites to the validity of the By-law appear to be—

1. That it be passed at a meeting specially called for the purpose of considering the same.

2. Such meeting to be held not less than three months after a copy of the By-law as the same is ultimately passed, together with a notice of the day appointed for the meeting, has been published.

3. Such publication to be in some newspaper issued weekly or oftener within the County as constituted for judicial purposes, or, if there be no such public newspaper, then in a public newspaper published nearest the County.

(*n*) See note *e* to s. 228.

(*o*) If, between publication and passing, a material alteration is made in the By-law, the By-law will be invalid. *In re Bryant and Pittsburgh*, 13 U. C. Q. B. 347.

(*p*) See note *j* to s. 286.

(*q*) See note *s.* to s. 320.

law may be repealed as residue.

part of the special rate imposed therefor, (*r*) provided the repealing by-law recites the facts on which it is founded, and is appointed to take effect on the thirty-first day of December in the year of its passing, and does not affect any rates due, or penalties incurred before that day, and provided the by-law is first approved by the Lieutenant-Governor in Council. 36 V. c. 48, s. 253.

Proviso.

Until debt paid, certain by-laws cannot be repealed.

336. After a debt has been contracted, the Council shall not, until the debt and interest have been paid, repeal the by-law under which the debt was contracted, or any by-law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the Council shall not alter a by-law providing any such rate, so as to diminish the amount to be levied under the by-law, except in the cases herein authorized, (*s*) and shall not apply to any other purpose any money of the corporation which, not having been previously otherwise appropriated by any by-law or resolution,

Nor altered.

Exceptions.

(*r*) It is an erroneous impression, when once a Municipal Council has determined to contract a loan, in order to aid, for example, in advancing a public work, that the whole matter of the By-law passed for that object is entirely out of their control, and not merely such parts of it as are necessary for securing those who have advanced money under its provisions. *In re Hill and Walsingham*, 9 U. C. Q. B. 310.

No By-law passed under this section can take effect—

1. Unless it recites the facts on which it is founded.

2. Unless it be appointed to take effect on the 31st December in the year of its passing.

3. Nor if it affect any rates due, or penalties incurred, before the day it takes effect.

4. Unless it be approved by the Lieutenant-Governor in Council.

(*s*) A Municipal Council has in general power to repeal and alter the By-laws of the Municipality. Note *g* to sec. 50. This section creates an exception to the general rule. The provisions of it are necessary for the security of creditors. It is enacted, first, that no Council shall either repeal a By-law under which a debt was contracted, or, secondly, alter a By-law providing the rate so as to diminish the amount to be levied under the By law, &c. The By-law, however, may, under certain circumstances, be in part repealed, pursuant to sec. 335. So the rate may, under certain circumstances, be reduced, pursuant to secs. 350, 351. If the repealing By-law do not come under one of these enactments it must be quashed. *In re Smith and Oakland*, 24 U. C. C. P. 295.

has been directed to be applied to such payment. (*t*) 36 V. c. 48, s. 254.

No officer to neglect, etc., to carry out by-law for payment under colour of illegal by-law.

337. No officer of the Municipality shall neglect or refuse to carry into effect a by-law for paying a debt under colour of a by-law illegally attempting to repeal such first mentioned by-law, or to alter the same so as to diminish the amount to be levied under it. (*u*) 36 V. c. 48, s. 255.

Municipal councils may purchase public works, etc., and contract debts to Crown, although no special or other annual rate settled.

338. Any Council may contract a debt to Her Majesty in the purchase of any of the public roads, harbours, bridges, buildings or other public works in Ontario, whether belonging to this Province or to the Dominion of Canada, or of any claim in respect of such works, (*a*) and may execute such bonds, deeds, covenants, and other securities to Her Majesty, as the Council may deem fit, for the payment of the price of any such public work or claim already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred to the municipal corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass all necessary by-laws for any of the purposes aforesaid; and all such by-laws, debts,

(*t*) This requires the sinking fund to be left untouched, and prohibits the Council withdrawing any money transferred thereto, or otherwise applying any funds that have been appropriated thereto. See *In re Barber* v. *Ottawa*, 39 U. C. Q. B. 406.

(*u*) The object of this section is, to compel Municipal Corporations and their officers to keep faith with creditors. When the latter advance money upon the security of a By-law for its repayment in whole or in part, within a specified period at a specified rate, any By-law attempting to repeal such mentioned By-law or altering the same, so as to diminish the amount to be levied under it, would be a fraud, whether so designed or not. But see sec. 335 *et seq.* Besides, it is the duty of the Treasurer of every Municipality to see that the money collected under such By-law is properly applied to the payment of interest and principal of debentures issued under the By-law. Sec. 386. The 207th section of 29 & 30 Vict. ch. 51, provided that an officer guilty of such neglect as specified in this section should be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, at the discretion of the Court whose duty it might be to pass sentence upon him. This being matter relating to crime and criminal procedure, and so within the exclusive jurisdiction of the Dominion Legislature, is omitted from the section here annotated, but it is presumed that the enactment is still in force.

(*a*) The statute 12 Vict. cap. 5, sec. 12, authorized the Governor in Council to contract with any Municipal Council or other local Corporation, for the transfer to them of any of the public roads, harbours, bridges, &c., which it might be more convenient to place

bonds, deeds, covenants and other securities shall be valid, although no special or other annual rate has been settled or

under the management of such local authorities. By statute 14 & 15 Vict. cap. 124, any Municipal Corporation in Upper Canada might contract a debt to Her Majesty in the purchase of any roads, &c., and the Municipality might enter into, make or execute all or any bonds, deeds, covenants or other securities to Her Majesty, which such Municipality might deem fit, for the payment of the amount of purchase money of any such work, and for securing the performance of any conditions of sale; and might also pass all By-laws for any of the purposes; and such By-laws, debts, bonds, deeds, covenants or other securities were to be binding and valid on such Municipality to all intents and purposes, though no special or other rate per annum should be settled or imposed, to be levied as provided under the 177th section of the Municipal Corporations Act of 1849. But by section 2, the Corporation was nevertheless authorized, in any By-law for the creation of such debt, or for making or executing any such bonds, deeds or other securities, as aforesaid, to Her Majesty, or in any other By-law by the Corporation, to impose a special rate per annum of such amount as the Municipality might deem expedient, for payment and discharge of such debts, bonds, covenants or other securities, or some part thereof; and every such By-law should be valid and binding on the Corporation, though the rate settled or imposed should be less than was required by the 177th section of the Municipal Corporations Act for 1849; and all provisions of that Act (except in so far as they were inconsistent with the Act then being passed) were to apply and extend to every such By-law, and the moneys to be raised thereby, as fully as they would extend to any By-law enacted by any such Municipality for the creation of any debt or raising any loan, as provided in said 177th section, and to the moneys thereby raised. By statute 16 Vict. cap. 181, s. 39, it was enacted that none of the provisions of the 4th or 16th sections of the Municipal Corporations Amendment Act of 1851 should affect or apply to any By-law passed or to be passed by any Municipality in Upper Canada for any of the purposes mentioned in 14 & 15 Vict. cap. 124, or to any debts, bonds, deeds, covenants or other securities contracted, made or executed to Her Majesty, under the provisions of that Act, or for any of the purposes therein mentioned. By statute 18 Vict. cap. 133, it was enacted, in effect, that no By-law, to be passed for raising money upon the credit of any City, Town, Township or Village Corporation, should have force or effect until the approval of the Municipal electors should have been obtained. All these provisions were repealed by the Municipal Institutions Act of 1858; and sec. 226 of Con. Stat. U. C. cap. 54 (of which sec. 229 of 29 & 30 Vict. cap. 51 was a re-enactment) was in effect substituted for them. The fair result would seem to be that none of the sections 330 to 332 of this Act, relating to By-laws creating debts, extend to By-laws made for the purchase of public works, except in the manner and to the extent pointed out in the second paragraph of the section here annotated, and that such By-laws would, at all events if passed by a County, be valid, although not containing any special rate, and although not assented to by the ratepayers. See *In re O'Neil and York and Peel*, 15 U. C. C. P. 249.

imposed to be levied in each year, as provided by sections three hundred and thirty to three hundred and thirty-two of this Act. 36 V. c. 48, s. 256.

Rates may be imposed for the payment of debts contracted with the Crown for such works.

339. The Council may in any by-law to be passed for the creation of any such debt, or for the executing of any such bonds, deeds, covenants, or other securities as aforesaid, to Her Majesty, or in any other by-law to be passed by the Council, settle and impose a special rate per annum, of such amount as the Council may deem expedient, in addition to all other rates whatsoever, to be levied in each year upon the assessed rateable property within the Municipality, for the payment and discharge of such debts, bonds, deeds, covenants or other securities, or some part thereof, and the by-laws shall be valid, although the rate settled or imposed thereby is less than is required by the sections last mentioned; and the said sections shall, so far as applicable, apply and extend to every such by-law, and the moneys raised, or to be raised thereby, as fully in every respect as such provisions would extend or apply to any by-law enacted by any Council for the creation of any debt as provided in the said sections, or to the moneys raised or to be raised thereby. (*b*) 36 V. c. 48, s. 257.

DIVISION VII.—BY LAWS RESPECTING YEARLY RATES.

Amount and Limit of Rates. *Sec.* 340.
How estimated. *Sec.* 341.
Estimates and By-laws to be annual. *Secs.* 342, 343.
In case of deficiency. *Secs.* 344, 345.
In case of excess. *Sec.* 346.
Date from which Taxes imposed. *Sec.* 347.
Priority of Debentures. *Sec.* 348.
Power to Exempt from taxation. *Sec.* 349.
Reduction of Special Rate. *Sec.* 350.
Formalities in By-law therefor. *Sec.* 351.

Yearly rates to be levied, sufficient to pay all debts payable within the year.

340. The Council of every Municipal Corporation, and of every Provisional Corporation, shall assess and levy on the whole rateable property within its jurisdiction, (*c*) a sufficient sum in each year to pay all valid debts of the Corporation,

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(*b*) See note *l* to sec. 330.

(*c*) The assessment is to be on "the *whole* ratable property, &c." An assessment, therefore, on a portion of the ratable property, such as wild lands, would be invalid.

Aggregate rate limited to two cents in the dollar.

whether of principal or interest, falling due within the year, (*d*)

(*d*) The power given is to assess and levy, &c., a sufficient sum in *each* year to pay all *valid* debts falling due *within the year*. It is not easy to define what is meant by "a valid debt." It may be described as a debt which the Corporation is legally liable to pay, and the payment of which may be enforced by process of law. The word "debt" must be taken as used in its most comprehensive sense, "as something due from one to another." *Per* Spragge, V. C., in *Wilkie and Clinton*, 18 Grant 559. Then the assessment is to be to pay all valid debts "falling due *within the year*." The general rule is that Municipal bodies ought not, in one year, to levy a rate to pay debts due in a past year. The ratepayers of a locality should not be required to pay for the benefits which the ratepayers of a previous year enjoyed. Each year's debts should be paid by that year's assessments, unless in those expressly authorized cases where a deviation is allowed by statute. *Per* A. Wilson, J., in *Haynes* v. *Copeland et al.*, 18 U. C. C. P. 167. After a lapse of years the ratepayers would be a totally different body from that which it was a few years previously. "Purchasers, availing themselves of their right of inspecting the annual reports of the Auditors of the liabilities of the ratable property in the City, have acquired property which in the absence of any such liability appearing, as that which is now asserted, they may fairly claim to hold discharged of any such liability as that now sought to be imposed upon it. To charge the present owners of real property with this liability would seem to partake of the character of a fraud upon them, &c." *Per* Gwynne, J., in *Frontenac* v. *Kingston*, 20 U. C. C. P. 64. The general inconvenience of retrospective rates has in England been long known and recognized in the Courts of Law, on the ground that succeeding ratepayers ought not to be made to pay for services of which their predecessors have had the benefit. See *The King* v. *Haworth*, 12 East. 556; *Cortis* v. *Kent Waterworks Co.*, 7 B. & C. 314; *The King* v. *Flintshire*, 5 B. & Al. 761; *Woods* v. *Reed*, 2 M. & W. 777; *Jones* v. *Johnson*, 5 Ex. 862; *S. C.* in Error, 7 Ex. 452. One object of the law, as ratepayers fluctuate, is to protect present inhabitants from being burthened with the expenses of their predeccssors. *The King* v. *Wavell et al.*, Doug. 116; *The King* v. *Goodcheap*, 6 T. R. 159; *Attorney-General* v. *Wigan*, 18 Jurist 299. As a rule, money required for Municipal purposes ought to be raised, as the law directs, beforehand, instead of being in any manner or by any person advanced, in the expectation of reimbursement by the Municipality. See *The King* v. *Haworth*, 12 East. 556; *Tawney's Case*, 2 Ld. Rayd. 1009; *Dawson* v. *Wilkinson*, Cases Temp. Hard. 381. But see *Burnham* v. *Peterborough*, 8 Grant 366: *S. C.* 7 U. C. L. J. 73. It is for reasons such as these that the power to assess under this section is restricted to debts falling due "within the year." See *Clapp* v. *Thurlow*, 10 U. C. C. P. 533. The result appears to be that no Municipal Council has power, without the consent of the electors, to authorize the expenditure of money for purposes not falling under the head of ordinary expenditure, without having the money in hand to meet the demand, and without making provision, by rate or otherwise, to raise the required amount to meet the demand when due. *McMaster* v. *Newmarket*, 11 U. C. C. P. 398; *S. C.* 8 U. C. L. J. 44; see also

but no such Council shall assess and levy in any one year

Gibb and Moore, 27 U. C. Q. B. 150; and *Grant and Puslinch*, *Ib.* 154. The policy of the law appears to be that all debts, where there is not money in hand to meet them, should be met by a rate in *anticipation*, or that otherwise the amount should be raised by rate within the current year. By the observance of this policy, abuses may be prevented. By the neglect of it, abuses will assuredly arise. If there were no such policy to be observed, Council after Council might allow arrears of debts to accumulate year after year, so as to bind future Councils and to burthen future ratepayers. If this were permitted, there would be no check upon the extravagance of Municipal Councils. The Legislature, in order to protect the interests of the ratepayers of the several Municipalities against abuse of the powers entrusted to the Municipal Councils, and which have authority for many purposes to bind them, have provided certain restrictions and limitations upon their powers. It is for those who contract with the Municipal Councils to see for themselves that the powers given are exercised with a due regard to such restrictions and limitations. If they neglect this, they have their own want of caution to thank for any inconvenience or loss they may suffer in consequence, and they certainly should not expect that such neglect should operate in their favour, and furnish an argument for disregarding those wise provisions of law which are designed to protect ratepayers from reckless or unauthorized expenditure or incurring of debts by Municipal Councils. See *Mellish* v. *Brantford*, 2 U. C. C. P. 35; *Scott et al.* v. *Peterborough*, 19 U. C. Q. B. 469; *Wright* v. *Grey*, 12 U. C. C. P. 479; *Cross* v. *Ottawa*, 23 U. C. Q. B. 288; *Haynes* v. *Copeland*, 18 U. C. C. P. 150. See further, *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 601; *Potts* v. *Dunnville*, 38 U. C. Q. B. 96. It has therefore been held, that a Municipal Corporation, sued for work done, may plead that the cause of action arose for and concerning a debt incurred and falling due in a previous year, which was not within the ordinary expenditure of the Corporation for that year, and for which no rate was by By-law imposed. *Ib.* In such a case it would be held that there was no "valid debt." But suppose a valid debt incurred in one year, and the Corporation omit to levy it in that year, does it become a less valid debt the next year? Is the debt paid or the duty extinguished by reason of the omission? *Per* John Wilson, J., in *Haynes* v. *Copeland*, 18 U. C. C. P. 168. If the debt be not paid or the duty discharged, plaintiff should be allowed to recover a judgment. The inability to make the judgment productive is no defence to the action, nor any reason that the judgment should not be obtained. See *Pallister* v. *Gravesend*, 9 C. B. 774; *Payne* v. *Brecon*, 3 H. & N. 572; *Bush* v. *Martin*, 2 H. & C. 311; *Hartnall* v. *Ryde Commissioners*, 4 B. & S. 361; *Hartley* v. *Mare*, 19 C. B. N. S. 85; *Scott* v. *Burgess and Bathurst School Trustees*, 19 U. C. Q. B. 28; *Frontenac* v. *Kingston*, 30 U. C. Q. B. 334; *S. C.* 32 U. C. Q. B. 348; See further *Stratton* v. *Metropolitan Board of Works*, L. R. 10 C. P. 76. In some of the United States of America there is an express prohibition against contracting debts in any year subsequent to the current year, and in such cases the debts are declared illegal and void. See *Jonas* v. *Cincinnati*, 18 Ohio, 318; *Goodrich* v. *Detroit*, 12 Mich. 279; *Philadelphia* v. *Flanigen*, 47 Penn.

more than an aggregate rate of two cents in the dollar on the actual value, exclusive of school rates. (*e*)

Provision when such aggregate not sufficient pay debts payable within the year.

2. If in any Municipality the aggregate amount of the rates necessary for the payment of the current annual expenses of the Municipality, and the interest and the principal of the debts contracted by such Municipality on the twenty-ninth day of March, 1873, exceed the said aggregate rate of two cents in the dollar on the actual value of such rateable prop-

St. 21; *Johnson* v. *Philadelphia*, *Ib.* 382; *Bladen* v. *Philadelphia*, 60 Penn. St. 464; *Wallace* v. *St. Jose*, 29 Cal. 180; see also, *Dicky* v. *Cedar Falls*, 27 Iowa, 227; *Davenport Gas Co.* v. *Davenport*, 13 Iowa, 229.

(*e*) The limitation as to the amount of rate was first introduced by the 29 & 30 Vict. cap. 51, sec. 225. The rates in some Municipalities were, before the passing of that Act, so rapidly increasing as to cause alarm among the ratepayers, and seriously diminish the value of property and so threaten to impoverish the ratepayers. The remedy applied is that of limiting the aggregate annual taxation to "two cents in the dollar on the actual value, exclusive of school rates." If an attempt were made to exceed the restriction, no doubt the Court of Chancery would, upon a proper case being made out, interfere by injunction. See *The Edinburgh Life Insurance Co.* v. *St. Catharines*, 10 Grant, 379. *The State Ex rel. Circuit Attorney* v. *County Court of Saline County*, 11 Am. 454. The limit of two cents in the dollar includes the special sinking fund account to be levied in respect of past debts. *Wilkie* v. *Clinton*, 18 Grant 557. Where an Act prohibited Municipalities from "contracting any debt or pecuniary liability, without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt so contracted," it was held inapplicable to ordinary street work, forming part of the current expenses of the Corporation, payable out of current revenues. *Reynolds* v. *Shreveport*, 13 La. An. 326. So where the words of the Act were that "the Council shall not create or permit to accrue any debts or liability which shall exceed, &c.," it was held to have no relation to liabilities arising *ex delicto*. *McCracken* v. *San Francisco*, 16 Cal. 591. Whether special power to a Municipal Corporation to aid particular railway enterprises does or does not *pro tanto* repeal a limitation as to power of taxation, has, in the United States, been a subject of much controversy and of judicial conflict. *Butz* v. *Muscatine*, 8 Wall. (U.S.) 575; *Clarke* v. *Davenport*, 14 Iowa, 494; *Learned* v. *Burlington*, 2 Am. Law Reg. N. S. 394 and note; *Leavenworth* v. *Norton*, 1 Kansas, 432; *Burnes* v. *Achison*, 2 Kansas, 254; *Fosdick* v. *Perrysburg*, 14 Ohio St. 472; *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496. The inclination of the Supreme Court seems to be in favour of that construction which restricts such a limitation to the exercise of the power of taxation in the ordinary course of Municipal action. *Amey* v. *Alleghany*, 24 How. (U. S.) 364. Generally speaking, the Legislature of Ontario, when intending that Municipal Corporations shall have power to aid Corporations notwithstanding the two cent limitation, so declares in the particular Act of Incorporation. See sec. 5 of 36 Vict. cap. 97, Ont., as an example.

erty, the Council of such Municipality shall levy such further rates as may be necessary to discharge obligations up to that date incurred, but shall contract no further debts until the annual rates required to be levied within such Municipality are reduced within the aggregate rate aforesaid : (*f*) but this shall not affect any special provisions to the contrary contained in any special Act now or hereafter in force. (*g*) 36 V. c. 48, s. 258. Proviso.

341. In Counties and local Municipalities the rates shall be calculated at so much in the dollar upon the actual value of all the real and personal property liable to assessment therein. (*h*) 32 V. c. 36, s. 10. How rates to be calculated.

(*f*) The rule established by this section is, that no Municipal Council shall assess and levy in any one year more than an aggregate rate of two cents in the dollar on the actual value, exclusive of school rates. To this rule there are, in and by the section, two exceptions created :

1. A Municipality in which the aggregate amount of the rates necessary for the payment of *current annual expenses*, and the interest and the principal of the debts contracted by such Municipality at the time of the passing of the Act 36 Vict. c. 48, shall exceed the aggregate rate of two cents in the dollar.

2. A Municipality authorized to exceed the rate of two cents in the dollar by special provision to that effect contained in any special Act now or hereafter in force.

In the case of either exception, it is made the duty of the Municipality to levy such further rates as may be necessary to discharge obligations already incurred, but such Municipality is not to contract any further debts until the annual rates are reduced within the aggregate of two cents.

(*g*) It is of course in the power of the Local Legislature to permit the limit to be exceeded either generally or for particular purposes. See *Amey* v. *Alleghany*, 24 How. (U. S.) 364 ; *Wallace* v. *San Jose*, 29 Cal. 180 ; *Wyncoop* v. *Society*, 10 Iowa, 388 ; *Rice* v. *Keokuk*, 15 Iowa, 569 ; *Gibbon* v. *Railroad Co.* 36 Ala. 410 ; *Foote* v. *Salem*, 14 Allen. (Mass.) 87. It has done so notably in Acts for the aid of local railway enterprises.

(*h*) A By-law imposing a tax of so much an acre, arbitrarily, without reference to value, is bad. *Doe McGill* v. *Langton*, 9 U. C. Q. B. 91. So a By-law imposing one uniform rate of 5s. per foot frontage, without reference to value, for draining into the common sewers of a city. *Ex parte Aldwell and Toronto*, 7 U. C. C. P. 104. Whenever a By-law in any of these respects is illegal, the Court may quash it ; but the Court will not, on an application for a mandamus, extra-judicially advise a Municipal Corporation as to the proper mode of assessment. *In re Dickson and Galt*, 10 U. C. Q. B. 395. Formerly the value in Cities, Towns and Villages was annual value, and in Counties and Townships actual value, and a process was necessary

Estimates to be made annually.

342. The Council of every County or local Municipality shall every year make estimates of all sums which may be required for the lawful purposes (*i*) of the County or local Municipality, for the year in which such sums are required to be levied, each Municipality making due allowance for the cost of collection, (*j*) and of the abatement and losses which may

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for capitalizing the annual values of real property at six per cent., and equalizing all values, with a view to the imposition of County rates. But since 1st January, 1867, the distinction has been abolished. Actual value is now the rule in all Municipalities. Under the old law, a By-law imposing a rate for County purposes, to be levied on actual value, and in Villages on annual value, was held not to be illegal. *Grierson* v. *Ontario*, 9 U. C. Q. B. 623. Under Con. Stat. U. C. cap. 31, secs. 155, 156 and 157, a portion of jury expenses to be borne by a City and County was to be in proportion to the assessed value of all the ratable property in each, and it was enacted that in comparing the value of ratable property in any City or Town and County for the purpose of the Act "the assessed annual value shall be held to be ten per cent. of the actual value" so that although for the general city purposes property was to be rated at an annual value of $6 on an actual value of $100, yet as between the City and County, for jury expenses, the annual value of the City property was to be deemed ten per cent. of its actual value, which would make the actual value of City property for this purpose ten times six per cent., or sixty per cent. (instead of one hundred per cent.) of its actual value. The effect of this was to reduce the actual value of City property, which was generally rated much higher than County property, by throwing off forty per cent. of its actual value, and to make sixty per cent. of the actual value represent the total actual value. It was the mode under that Act adopted to equalize the Rural and City rating. But by and since the Act of 1866, all real and personal property are estimated at actual value in all Municipalities, and the rule prescribed by the Con. Stat. U. C. cap. 31, secs. 155-157 has been held to be superseded, greatly, as it is said, to the disadvantage of Cities. *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584; *S. C.* 32 U. C. Q. B. 348.

(*i*) Lawful purposes. Municipal Councils, which are the creatures of Statute Law, derive all their powers of taxation from Statute Law, if the purpose of taxation be not either expressly or inferentially authorized by Statute, it is not a lawful purpose. *Minot* v. *Inhabitants of West Roxbury*, 17 Am. 52.

(*j*) In making yearly estimates of the sums required, it will be necessary for the Council to make due allowance in respect of the following:

1. The cost of collection;
2. Abatement and losses which may occur in the collection;
3. Taxes on lands of non-residents that may not be collected;

and accordingly have a margin sufficient to cover drawbacks arising from any or all of the foregoing causes. It is not necessary that the By-law should set forth the estimates on which it is founded. *Fletcher and Euphrasia*, 13 U. C. Q. B. 129. Mentioning a specific

occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected. 32 V. c. 36, s. 13.

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sum to be raised for specific purposes may be treated as setting forth an estimate that such sum is required for these purposes. *Per* Robinson, C. J., *Ib.* 133. The Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. *Ib.* A local Municipality has not, it seems, the power to pass a By-law of its own, imposing a rate in aid of a County rate. *Ib.* A By-law authorizing a levy of certain moneys for Township purposes, and *double* the amount required by the County for County purposes, is clearly bad. *Ib.* "To raise moneys for those same purposes to the full amount in one case, and to double the amount in the other, is, on the face of it, beyond the power of the Township Council, for it is exercising a power not only not conferred upon them, but expressly conferred upon another Municipal Corporation. The only argument offered to justify this course was that the Township Council had ascertained that, owing to the large proportion of lands held by non-residents, a sum very far short of that imposed by the County By-law would be collected by the collector on the roll; that a considerable deficiency would remain to be made up which the Township Treasurer would have no funds to meet, and therefore such a By-law was necessary to supply those funds. . . . For the purposes of this argument we will assume the object and intentions of the Township Council to be what are stated, and that the facts on which they rely as requiring them to take this course exist (though if our decision had to rest upon any such ground, it would have to be indispensable that all those facts should be established before us); but we think, assuming everything suggested, that will not sustain the By-law, *which is not, on the face of it, directed to the purpose of meeting a deficiency*, and does not even *suggest* any, if that would enable the Township Council to raise money by By-law expressly to meet it," &c. *Per* Robinson, C. J., *Ib.* 132. A By-law enacting "that the sum of three pence in the pound be levied and raised on all ratable property, to raise the sum of £375, to defray all expenses on the Township for the current year, *County and Township included*, and a portion of said sum to be laid out on repairs of roads and bridges as the Council thinks most wanted, and if any balance remain, to be handed over to the credit of the Township for the ensuing year," was quashed. *White* v. *Collingwood*, 13 U. C. Q. B. 134. Draper, J., said: "In our opinion this By-law must be quashed altogether. As to the part imposing rates for County purposes, it is bad, for the reason given in the preceding case. *Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129. And then this By-law affords no means of telling how much must be deducted from the sum of £375 directed to be raised; nor yet can it be ascertained how much the rate of three pence in the pound must be reduced in order to raise that portion of £375 which the Township Council had authority to impose. There are also other apparent objections to this By-law which it is not necessary to advert to for the purpose of sustaining our judgment." *Ib.* 135. It is now expressly enacted that every local Municipal Council, in paying over . . . its share of any County rate *shall* supply out of the funds of the Municipality *any deficiency arising from*

By-laws for raising money by rate.

343. The Council of every Municipality may pass one by-law, or several by-laws, authorizing the levying and collecting of a rate or rates of so much in the dollar upon the assessed value of the property therein as the Council deems sufficient to raise the sums required on such estimates. (*k*) 32 V. c. 36, s. 14.

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the non-payment of the taxes, but shall not be held answerable for any deficiency arising from the abatements of, or inability to collect, the tax on *personal* property." Sec. 175 of R. S. O. 180. It has been intimated that a local Municipality has no power to add to the column headed "County Rate" an allowance for the cost of collecting the County rate and for the abatements and losses which might occur in the collection of it, and for taxes on the lands of non-residents which might not be collected. *Grier* v. *St. Vincent*, 12 Grant 330; *S. C.* 13 Grant 512. Mowat, V. C., said in the last case: "The policy of the Legislature appears to have been to guard, as far as possible, the money to be raised in the Township by its Municipal authority for Provincial, County, School and and other special purposes from the control of the Township Council, these moneys not being raised by their authority, or not going to purposes over which they had jurisdiction." *Ib.* 519. And again: "It is now suggested that the eleventh section (same as thirteenth, above) of the Assessment Act, as explained by the Interpretation Act, sanctions what was done here. That section directs every local Municipality, in the estimates of the year, to make due allowance, . . . but says nothing as to the column in which the allowance is to be entered, . . . I think it is sufficiently apparent . . . that it is contrary to the intention and policy of the Legislature that the Township should mix up in the 'County Rate' column money of which they are to have the control, with the money levied for the County." *Ib.* 520. If the Tax Act direct a particular medium of payment, there can be no right of set-off so as to defeat it. *Trenholm* v. *Charlston*, 16 *Am.* 732.

(*k*) It is not necesary that a By-law should set forth the estimates on which it is founded. But the rate should be such as "the Council *deems sufficient* to raise the sums required in such estimates." This must be read in connection with sub-section 4 of section 330, which requires that "such special rate shall be *sufficient*, according to the amount of ratable property appearing by the last revised assessment roll to discharge the debt and interest when payable respectively," and sub-section 6c of the same section, which requires the By-law to recite "*the amount* of the whole ratable property of the Municipality, according to the last revised or revised and equalized assessment roll." In order to ascertain the amount of the rate, it is necessary for the Council to know the amount proposed to be raised, when payable, and the whole amount of the ratable property of the Municipality according to the last revised or equalized assessment rolls. These are required to be recited in the By-law itself, in order that the Court and others may judge of the sufficiency of the rate to raise the sum required by the estimates. But even if there be a mistake as to the amount of the ratable property, or an error as to the sufficiency of the rate, it does not follow that the By-law must be set aside. *Grierson*

344. If the amount collected falls short of the sums required, the Council may direct the deficiency to be made up from any unappropriated fund belonging to the Municipality. (*l*) 32 V. c. 36, s. 15.

If the amount collected falls short.

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v. *The Municipal Council of Ontario*, 9 U. C. Q. B. 623. Burns, J., said: "I do not think the Legislature intended that the Court should be compelled to avoid a By-law because it could be made out by proof that some error was committed in a calculation, or something of that sort done which would in strictness be illegal." *Ib.* 632. In this case, the County Council, in estimating the actual value of the ratable property in the Village of Oshawa for 1851, made it £61,666, whereas it should have been £92,500, and yet the Court refused to set aside the By-law. *Ib.* But if the amount of the special rate be unequal or plainly insufficient and so illusory, the objection would assume a substantial character calling probably for the summary interference of the Court. *Per* Draper, C. J., in *Secord and Lincoln*, 24 U. C. Q. B. 142, 150. In this case the sum mentioned in the By-law was $6,434,773, whereas the amount mentioned in the rate was $6,452,655, a difference "too small to require serious notice when the rate to be imposed was half a mill in the dollar," and so the Court refused to quash the By-law. *Ib.* But where it was clear and admitted that "the 5½d. in the pound on the sum stated in the By-law to be the value of the ratable property within the Municipality, would not produce such an amount as would cover the payment, which, under the By-law, is appointed to be made within the year, but considerably less," the rule was made absolute to quash the By-law. *Perry* v. *Whitby*, 13 U. C. Q. B. 564. *Per* Robinson, C. J., "It will be found, I think, to come short by £30." *Ib.* 567. This By-law on the face of it provided, "that if the rate in any one year should prove deficient, &c., such deficiency should be made up from the general fund of the Town." As to this, the Chief Justice said, "And the manner in which the By-law provides for making up the deffieiency that may arise in the payment, even if it were clearly legal, would not still cure the objection, for the statute expressly requires that the rate imposed *shall be* in itself sufficient to cover it upon the basis of calculation assumed, and if not it declares that the By-law *shall be* void." *Ib.* 567. But still it is apprehended that it is not necessary that calculations should in the case of every By-law be strictly correct. It is not incumbent on a Municipal Council to raise all that is required, and no more than required for ordinary purposes, by one By-law. Were this the law, it would be impossible, owing to contingencies, for any Municipal Council to comply with it. The amount collected may either fall short or exceed the sum required. If short, the deficiency may be made up from any unappropriated fund belonging to the Municipality. Sec. 344. If no unappropriated fund, the deficiency may be equally deducted from the sums estimated or from any one or more of them or a second By-law passed, under the section here annotated. If an excess, the surplus becomes a part of the general fund of the Municipality, unless otherwise appropriated. Sec. 346.

(*l*) See the last note

Estimates may be reduced proportionally.

345. If there is no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. (*m*) 32 V. c. 36, s. 16.

When sums collected exceed estimate, appropriation of the balance.

346. If the sums collected exceed the estimates, the balance shall form part of the general fund of the Municipality, and be at the disposal of the Council, unless otherwise specially appropriated; but if any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the amount in excess collected on account of such special tax shall be appropriated to the special local object. (*n*) 32 V. c. 36, s. 17.

Yearly taxes to be computed from 1st January, unless otherwise ordered.

347. The taxes or rates imposed or levied for any year shall be considered to have been imposed, and to be due on and from the first day of January of the then current year, and end with the thirty-first day of December thereof, (*o*)

(*m*) See note *k* to sec. 343.

(*n*) The preceding sections, as well as the first part of this section, relate more particularly to general estimates for general purposes. If any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the general rule is not to apply. In such case the amount collected shall, instead of forming part of the general fund, be appropriated to the special local object and no other.

(*o*) By Con. Stat. U. C. cap. 55, sec. 10, it was declared that the taxes or rates levied or imposed for any year shall be considered to have been *imposed* for the then current year commencing 1st January and ending 31st December. It was apparently enacted to remove a difficulty, such as that which presented itself in *Mellish* v. *Brantford*, 2 U. C. C. P. 35. *In re Yarwood*, 7 U. C. L. J. 47, Hughes, Co. J., said: "The sixteenth section of the Consolidated Assessment Act of Upper Canada, specifies that the taxes imposed for the year shall be considered to be so imposed for the current year, commencing on 1st January and ending with 31st December, unless otherwise expressly provided for by By-law. I consider, in the absence of such a By-law, if the taxes imposed for the year are to date from 1st January to 31st December, that the property upon which rates and taxes are assessed is to be that which the rated party owns or possesses within the same period, and no more; and if he were a resident of the Town when the assessment was taken, or after the 1st of January, he was properly assessed as a resident, because the assessment relates back to 1st of January in each year." In *Marr* v. *Vienna*, 10 U. C. L. J. 275, the same learned Judge said: "The facts which came out in this case shew me that the decision *In re Yarwood*, 7 U. C. L. J. 47 was not correct in one particular. Had the appellant there been assessed as well in Yarmouth as St. Thomas in respect of the same income, an injustice would at once have presented itself, which I am satisfied would have led me to a conclusion different to the one I arrived at, because the

unless otherwise expressly provided for by the enactment or by-law under which the same are directed to be levied. (*p*) 32 V. c. 36, s. 18.

Priority of debentures.

348. All debentures issued before the first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, by Municipal Corporations, under any by-law, and based upon the yearly value of rateable property at the time

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statute never intended a man to pay taxes *twice* in the same year in respect of the same property. So that I am now satisfied the sixteenth (now eighteenth) section only fixes the Municipal fiscal year to commence on 1st January and to end on 31st December in each year (unless a Municipal By-law fix it otherwise) for all purposes for which rates and taxes are to be considered to have been imposed for any current year." In *Ford* v. *Proudfoot*, 9 Grant 478; *Corbett* v. *Taylor*, 23 U. C. Q. B. 454, and *Bell* v. *McLean*, 18 U. C. C. P. 416, it was contended that taxes imposed for a particular year should be taken, not only as imposed, *but as due* from 1st January. But the Courts refused so to interpret this section. In *Corbett* v. *Taylor*, Draper, C. J., said: "We do not so interpret this section of the statute, but read it as intended (merely) to fix the fiscal year for all Municipalities for the purpose of rates and taxes, and as providing that, no matter what part of a year a By-law imposing rates and taxes may be passed, the taxes shall be considered as imposed for the whole current year. The argument for the plaintiff, if pushed home, amounts to this: that on such a covenant, (against incumbrances) if entered into on 2nd January, the taxes for the current year would be in arrears on that day, if a tax or rate were imposed (at any time) within the year, and in effect the covenant would be broken as soon as made, although when entered into no tax or rate had been imposed." Wilson, J., in *Bell* v. *McLean*, 18 U. C. C. P. 416, said, "In one sense the tax may be said to be due when it is imposed by the passage of a By-law for that purpose; but it cannot be strictly said to be due until the collector has got his roll: nor even then, for he cannot distrain or take any compulsory proceeding to enforce payment until he has called at least once on the party taxed and demanded payment, or transmitted a statement by post demanding payment if the party be not resident within the Municipality." And again, "A person who pays the taxes imposed on him for a particular year before the end of that year pays the amount in advance. He pays it up to a day which has not yet arrived. The time for its payment has gone by, but the time for its complete accrual has still to come," *Ib.* 421. It is to be observed that the section here annotated declares not only that the taxes, &c., imposed or levied for any year shall not only be considered to have been *imposed* but "*to be due*" on, from and after 1st of January of the then current year. It remains for the Courts to decide in what sense the word "due" is used in this section.

(*p*) It is in the power of the Municipal Council to say by the By-law from what time the tax or rate shall be taken to have been imposed, &c. If there be no direction to that effect it will be considered as imposed and due from 1st January of the year in which passed.

How rates for paying them to be calculated.

of passing such-by-law, shall hold the order of priority which they occupied on the said first day of January, one thousand eight hundred and sixty-seven; (*q*) and each Municipal Corporation (having so issued debentures) shall levy a rate on the actual real value of the rateable property within the Municipality represented, sufficient to produce a sum equal to that leviable or produced on the yearly value of such property as established by the assessment roll for the year one thousand eight hundred and sixty-six; (*r*) and such rates shall be applied solely to the payment of such debentures, or interest on such debentures, according to the terms of the by-law under which they were issued. (*s*)

To be applied solely to such purposes.

Rate for sinking funds.

2. In cases where a sinking fund is required to be provided, either by the investment of a specific rate or amount, or on a rate on the increase in value over a certain sum, then such a rate shall be levied as shall at least equal the sum originally intended to be set apart. (*t*) 32 V. c. 36, s. 11.

Power to exempt factories from taxation.

349. Every Municipal Council shall have the power of exempting any manufacturing establishment, in whole or in part, (*a*) from taxation for any period not longer than ten

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(*q*) Before 1st January, 1867, in Cities, Towns and Incorporated Villages yearly, and not actual values prevailed. By-laws of Cities, Towns and Incorporated Villages creating debts were up to that date necessarily based on yearly values. Debentures were issued on the security of such values and rights acquired by the purchasers that such values should, until the payment of the debentures, be maintained. The object of this section is to declare that such rights shall be maintained.

(*r*) It is necessary for the Corporation, under this part of the section: first, to estimate what amount in any year would be produced on the basis of a yearly value in 1866, and then to levy a rate on actual value sufficient to produce a sum equal to that amount.

(*s*) The application otherwise would be a breach of trust, and subject the Council to be proceeded against in the Court of Chancery by way of injunction. See *Wilkie* v. *Clinton*, 18 Grant 557.

(*t*) See note *r* above.

(*a*) The object of this section is to enable Municipal Councils to encourage manufacturing establishments within their limits. The section is not in terms restricted to *new* manufacturing establishments. It authorizes the exemption to be made as to *any* manufacturing establishment, in whole or in part, apparently extending to old as well as new establishments. Whether the introduction of the words "in whole or in part" enables the Corporation to discriminate in favour of new manufacturers as against old ones of the same class or kind, remains to be decided. It was held, under a statute enabling

years, and to renew this exemption for a further period not exceeding ten years. (*b*) 36 V. c. 48, s. 259; *and see* post s. 454 (5).

When the rate imposed by by-law may be reduced by by-law.

350. In case in any particular year, one or more of the following sources of revenue,—namely:

(*a.*) The sum raised by the special rate imposed for the payment of a debt, and collected for any particular year; and

(*b.*) The sum on hand from previous years; and

(*c.*) Any sum derived for such particular year from the surplus income of any work, or of any share or interest therein applicable to the sinking fund of the debt; and

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Municipal Councils to exempt from taxation "manufactures of woollens, cottons, glass, paper, &c.," that a By-law exempting new manufactures as against old manufactures in the same line of business was void. *In re Pirie and Dundas*, 29 U. C. Q. B. 401. Wilson, J., in delivering the judgment of the Court, said, "I do not think it would be against the statute to provide that *all* cotton manufacturers should be exempt from taxation, because it places all persons of the same line of business on the same footing, without giving any advantages or priviliges to one or more of that trade over the others. * * * In no case is A. of the cotton or any other particular trade to get the benefit which B. of the same trade is not also to get. For this is a monopoly of the worst description, and it cannot be necessary either for the proper stimulus of the *trade*, though it may stimulate A. very wonderfully in that trade, but then only at the expense of B." *Ib.*, 407; see further, sec. 279 and notes thereto. The general rule is, that the burden of taxation should fall equally, and for this reason statutes exempting particular persons or particularly property from taxation are construed strictly. See notes to sec. 6 of the Assessment Act. The Municipal Council may impose reasonable conditions to be complied with by those claiming exemption under this section. See *In re Pirie and Dundas*, 29 U. C. Q. B. 401.

(*b*) The power is restricted in the first instance to an exemption for ten years, with a power to renew the exemption for a further period not exceeding ten years—in all, twenty years. The power to renew is not given from time to time, but only once to be exercised. See *Neilson* v. *Jarvis*, 13 U. C. C. P. 176, and *Bank of Montreal* v. *Taylor*, 15 U. C. C. P. 107. It is a question whether the By-law can be repealed within the period of exemption mentioned therein, after its terms have been accepted and acted upon by the persons in whose favour it is passed. In other words, the question is whether the By-law is to be looked upon simply as a local law or as a contract. If the former, it may be repealed; if the latter, it cannot be repealed; for one party to a contract cannot rescind it against the will and to the prejudice of the other. See *East Saginaw Manufacturing Co.* v. *City of East Saginaw*, 2 Am. Rep. 82; *S. C.*, 19 Mich. 259; *The People ex rel Cunningham et al.* v. *Roper*, 35 N. Y. 629.

(*d.*) Any sum derived from the temporary investment of the sinking fund of the debt, or any part of it, and carried to the credit of the special rate and sinking fund accounts respectively, amount to more than the annual sum required to be raised as a special rate to pay the interest, and the instalment of the debt for the particular year, and leave a surplus to the credit of such accounts, or either of them, (*c*) then the Council may pass a by-law reducing the total amount to be levied under the original by-law for the following year to a sum not less than the difference between such last mentioned surplus and the annual sum which the original by-law named and required to be raised as a special rate. 36 V. c. 48, s. 260.

Recitals requisite in such by-law.

351. The by-law shall not be valid (*d*) unless it recites:— (1.) The amount of the special rate imposed by the original

(*c*) Having discovered the existence of a surplus arising from the sources mentioned in the section, the Council should, first, ascertain the precise amount of the surplus; secondly, ascertain the total amount to be levied for the then next following year; thirdly, deduct the one from the other; and fourthly, take credit for the result, and reduce the original rate so as to yield no more than what is necessary after taking such credit. To ascertain the surplus, the interest and sinking fund appropriation of the current year, as well as an amount equal to the interest of the year following, ought to be deducted from the amount at the credit of the special rate account. In the event of there being a surplus in any year after paying interest and appropriating the necessary sum to the sinking fund, sec. 356 requires such surplus to remain in the special rate account, to be applied if necessary towards the next year's interest. If the surplus exceed the following year's interest, the excess may, under that section, be transferred to the sinking fund account, in reduction of principal. It would appear to be necessary, before dealing with the surplus, to see not only that there is enough at the credit of the special rate account to meet the interest and sinking fund appropriation of the current year, but the interest of the year following. If after such calculation enough is found for the two years and to spare, the excess may be dealt with under the section here annotated—that is, looked upon as so much collected in anticipation of the requirements of the year following, leaving the balance only between it and the amount necessary, according to the original By-law, to be levied. The course therefore recommended is, whenever a surplus is in any year found to exist, to retain to the credit of the special rate account, besides the requirements of the year, a sum equal to the interest of the following year, and then, first, either to carry the balance to the sinking fund account, under sec. 356, or consider it as so much in hand for the next following year, and to reduce the rate of that year so as to make up the deficiency only.

(*d*) See note *l* to sec. 334.

by-law; (*e*) (2.) The balance, of such rate for the particular year, or on hand from former years; (*f*) (3.) The surplus income of the work, share or interest therein received for such year; (*g*) and (4.) The amount derived for such year from any temporary investment of the sinking fund— (*h*)

Reduced rate to be named.

Nor unless the by-law names the reduced amount in the dollar to be levied under the original by-law—

By-law to be approved of by the Lieut.-Governor.

Nor unless the by-law is afterwards approved by the Lieutenant-Governor in Council, 36 V. c. 48, s. 261.

DIVISION VIII.—ANTICIPATORY APPROPRIATIONS.

When and how made. Secs. 352, 353.
By Senior for Junior Municipality. Sec. 354.

Anticipatory appropriations may be made.

352. In case any Council desires to make an anticipatory appropriation for the next ensuing year in lieu of the special rate for such year, in respect of any debt, the Council may do so, by by-law, (*i*) in the manner and subject to the provisions and restrictions following:

What funds may be so appropriated.

1. The Council may carry to the credit of the sinking fund account of the debt, as much as may be necessary for the purpose aforesaid; (*j*)

(*a.*) Of any money at the credit of the special rate account of the debt beyond the interest on such debt for the year following that in which the anticipatory appropriation is made; (*k*)

(*b.*) And of any money raised for the purpose aforesaid (*l*) by additional rate or otherwise;

(*e*) See sec. 330, sub-sec. 3.

(*f*) See note *c* to s. 350.

(*g*) See same note.

(*h*) See same note.

(*i*) This and the foregoing sections are made for the relief of the ratepayers, provided the security of the creditors be not lessened.

(*j*) "Aforesaid," *i. e.* of making an anticipatory appropriation for the next ensuing year, in lieu of the special rate for such year, in respect of any debt, &c.

(*k*) Here it is clear that a year's interest in advance is to be retained, as directed by sec. 356, and pointed out in note *c* to sec. 350.

(*l*) "Purposes aforesaid." See note *j* above.

(*c.*) And of any money derived from any temporary investment of the sinking fund; (*m*)

(*d.*) And of any surplus money derived from any corporation work or any share or interest therein; (*n*)

(*e.*) And of any unappropriated money in the treasury; (*o*)

Such moneys respectively not having been otherwise appropriated;

The sources and application to be stated.

2. The by-law making the appropriations shall distinguish the several sources of the amount, and the portions thereof to be respectively applied for the interest and for the sinking fund appropriation of the debt for such next ensuing year; (*p*)

When moneys retained sufficient, the yearly rate may be suspended for the ensuing year.

3. In case the moneys so retained at the credit of the special rate account, and so appropriated to the sinking fund account from all or any of the sources above mentioned, are sufficient to meet the sinking fund appropriation and interest for the next ensuing year, the Council may then pass a by-law directing that the original rate for such next ensuing year be not levied. (*q*) 36 V. c. 48, s. 262.

By-law must recite—

353. The by-law shall not be valid (*r*) unless it recites— (*s*)

The original debt and object.

(*a.*) The original amount of the debt, and in brief and general terms, the object for which the debt was created; (*t*)

(*m*) The investment authorized by sec. 357.

(*n*) See sec. 350 and note thereto.

(*o*) The right of a Municipal Council to take moneys already appropriated, and apply them to purposes different from the original appropriation, is very questionable. Though sometimes done, it ought never to be encouraged. In the case of appropriations to the sinking fund account of a debt, it cannot be legally done. See *Edinburgh Life Assurance Co.* v. *St. Catharines*, 10 Grant 379; *In re Barber and Ottawa*, 39 U. C. Q. B. 406.

(*p*) The sources to be one or other of the foregoing.

(*q*) When the surplus, though not equal to the product of the entire rate for a year, is considerable, a By-law may be passed for the proportionable *reduction* of the rate, sec. 350; but when the surplus is sufficient to meet the sinking fund appropriation and interest for a year, a By-law may be passed to the effect that for that year the original rate *be not levied.*

(*r*) See note *l* to sec. 334.

(*s*) This section bears the same relation to sec. 352 that sec. 351 bears to sec. 350. The one is for the reduction of the special rate for a year, the other for the entire cessation of it.

(*t*) See sec. 330, sub. 6, and notes thereto.

(*b.*) The amount, if any, already paid of the debt; — The amount paid.

(*c.*) The annual amount of the sinking fund appropriation required in respect of such debt; — The annual amount for sinking fund.

(*d.*) The total amount, then on hand, of the sinking fund appropriations, in respect to the debt, distinguishing the amount thereof in cash in the treasury from the amount temporarily invested; — The amount for sinking fund in hand.

(*e.*) The amount required to meet the interest of the debt for the year next after the making of such anticipatory appropriation; (*u*) and — The amount required for interest.

(*f.*) That the Council has retained at the credit of the special rate account of the debt, a sum sufficient to meet the next year's interest (naming the amount of it), and that the Council has carried to the credit of the sinking fund account a sum sufficient to meet the sinking fund appropriation (naming the amount of it) for such year; — And that it is reserved, etc.

2. No such by-law shall be valid unless approved by the Lieutenant-Governor in Council. 36 V. c. 48, s. 263. — By-law to be approved by Lieut. Governor.

354. After the dissolution of any Municipal Union, the Senior Municipality may make an anticipatory appropriation for the relief of the Junior Municipality, in respect of any debt secured by the by-law, in the same manner as the Senior Municipality might do on its own behalf. (*v*) 36 V. c. 48, s. 264. — Anticipatory appropriation on separation of Municipalities.

Title III—Respecting Finance.

Div. I.—Accounts and Investments.
Div. II.—Commission of Inquiry into Finances.

Division I.—Accounts and Investments.

Accounts for Special Rate and Sinking Fund. *Sec.* 355.
Surplus on Special Rate, Application of. *Sec.* 356-357.
Surplus on Special Rate, Investment of. *Sec.* 358.
General Surplus, Application of. *Sec.* 359-361.
Unauthorized Application, Liability for. *Sec.* 362.
Yearly Returns to Government. *Sec.* 363-364.

(*u*) See sec. 350 and note thereto.

(*v*) An anticipatory appropriation in relief may, it is apprehended,

Two special accounts to be kept; 1, of the special rates; 2, of the sinking fund or instalments of principal.

355. The Council of every Municipal Corporation shall keep in its books two separate accounts, one for the special rate, and one for the sinking fund, or for instalments of principal of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted, (*a*) and shall keep the said accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained and appropriated for payment thereof. 36 V. c. 48, s. 265.

When surplus may be applied to next year's interest, and to sinking fund.

356. If, after paying the interest of a debt and appropriating the necessary sum to the sinking fund of such debt, or in payment of any instalment of principal, for any financial year, there is a surplus at the credit of the special rate account of such debt, (*b*) such surplus shall so remain, and

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be either one in reduction of the special rate for a given year (sec. 350) or for the cessation of the rate for that year. Sec. 352.

(*a*) Two accounts are mentioned; the special rate account, and the sinking fund or instalments account. The amount of all rates collected and received by the Treasurer will appear in the first, and from it be transferred to the second all such sums as form portions of the sinking fund or instalments fund account. The first or special rate account will constitute the interest account as well as the general account, and the sums required for interest will be retained therein until disbursed, and then be charged thereto. The sums transferred on account of principal to the second or sinking fund or instalments account, will of course be also charged against the first or special rate account, and when transferred be credited to the second or sinking fund or instalments account. It is unnecessary to remark upon the great importance of the accounts being kept with the greatest care and accuracy. The object of keeping the accounts as directed, and any other necessary accounts, is to exhibit *at all times* the state of *every* debt and the amount of moneys raised, obtained and appropriated for payment thereof. In one case the Chancellor of Upper Canada said, "I think I ought not to dispose of this case without observing upon the utter disregard of the provisions of the statute disclosed in the evidence on the part of these officers of the Municipality whose duty it is to see to the keeping of its accounts. The separate accounts, so pointedly required by sec. 230 of the Act (same section as here annotated), seem not to have been kept, but special rates, sinking fund account, and rates and assessments for general purposes, appear to have been mixed up together. The directions of the statute are *so explicit that it was nothing less than most culpable neglect of duty not to follow them.*" *Wilkie* v. *Clinton*, 18 Grant 560.

(*b*) A surplus beyond the interest may arise from the increase of ratable property, &c.; for when a By-law creating a debt, &c., is passed, the ratable property is ascertained *irrespective of any future increase*, &c. See sec. 330, sub-s. 5.

may be applied, if necessary, towards the next year's interest; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of the sinking fund account, or in payment of principal of such debt. (*c*) 36 V. c. 48, s. 266.

Application of moneys with consent of Lieut.-Governor in Council.

357. The Lieutenant-Governor in Council may, by order, direct that such part of the produce of the special rate levied, and at the credit of the sinking fund account or of the special rate account as aforesaid, instead of being so invested as hereinafter provided, (*d*) shall, from time to time, as the same accrues, be applied to the payment or redemption, at such value as the said Council can agree for, or of any part of such debt or of any of the debentures representing or constituting such debt, or any part of it, though not then payable, (*e*) to be selected as provided in such order, and the Municipal Council shall thereupon apply and continue to apply such part of the produce of the special rate at the credit of the sinking fund or special rate accounts, as directed by such order. 36 V. c. 48, s. 267.

(*c*) If the surplus of the special rate account in any year exceed the payment of the ordinary calls upon it, together with the next year's interest, the excess may be transferred to the sinking fund account, that is, applied towards the liquidation of principal. Provision is, by sec. 358, made for the investment of the excess.

(*d*) See sec. 358 *et seq.*

(*e*) The object of the special rate is to pay off the debt and interest authorized by the By-law in accordance with the terms of the By-law. Sec. 330, sub. 4. The ordinary mode is by annually raising a certain sum for interest and a certain sum for sinking fund or instalment, so as to discharge both principal and interest when payable. If the principal be payable by annual instalments, there will not be such an accumulation to the credit of the sinking fund as if the principal money were payable at the expiration of a fixed period of time. See sec. 332. The annual rate in either case is based on the value of the ratable property at the time of the passing of the By-law, "irrespective of any future increase of the ratable property of the Municipality," and irrespective of other incomings specified in the Act. Sec. 330, subs. 5. In any view, therefore, there may be an accumulation of money in the nature of surplus to the credit of the fund in advance of what is required to pay the annual obligation under the By-law. Instead of investing the same, provision is by this section made for the application of the money "to the payment or redemption, at such value as the Council can agree for," of any part of the debt, though not payable. This can only be done by order of the Lieutenant-Governor in Council. It is intended that the order shall be a continuing one, for it is declared that the Council shall thereupon "apply and continue to apply" the same, as directed

Surplus may be invested in certain cases.

358. If any part of the produce of the special rate levied in respect of any debt, and at the credit of the sinking fund account, or of the special rate account thereof, cannot be immediately applied towards paying the debt by reason of no part thereof being yet payable, (*f*) the Council shall from time to time, invest in Government securities or otherwise, as the Lieutenant-Governor in Council may direct. (*g*) 36 V. c. 48, s. 268.

Council may apply other funds towards such debts.

359. Every such Council may appropriate to the payment of any debt the surplus income derived from any public or corporation work, or from any share or interest therein, after paying the annual expenses thereof, or any unappropriated money in the treasury, or any money raised by additional rate (*h*); and any money so appropriated shall be carried to the credit of the sinking fund of the debt, or in payment of any instalment accruing due. (*i*) 36 V. c. 48, s. 269.

Certain moneys may be set apart for educational purposes.

360. Any Municipal Corporation having surplus moneys derived from the "The Ontario Municipalities Fund," or from any other source, (*k*) may, by by-law, set such surplus apart

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by the order. It is felt by the Legislature that the possession of an unproductive surplus is an element of abuse, and provision is made by this and the following sections for the investment or other disposal of it.

(*f*) See note *e* to 357.

(*g*) The power conferred so far is simply to invest in Government securities. This, it is apprehended, may be made without any order in Council. But if an investment otherwise than in Government securities, or such securities hereinafter specially mentioned, it is presumed that an order in Council will be required.

(*h*) The rate for the payment of a debt created by By-law is calculated according to the existing value of the taxable property of the Municipality, irrespective of income from public works or other increase. Sec. 330, subs. 5. But by this section the Council of the Municipality is empowered to supplement the proceeds of the rate by the appropriation thereto of the following moneys:

1. The surplus income derived from any public or Corporation work, or from any share or interest therein, after paying the annual expenses thereof.

2. Any unappropriated money in the Treasury.

3. Any money raised by additional rate.

(*i*) See note *e* to sec. 357.

(*k*) The original of this section was, by the Act of 1866, restricted in its operation to the Upper Canada Municipalities Fund. It was by the Act 31 Vict. ch. 30, sec. 27, extended to moneys derived from other sources.

for educational purposes, (*l*) and invest the same (*m*) as well as any other moneys held by such Municipal Corporation for, or not lawfully appropriated to, educational purposes, in public securities of the Dominion, municipal debentures, or in first mortgages on real estate, held and used for farming purposes, and being the first lien on such real estate, and from time to time, as such securities mature, may invest in other like securities, or in the securities already authorized by law, as may be directed by such by-law or by other by-laws passed for that purpose. Investment of same.

2. No sum so invested shall exceed two-thirds of the value of the real estate on which it is secured, according to the last revised and corrected assessment roll, at the time it is so invested. (*n*) 36 V. c. 48, s. 270. *See Rev. Stat.* c. 28, s. 7; *and* c. 204, s. 93. Proviso: as to investment.

361. Any Municipal Corporation having surplus moneys set apart for educational purposes, may, by by-law, invest the same in a loan or loans to any Board or Boards of School Trustees within the limits of the Municipality, for such term Loans to school trustees.

(*l*) Where a Township Council enacted that the interest arising on the invested funds for schools in a Township, should be apportioned on, and according to the number of days the schools had been open or taught in each half year, the Court refused to quash the By-law. *In re Storms and Ernestown*, 39 U. C. Q. B. 353.

(*m*) The power is not only to set apart the surplus for educational purposes, but to invest the same. The investments may be:

1. In public securities of the Dominion;

2. Municipal debentures;

3. First mortgages on real estate, held and used for farming purposes.

In the event of the mortgagor making default, the Municipal Corporation may, notwithstanding the provisions of the Statute of Mortmain, have a decree of foreclosure. *Orford* v. *Bailey*, 12 Grant, 276. There is probably no serious danger of Municipalities holding lands so acquired to any alarming extent. *Ib.* If it should become a serious evil, the Legislature can cure it at any time by compelling a sale of the lands so acquired. *Ib.*

(*n*) This is directed against possible abuses, and intended to secure safety of investment. The direction that the sum invested is not to exceed two-thirds of the value of the real estate on which it is secured, according to the last revised and corrected Assessment Roll at the time the money is invested, is deserving of careful attention. Municipal Councillors are trustees for the ratepayers, and if they disregard the safeguard of this section, they are made civilly responsible to make good the loss. See sec. 362.

or terms, and at such rate or rates of interest as may be agreed upon by and between the parties to such loan or loans respectively, and may be set forth in such by-law; (*o*) or may by by-law grant any portion of such moneys or other general funds by way of gift to aid poor School Sections within the Municipality. (*p*) 36 V. c. 48, s. 271. *See Rev. Stat.* c. 204, s. 94.

Aid to poor school sections.

No members of corporation to be party to investment.

Rev. Stat. c. 28, s. 7,

Liability for loss.

362. No member of any Municipal Corporation shall take part in or in any way be a party to the investment of any such moneys as are mentioned in this Act, by or on behalf of the corporation of which he is a member, otherwise than is authorized by this Act, or by the seventh section of *The Act respecting the Clergy Reserves*, or by any other law in that behalf made and provided, (*q*) and any such person so doing shall be held personally liable for any loss sustained by such Corporation. (*r*) 36 V. c. 48, s. 272.

(*o*) It should be noted that the first part of this section only applies to a Corporation "having surplus moneys set apart for educational purposes." The first part is a copy of section 275 of the Act of 1866. Before section 275 of the Act of 1866, which was taken from sec. 4 of Stat. 27 Viet. cap. 17, each Township had power to grant to the Trustees of any School Section, on their application, authority to borrow any sums of money necessary for specified purposes, in respect to School sites, School houses and their appendages, or for the purpose or erection of a teacher's residence; and in that event was required to cause to be levied in each year upon the taxable property in the Section a sufficient sum for the payment of the interest on the sum so borrowed, and a sum sufficient to pay off the principal within ten years, Con. Stat. U. C. ch. 64, s. 35. By the section here annotated, the Municipal Corporation may not merely give authority to School Trustees to borrow, but itself lend money to the School Trustees within the limits of the Municipality, "for such term or terms and at such rate or rates of interest as may be agreed upon, &c., and set forth in such By-law." See *In re Doherty and Toronto*, 25 U. C. Q. B. 409.

(*p*) The latter part is not, like the first part of the section, restricted to moneys set apart for educational purposes. The grant may be of such last mentioned moneys, "or *other* general funds, by way of gift to aid poor School Sections within the Municipality."

(*q*) The members of the Municipal Council are agents for the people whom they represent, with a limited authority in regard to the borrowing and lending of money, as well as other matters. They are also trustees for the people, and, being so, are not allowed to make a profit out of the trust fund, or deal with it otherwise than directed by the Legislature. See sec. 414, and notes thereto.

(*r*) Trustees exceeding their powers as to the mode of investment where loss is the result are very commonly made personally liable for

Municipalities indebted to Municipal Loan Fund to make annual returns to Provincial Treasurer.

363. The Treasurer of every Municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, shall, so long as any part of such sum, or of the interest thereon, remains unpaid by such Municipality, transmit to the Treasurer of Ontario, on or before the fifteenth day of January in every year, (*s*) a return, certified on the oath of the Treasurer before some Justice of the Peace, containing the amount of taxable property in the Municipality according to then last assessment roll or rolls; a true account of all the debts and liabilities of the Municipality, for every purpose, for the then last year; and such further information and particulars with regard to the liabilities and resources of the Municipality as the Lieutenant-Governor in Council may from time to time require, (*t*) under a penalty, in case of neglect or refusal to transmit the return, account, information or particulars, of one hundred dollars, to be recovered with costs as a debt due to the Crown. (*u*) 36 V. c. 48, s. 273.

Penalty for default.

Every Council to make a yearly report of state of debts to Lieutenant-Governor, etc.

364. Every Council shall, on or before the thirty-first day of January in each year, (*v*) under a penalty of twenty dollars in case of default, to be paid to the Treasurer of Ontario, (*w*) transmit to the Lieutenant-Governor, through the Provincial Secretary, an account, in such form as may be prescribed from time to time by the Lieutenant-Governor in Council, of the several debts of the corporation, as they stood on

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the amount of the loss. See *Zambaco* v. *Cassavetti*, L. R. 11 Eq. 439; *Ex parte Norris*, L. R. 4 Ch. 280; see further *Hopgood* v. *Parkin*, *Ib.* 74.

(*s*) See note *g* to sec. 240.

(*t*) It is, by Con. Stat. Can. ch. 83, sec. 64, made the duty of the Treasurer of any Municipality in *arrear* for any sum of money under that Act or the Municipal Loan Fund Act, to certify to the Provincial Secretary, within one month after the time when the sum of money is payable, the total value of the assessable property, and the rate in the dollar in such Municipality, for the year preceding the default.

(*u*) In any action for the recovery of such a penalty, it is sufficient to prove by any one witness or other evidence, that such return, &c., ought to have been transmitted by the defendant as alleged on the part of the Crown; and the onus of proving that the same was so transmitted is to rest upon the defendant. R. S. O. c. 20, s. 15.

(*v*) See note *g* to sec. 240.

(*w*) See note *u* to sec. 363.

the thirty-first day of December preceding, (*x*) specifying in regard to every debt of which a balance remained due at that day,

What such report must show.

1. The original amount of the debt;
2. The date when it was contracted;
3. The days fixed for its payment;
4. The interest to be paid therefor;
5. The rate provided for the redemption of the debt and interest;
6. The proceeds of such rate for the year ending on such thirty-first day of December;
7. The portion (if any) of the debt redeemed or paid during such year;
8. The amount of interest (if any) unpaid on such last mentioned day; and
9. The balance still due of the principal of the debt. 36 V. c. 48, s. 274.

Division II.—Commission of Inquiry into Finances.

When granted. *Sec.* 365.
Expenses of *Sec.* 366.

When a commission of inquiry may issue.

365. In case one-third of the members of any Council, or thirty duly qualified electors of the Municipality, (*a*) petition for a commission to issue under the Great Seal, to inquire into the financial affairs of the Corporation and things connected therewith, and if sufficient cause is shewn, the Lieutenant-Governor in Council may issue a commission accordingly, and the commissioner or the commissioners, or such one or more of them as the commission empowers to act, shall have the

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(*x*) The design of this section is yearly to inform the Executive Government of the Province of the financial condition of each Municipality.

(*a*) The power conferred is one of inquiry, and may be of great advantage to Municipalities, by enabling the Commissioners to enforce the attandance of witnesses and compel them to give evidence. *Per* Richards, C. J., *In re Eldon and Ferguson*, 6 U. C. L. J. 209. It is a public inquiry conducted under a publi Act of Parliament, which says nothing about compensation to witnesses, and it would seem that persons called before the Commissioners are not entitled to compensation for expenses or loss of time any more than in the case of a prosecution for a misdemeanour. *Per* Robinson, C. J., in *East Nu-*

same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases. (*b*) 36 V. c. 48, s. 275.

Expenses of such commissions provided for.

366. The expenses to be allowed for executing the commission shall be determined and certified by the Treasurer of Ontario, and shall thenceforth become a debt due to the commissioner or commissioners by the Corporation, and shall be payable within three months after demand thereof made by the commissioner, or by any one of the commissioners, at the office of the Treasurer of the Corporation. (*c*) 36 V. c. 48, s. 276.

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souri v. *Horseman et al.*, 16 U. C. Q. B. 567. Inquiries into other than financial matters are authorized by another section of this Act, sec. 452. If it be alleged and proved that the Councillors whose duty it is to give all necessary and reasonable information, maliciously conspired to withhold information, and contrived and intended to cause expense and damage to the Corporation, by increasing the costs and expenses of the Commission, and throw upon the Corporation any costs (sec. 366), and it be charged and proved that the Councillors, in pursuance of such contrivance and intention, misconducted themselves to the damage of the Corporation, an action on the case may be maintained against them at the suit of the Corporation for recovery of damages. *East Nissouri* v. *Horseman et al.*, 16 U. C. Q. B. 556; and in such an action, where it was shewn that the Clerk absented himself and kept back the books, &c., in collusion with the defendants, and that, in consequence, the costs of the Commission, which otherwise would not have exceeded £75 or £100, were increased to £328, it was held that the sum of £250 damages was not excessive. *S. C.* 18 U. C. Q. B. 31. There is nothing in the section to prevent the Corporation from suing for money due them. *Per* Richards, J., *In re Eldon and Ferguson et al.*, 6 U. C. L. J. 209. It would be unreasonable to hold that the power to inquire should deprive the Corporation of the right to resort to a more speedy and economical mode of investigating accounts, and of obtaining payment of the amount due when ascertained. *Ib.*

(*b*) It is presumed that witnesses on such an inquiry would not be bound by their answers to questions to criminate themselves. See note to sec. 452.

(*c*) The expenses are to be *determined* by the Treasurer of Ontario. No appeal of any kind is provided for. When determined, the account may be certified. When certified, the amount of it becomes a debt due by the Municipality to the Commissioner or Commissioners, payable "*within* three months after demand, &c." A right of action arises on the part of the Commissioners to recover the money by action at law, after the amount has been determined, certified, and demanded. The plaintiff in such an action is not obliged to prove the regularity of the issue of the commission. *Bristow* v. *Cornwall*, 36 U. C. Q. B. 225.

TITLE IV.—ARBITRATIONS.

DIVISION I—APPOINTMENT OF ARBITRATORS.
DIVISION II.—PROCEDURE.

DIVISION I. APPOINTMENT OF ARBITRATORS.

How Appointed. *Secs.* 367-371.
Failure of parties to appoint. *Sec.* 372.
Respecting real property, &c. *Secs.* 373–374.
Where several interests. *Secs.* 375-376.
Award, when to be made. *Sec.* 377.
Certain persons disqualified. *Sec.* 378.

Appointments how to be made.

367. The appointment of all arbitrators shall be in writing under the hands of the appointers, (*a*) or in case of a Corporation, under the corporate seal, and authenticated in like manner asa by-law. (*b*) 36 V. c. 48, s. 277.

Council or head thereof may appoint for corporation.

368. The arbitrators on behalf of a municipal corporation shall be appointed by the Council thereof, or by the head thereof, if authorized by a by-law of the Council. (*c*) 36 V. c. 48, s. 278.

(*a*) Decided cases show the great practical difficulty which either party may often have in obtaining possession of the appointment of his opponent's Arbitrator when he wishes to make the submission a rule of Court, and the delay, expense and inconvenience to which this difficulty may subject him. A method, it is suggested, may be found to remedy this difficulty. If each party took the precaution, at the time of the reference, of requesting the other party to make the appointment of his Arbitrator in duplicate, and if they mutually agree to furnish each other with one of the duplicate parts, and not a mere copy, there seems no reason why, on producing the appointment of his own Arbitrator and the duplicate original of his opponent's Arbitrator, and properly verifying both of them, the submission might not be made a rule of Court. Russell on Awards, 560.

(*b*) There should, in strictness, be a By-law of the Council authorizing the appointment, or the affixing of the seal to the appointment or a By-law delegating the appointment to the head of the Council. See sec. 368. But the Municipal Council may so act as to be estopped from taking formal objections to the mode of appointment. See *In re Eldon and Ferguson*, 6 U. C. L. J. 207; and *Wilson and Port Hope*, 10 U. C. Q. B. 405. The appointment, when properly authorized, should not only be under the seal of the Corporation, but be signed by the head of the Corporation and by the Clerk of the Corporation. Such is the mode of authenticating a By-law. See sec. 281.

(*c*) As a rule, an Arbitrator, to represent a Municipal Council, must be appointed by that Council; the exception is when the

Mode of appointing arbitrators and conducting arbitrations.

369. In cases where arbitration is directed by this Act, either party may appoint an arbitrator, and give notice thereof in writing to the other party, and therein calling upon such party to appoint an arbitrator on behalf of the party to whom such notice is given. (*d*) A notice to a Corporation shall be given to the head of the Corporation. (*e*) 36 V. c. 48, s. 279.

Third arbitrator to be appointed.

370. The two arbitrators appointed by or for the parties shall within seven days from the appointment of the lastly named of the two arbitrators (*f*) appoint in writing a third arbitrator. (*g*) 36 V. c. 48, s. 280.

When more than two municipalities.

371. In cases where more than two Municipalities are interested, each of them shall appoint an arbitrator, and in such case, if there is an equality of arbitrators, the arbitrators so appointed shall appoint another arbitrator, (*h*) or in default, at

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Council, by By-law, deputes that power to the head of the Council. See note *b* to preceding section.

(*d*) The notice must be in writing. It should state the object of the arbitration, name the Arbitrator appointed by the party giving the notice, and call upon the other party to name his Arbitrator. It should be express and absolute. Where B. had given notice to a railway company that "it was his intention" to appoint M. as Arbitrator, and if they failed for fourteen days to appoint one, he would appoint him to act for both parties, and M. did so act, the Court refused to enforce the award. *Bradley* v. *London and North Western Railway Co.*, 5 Ex. 769.

(*e*) This is apparently a provision for the service of the notice. "It shall be given to the head of the Corporation."

(*f*) As to computation of time, see note *a* to sec. 177.

(*g*) It is a common error to look upon a *third* Arbitrator as an umpire. The difference between a third Arbitrator and an umpire is that the former is appointed *before* the arbitration proceeds, and the latter after the Arbitrators have entered upon the reference and are unable to agree. There are other distinctions between the two, unnecessary to be mentioned here. Harrison's C. L. P. Act, 2nd Ed. 238.

(*h*) This section contemplates the difficulty of Arbitrators disagreeing where each represents a particular Municipality, and there is an equality of Arbitrators. In such a case there ought to be no difficulty. But Arbitrators sometimes, instead of appreciating their position as impartial judges of the matters in dispute, and so acting, act as advocates, if not as partizans for the party appointing them. No decision would generally be the result if there were no provision for the appointment of an additional Arbitrator. The additional Arbitrator, under this section, is to be appointed by the Arbitrators first appointed. If they, from any cause, fail to do so, the Lieutenant-Governor may, on a proper application, appoint such additional

the expiration of twenty-one days after such arbitrators have been appointed, the Lieutenant-Governor in Council may, on the application of any one of the Municipalities interested, appoint such arbitrator. 36 V. c. 48, s. 281.

Provision in case of neglect to appoint.

372. In case of an arbitration between Municipal Corporations, if for twenty-one days, or in case the arbitration is respecting drainage works, then, if for twenty days after having received such notice, the party notified omits to appoint an arbitrator ; (*i*) or if for seven days after the second arbitrator has been appointed, the two arbitrators omit to appoint a third arbitrator, then, in case the arbitration is between Townships or between a Township and a Town or an incorporated Village, the Judge of the County Court of the County within which the Townships, Town or incorporated Village are or any of them in situate, or in case the arbitration is between other Municipalities, the Lieutenant-Governor in Council may appoint an arbitrator for the party or arbitrators in default, or a third arbitrator, as the case may require. 36 V. c. 48, s. 282.

Arbitration as to real property taken or injured by Municipal Corporations.

373. In case of an arbitration between a Municipal Corporation and the owners or occupiers of, or other persons interested in real property entered upon, taken or used by the Corporation in the exercise of any of its powers, or injuriously affected thereby, (*j*) if, after the passing of the

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Arbitrator. Although no direction is given as to the mode of appointment in either case, it would be well that it should be made in writing.

(*i*) It is the duty of each party to appoint *one* Arbitrator, and give notice thereof in writing to the other party. It is the duty of the two Arbitrators so appointed, in seven days after the appointment of the second Arbitrator, to appoint a third Arbitrator. Default may be made in either particular, and provision is here made therefor. If the arbitration is between Townships, or between a Township and Town, or Incorporated Village, the Judge of the County in which the Townships, Town, or Incorporated Village are or any of them is situate, may appoint the second or third Arbitrator, as the case may require ; but if the arbitration is between other Municipalities, such as Counties or County and a City or Town, or a City and Town, the appointment must be made by the Governor in Council. The appointment ought, though not so directed, to be in writing. See note *d* to sec. 369.

(*j*) The husband cannot bind his wife as to her property so as to avoid the necessity of an arbitration with her. See *In re Benson et ux. and Port Hope, Lindsay and Beaverton Railway Co.*, 29 U. C. Q. B. 529.

by-law, any person interested in the property appoints and gives due notice to the head of the Council of his appointment of an arbitrator to determine the compensation to which such person is entitled, (*k*) the head of the Council shall, if authorized by by-law, (*l*) within seven days (*m*) appoint a second arbitrator, and give notice thereof to the other party, and shall express clearly in the notice what powers the Council intends to exercise with respect to the property, describing it. (*n*) 36 V. c. 48, s. 283; 40 V. c. 7, *Sched.* A (177.)

Provision if owner of property fails to name arbitrator.

374. In any such last mentioned arbitration, if after service on the owner or occupier of, or person so interested in, the property of a copy of any by-law, certified to be a true copy under the hand of the Clerk of the Council, the owner or occupier or person so interested omits for twenty-one days to name an arbitrator, and give notice thereof as aforesaid, (*o*) the Council or the head, if authorized by by-law, (*p*) may name an arbitrator on behalf of the Council, and give notice thereof to such owner, occupier or person so interested, and the latter shall, within seven days thereafter, name an

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(*k*) A difference is to be observed as to arbitration between Municipal Corporations and arbitrations between a Municipal Corporation and individuals. In the latter case the individual appoints his Arbitrator, and gives due notice thereof to the head of the Council. When he does so, the head of the Council is required, if authorized by By-law, within seven days, to appoint a second Arbitrator, and, besides, to give notice thereof to the individual; in which notice must be clearly expressed "what powers the Council intends to exercise with respect to the property, describing it." For *form* of mandamus on the head of a Municipal Council to appoint an Arbitrator, see *The Queen* v. *Perth*, 14 U. C. Q. B. 156.

(*l*) See note *c* to sec. 368.

(*m*) As to computation of time, see note *a* to sec. 177.

(*n*) See notes to sec. 456.

(*o*) The first step is to be taken by the Council, who are required to cause to be served on the owner or occupier of, or person interested in, the land to be affected a copy of the By-law affecting it, certified to be a true copy, under the hand of the Clerk of the Council. Then the initiative as to arbitration is to be taken by the owner so served. It is his duty, within twenty-one days after service, to name an Arbitrator and give notice thereof to the Council in the manner prescribed by the last clause. If he allow the twenty-one days to expire without doing it, then the Council may take the initiative by appointing the first Arbitrator, and giving notice of his appointment. If this is done the owner of the land is required, within *seven* days thereafter, to name the second Arbitrator. As to computation of time, see note *a* to sec. 177.

(*p*) See note *c* to sec. 368.

arbitrator on his behalf. 36 V. c. 48, s. 284; 40 V. c. 7, *Sched.* A (177).

Where several parties are interested in the same property.

375. In case there are several persons having distinct interests in property in respect of which the Corporation is desirous of exercising the powers referred to in the three hundred and seventy-third section, under a by-law in that behalf passed, whether such persons are all interested in the same piece of property, or some or one in a part thereof, and some or one in another part thereof, and in case the by-law or any subsequent by-law provides that the claims of all should, in the opinion of the Council, be disposed of by one award, (*q*) such persons shall have twenty-one (instead of seven) days to agree upon and give notice of an arbitrator jointly appointed in their behalf (*r*) before the County Court Judge shall have power to name an arbitrator for them. 36 V. c. 48, s. 285.

County Court Judge to appoint arbitrator in certain cases.

376. If any such owner, occupier or person so interested, or the head of any such Council, whether from want of authority in that behalf, or otherwise, (*s*) omits to name an arbitrator within seven days after receiving notice to do so, (*t*) or if the persons having distinct interests as aforesaid (*u*) omit to name an arbitrator within twenty-one days after receiving notice to do so, or if the two arbitrators do not within seven days from the appointment of the lastly named of the two arbitrators agree on a third arbitrator, or if any of said arbitrators refuse or neglect to act, (*v*) the Judge of the County Court of the County in which the property is situated, on the application of either party, shall nominate as an arbitra-

(*q*) Where several persons are interested (as in the opening of a new road, &c.), there may be an arbitration under this Act as to each person interested, or, in the option of the Council, an arbitration as to all, and the claims of all be determined by one award. In the latter case, instead of seven days only allowed by sec. 376, twenty-one days are given.

(*r*) See note *d* to sec. 369.

(*s*) See note *c* to sec. 368.

(*t*) As to computation of time, see note *a* to sec. 177.

(*u*) See sec. 375.

(*v*) "*Any* of the Arbitrators." This may be taken to refer to the refusal or neglect of any Arbitrator mentioned in any of the preceding sections, from section 367, to act, for in none of them is there any such provision made for the neglect or refusal of an Arbitrator to act.

tor (*w*) a fit person resident without the limits of the Municipality in which the property in question is situate, to act for the party failing to appoint, or as such third arbitrator, or in the stead of the arbitrator refusing or neglecting to act, and such arbitrators shall forthwith proceed to hear and determine the matters referred to them. 36 V. c. 48, s. 286; 40 V. c. 7 *Sched.* A (178).

Time for making award.

377. In any of the cases herein provided for, (*x*) the arbitrators shall make their award within one month after the appointment of the third arbitrator. (*y*) 36 V. c. 48, s. 287.

Persons disqualified from acting as arbitrators.

378. No member, officer or person in the employment of any corporation which is concerned or interested in any arbitration, (*z*) nor any person so interested, shall be appointed or act as an arbitrator in any case of arbitration under this Act. 36 V. c. 48, s. 288.

DIVISION II.—PROCEDURE.

Oath of Arbitrator. *Sec.* 379.
Proceedings. *Sec.* 380.
Costs, power over. *Sec.* 381.
Majority to decide. *Sec.* 382.
Evidence, where filed. *Sec.* 383.
Award, when adoption by By-law required. *Sec.* 384.
Award, how made, and jurisdiction of Courts. *Sec.* 385.

(*w*) Though not so directed, it would be convenient that the nomination should be in writing.

(*x*) See sec. 377 *et seq.*

(*y*) From the time the Arbitrator has made the award his authority ceases. He cannot afterwards make any correction or alteration, even of manifest errors. *Irvine* v. *Elnon*, 8 East. 54; *Ward* v. *Dean* 3 B. & Ad. 234; *Re Hall* v. *Hinds*, 2 M. & G. 847; *Brooke* v. *Mitchell*, 6 M. & W. 473.

(*z*) An Arbitrator should be impartial. If corrupt conduct on the part of an Arbitrator be shown, his award will be set aside. See *Tittenson* v. *Peat*, 3 Atk. 529; *Earle* v. *Stocker*, 2 Vern. 251; *Burton* v. *Knight*, *Ib.* 514; *Morgan* v. *Mather*, 2 Ves. 15; *Emery* v. *Wase*, 5 Ves. 846; *Lonsdale* v. *Littledale*, 2 Ves. 451; *Clarke* v. *Stocken*, 2 Bing. N. C. 651. But mere suspicion of misconduct is not enough. *Crossley* v. *Clay*, 5 C. B. 581; see also *Anon*, 2 Vern. 100; *Goodman* v. *Sayers*, 2 J. & W. 249. In order that there should not to be even suspicion as to Municipal awards, it is here declared 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." See *In re Elliot and South Devon Railway Co.* 2 De G. & Sm. 17.

Arbitrators to be sworn.

379. Every arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (*a*) (or in case of those who by law affirm, make and subscribe the following affirmation) before any Justice of the Peace:

Form of oath.

"I (A. B.) do swear (*or* affirm) that I will well and truly try the matters referred to me by the parties, and a true and impartial award make in the premises, according to the evidence and my skill and knowledge. So help me God."

36 V. c. 48, s. 289.

Time of meeting, &c.

380. The arbitrators shall, within twenty days (*b*) after the appointment of the third arbitrator, meet at such place as they may agree upon, (*c*) to hear and determine the matter in dispute, (*d*) with power to adjourn from time to time, and shall make their award in writing, (*e*) and, if the arbitration is respecting drainage works, in triplicate, which shall be binding

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(*a*) The oath is not only to be taken by *every* Arbitrator, but to be taken by him "*before proceeding to try the matter of the arbitration.*" The oath, besides, is not only to be taken but subscribed. When taken and subscribed, it is to be filed with the papers of the reference.

(*b*) As to computation of time, see note *a* to sec. 177.

(*c*) There is no express direction in this statute that the Arbitrators shall give to the parties notice of their meetings and an opportunity of being heard; but this is essential, at least to this extent, that whether there has been a formal notice or not, it should appear that the parties at least had knowledge of the meetings and an opportunity of being heard and producing evidence before the Arbitrators. *In re Johnson and Gloucester*, 12 U. C. Q. B. 135.

(*d*) An Arbitrator is in general, whether of the legal profession or not, the judge of law as well as fact, see *Jupp et al.* v. *Grayson*, 1 C. M. & R. 523; *Young* v. *Walter*, 9 Ves. 364; *Perriman* v. *Steggall*, 9 Bing. 679; *Campbell* v. *Twemlow*, 1 Price 81; *Wilson* v. *King*, 2 C. & M. 689; *Hall* v. *Ferguson*, 4 O. S. 392, and this being so, the Court will be reluctant to set aside the award unless for mistake apparent on the face of it. *Hogge* v. *Burgess*, 3 H. & N. 293; *Hodgkinson* v. *Fernie*, 3 C. B. N. S. 189; *Baguelly* v. *Borthwith*, 4 L. T. N. S. 245, and, unless empowered to set it aside, will not in general remit it back to the Arbitrator for reconsideration. *Hogge* v. *Burgess*, 3 H. & N. 293; *Latta* v. *Wallbridge*, 7 U. C. L. J. 207. But as to certain awards, inquiry may be had as to the merits. See sec. 385.

(*e*) In all cases the award is to be in writing. If it were not for this very proper provision, an award by word of mouth might be held sufficient. *Hanson* v. *Leveredge*, Carthew 256; *Rawling* v. *Wood*, Barnes, 54; *Oates* v. *Bromil*. 1 Salk. 75; *Blundell* v. *Brettargh*, 17 Ves. 232, 240.

on all parties, and one copy thereof shall be filed with the Clerk of each of the Municipalities interested, and one shall, in case the arbitration is respecting drainage works as aforesaid, be filed with the Registrar of deeds for the County or other Registration Division in which the lands affected are situate. (*f*) 36 V. c. 48, s. 290.

Costs.

381. The arbitrators shall have power to award the payment by any of the parties to the other of the costs of the arbitration, or of any portion thereof, (*g*) and may either direct the payment of a fixed sum, (*h*) or that such costs should be taxed on either the scale of Superior Courts of Common Law, or of the County Courts, in which case such costs shall be taxed by the officer in the County of the proper Court, without any further order, (*i*) and the amount shall be payable one week after such taxation. (*j*) Revision by the principal officer at Toronto may be had upon one week's notice and an appeal to a Judge in the usual manner. (*k*) 36 V. c. 48, s. 291.

(*f*) The original in all probability, would be received as evidence on its mere production, and if so, a copy thereof may be received without proof of the original. See *Warren* v. *Deslippes*, 33 U. C. Q. B. 59.

(*g*) Power is given to the Arbitrators to award as to costs; but they are under no obligation to do so. They may, if they see fit, be silent as to costs. See *Mackintosh* v. *Blythe*, 1 Bing. 269; *Young* v. *Gye*, 10 Moore 198. Before this Act there was no power to award as to costs. *In re Northumberland and Durham and Cobourg*, 20 U. C. Q. B. 283.

(*h*) The Court will not review the discretion as to amount where an Arbitrator having power to fix the amount of costs has exercised the power, unless the amount fixed be so excessive as to manifest partiality. *Anon.* 1 Chit. 38; *Shephard* v. *Brand*, Cases Temp. Hard. 53; *Turner* v. *Rose*, 1 Ld. Kenyon, 393.

(*i*) All that the Arbitrator has to do, instead of fixing the amount of costs, is to say, "I award costs to (naming the party)," according to the scale of costs of the Superior Courts of Common Law or of the County Court, and stating whether he intends his award to apply to all the costs, including the award as well as the reference. In such case the costs must be taxed by the officer of the proper Court without an order of any kind.

(*j*) If the costs be either fixed in the award or be declared subject to taxation on the scale either of Superior Courts or County Courts, the amount, when ascertained, may be enforced in the same manner as any other portion of the award.

(*k*) Either party may, as of right, have the taxation of costs by any Deputy Clerk of the Crown and Pleas revised by the principal

Majority to decide.

382. In case of a difference between the arbitrators, the decision of the majority of them shall be conclusive. (*l*) 36 V. c. 48, s. 292.

Notes of the evidence adduced to be taken and filed in certain cases.

383. In case of any award under this Act, which does not require adoption by the Council, (*m*) or in case of any award to which a Municipal Corporation is a party, and which is to be made in pursuance of a submission containing an agreement that this section of this Act should apply thereto, (*n*) the arbitrator or arbitrators shall take, and immediately after the making of the award, shall file with the Clerk of the Council, for the inspection of all parties interested, full notes of the oral evidence given on the reference, and also all documentary evidence or a copy thereof; and in case they proceed partly on a view or any knowledge or skill possessed by themselves or any of them, they shall also put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto. (*o*) 36 V. c. 48, s. 293.

Grounds of decision, etc., to be stated in writing.

Clerk of the Court wherein the proceedings have been had. Har. C. L. P. Act, 2nd Ed. 438.

(*l*) In the case of an award by several individuals, all should execute at the same time and in the presence of each other, *In re Templeman and Reed*, 9 Dowl. 965; *Wade* v. *Dowling*, 4 E. & B. 43; *Helps* v. *Roblin*, 6 U. C. C. P. 52; *Martin* v. *Kergan*, 2 U. C. P. R. 370, and full opportunity should be given to the minority of the Arbitrators, if so disposed, to join in the award. *Ib.*

(*m*) See sec. 384 and notes thereto.

(*n*) Which may be in this form: "It is hereby agreed that section 383 of the Act respecting Municipal Institutions in the Province of Ontario shall apply to any award made touching or concerning the premises aforesaid."

(o) The duties of the Arbitrators, where this section applies, are to—

1. Take full notes of the oral evidence given on the reference.

2. File the same, immediately after the making of the award, with the Clerk of the Council, for the inspection of all parties interested.

3. File in like manner all documentary evidence or a copy thereof.

4. In case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto.

But it does not follow that the award will be set aside for non-compliance with the provisions of this section. *In re Northumberland and Durham and Cobourg* 20 U. C. Q. B. 283.

384. In case the award relates to property to be entered upon, taken or used as mentioned in the three hundred and seventy-third section, and in case the by-law did not authorize or profess to authorize any entry or use to be made of the property before an award has been made, except for the purpose of survey, or in case the by law did give or profess to give such authority, but the arbitrators find that such authority had not been acted upon, the award shall not be binding on the Corporation unless it is adopted by by-law within six weeks after the making of the award; (*p*) and if the same is not so adopted, the original by-law shall be deemed to be repealed, and the property shall stand as if no such by-law had been made, and the corporation shall pay the costs of the arbitration. 36 V. c. 48, s. 294.

Award to be binding in certain cases, must be adopted by by-law within a certain time.

385. Every award made under this Act shall be in writing (*q*) under the hands of all or two of the arbitrators, and shall be subject to the jurisdiction of any of the Superior Courts of Law or Equity, as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court; (*r*) and in the cases provided for by the three hundred and eighty-third section, the Court shall consider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award or

Award to be made by at least two arbitrators, and subject to Superior Courts.

Powers of the Courts in such matters.

(*p*) A Municipal Corporation has, by statute, certain powers in regard to roads, streets and other communications, and to drains and sewers, which powers may be exercised by By-law. Any award made in reference thereto is dependent on the adoption of the award by By-law within six weeks after its making; and the original By-law is also made dependent on the passing of such second By-law. The award is not to be binding on the Corporation unless, within the time limited for the purpose, it is adopted by the Council. If not so adopted, the original By-law is to be deemed repealed. In this event the Corporation is to pay the costs of the arbitration. As to which see sec. 381 and notes thereto.

(*q*) See note *e* to sec. 380.

(*r*) Formerly there were two kinds of submission that might be made rules of Court:

1. References by rule of Court, Judge's order, and order of Nisi Prius.

2. Submissions in writing, by virtue of the statute 9 & 10 Will. III. ch. 15, where they contain an agreement to the effect that they may be made rules of Court.

remit the matters referred, or any of them, from time to time, to the consideration and determination of the same arbitrators, or to any other person or persons whom the Court may appoint, as prescribed in "*The Common Law Procedure Act*," and fix the time within which such further or new award shall be made, or the Court may itself increase or diminish the amount awarded or otherwise modify the award, as the justice of the case may seem to the Court to require. (*s*) 36 V. c. 48, s. 295.

Rev. Stat. c. 50.

TITLE V.—DEBENTURES AND OTHER INSTRUMENTS.

To be under seal and bear signature of head. *Sec.* 386.
Railway Debentures. *Sec.* 387,
Defects in form. *Sec.* 388.

These were extended by the Common Law Procedure Act, 1856, s. 97, which enated that "Every agreement or submission, whether by deed or instrument, not under seal, may be made a rule of one of the Superior Courts of Law or Equity in Upper Canada, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should *not* be made a rule of Court," &c. This provision is now in substance re-enacted in sec. 210 of the C. L. P. Act. Rev. Stat. Ont., c. 50. The effect of the clause here annotated is to place submissions under this section on the same footing as any of the foregoing described submissions. *In re Brant and Waterloo*, 19 U. C. Q. B. 450 ; and *In re Eldon and Ferguson*, 6 U. C. L. J. 207. The effect of making any award under this Act subject to the jurisdiction of any of the Superior Courts of Law or Equity, as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court, appears to be to bring all such submissions under the statute of 9 & 10 Will. III. cap. 15, and to give the Courts power to review the awards, and if necessary, to enforce the performance of them. See notes to Harrison's C. L. P. Act, 2nd Ed. 223. The ordinary remedy by action is of course open to any party to an award under this section. See *Harpel* v. *Portland*, 17 U. C. Q. B. 455. In such an action it is no objection to the declaration that it was upon a submission to three arbitrators, while two only executed the award, for the statute authorizes two to act, and makes their award valid. *Ib.* Under a plea of no award it has been held that defendants cannot dispute the Arbitrators' authority to award a portion of the sum awarded. *Hodgson* v. *Whitby*, 17 U. C. Q. B. 230.

(*s*) The power here given can be reasonably exercised on inspection of the "full notes of the oral evidence given on the reference and also all documentary evidence or a copy thereof," which, under sec. 383 of this Act, the Arbitrators are bound to file "for the inspection of all parties interested." It is a more extensive power than usually exercised as to ordinary awards. *In re Howick and Wroxeter*, 12 U. C. L. J. N. S. 64.

Local Improvement Debentures. *Sec.* 389.
Transfer of Registered Debentures. *Secs.* 390-393.
No issue under $100. *Sec.* 394.
Restrictions as to Banking. 29-30 V. c. 51, ss. 218, 219, p. 305.

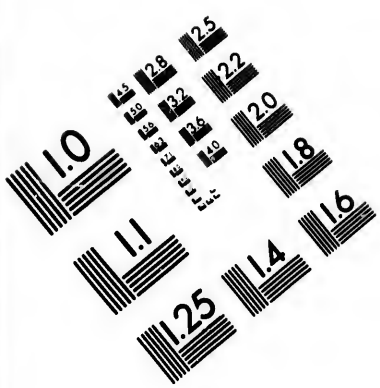
Debentures, bonds, &c., how to be executed.

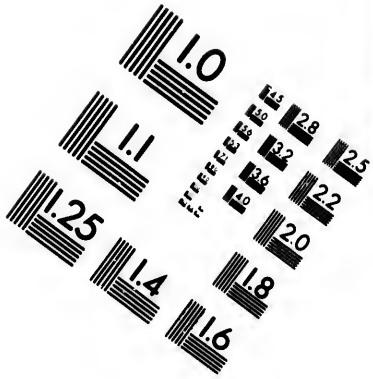
386. All debentures and other instruments duly authorized to be executed on behalf of a Municipal Corporation shall, unless otherwise specially authorized or provided, be sealed with the seal of the Corporation, and be signed by the head thereof, or by some other person authorized by by-law to sign the same, (*a*) otherwise the same shall not be valid, (*b*) and it shall be the duty of the Treasurer of the Municipality to see that the money collected under such by-law is properly applied to the payment of the interest and principal of such debentures. (*c*) 36 V. c. 48, s. 296.

(*a*) Although the By-law provides that the debentures shall be signed by the head of the Council, yet, if the head of the Council perversely refuse to discharge his duty in this respect, a By-law may be passed providing for the signing of the debentures by some person in his stead, and the debentures so signed will be valid. *Brock* v. *Toronto and Nipissing Railway Co.*, 17 Grant 425.

(*b*) It has been held that a debenture issued by a Municipal Council, under its corporate seal, and signed by the head of the Corporation, for the payment of a debt due or loan contracted under a By-law which does not provide by special rate for the payment of the debt or loan, does not estop the Municipal Corporation from setting up, as a defence to an action on the debentures, the invalidity of the By-law: *Mellish* v. *Brantford*, 2 U. C. C. P. 35; See further, *Thomas* v. *Richmond*, 12 Wall. (U.S.) 349; *Webster County* v. *Taylor*, 19 Iowa 117; *Clark* v. *Desmoines*, *Ib.* 199; *Clark* v. *Polk County*, *Ib.* 248; *Halstead* v. *Mayor*, *&c.* 3 Comst. (N.Y.) 430; *Hodyes* v. *Buffalo*, 2 Denio. (N.Y.) 110; *Boom* v. *Utica*, 2 Barb. (N.Y.) 104; *Anthony* v. *Inhabitants*, 1 Mete. (Mass.) 284, and may file a bill in Equity for the cancellation of securities illegally issued. *Pulaski County* v. *Lincoln*, 4 Eng. (Ark.) 320; *Trustees &c.* v. *Cherry*, 8 Ohio St. 564. See further, note *m* to sec. 390. A person negotiating the sale of a Municipal debenture is not answerable that the Municipality will pay the amount secured by the debenture. *Sceally* v. *McCallum*, 9 Grant 434. Where, therefore, a Township Municipality, in pursuance of the Municipal Corporation Act of 1849, passed a By-law for the purpose of granting a loan to the Port Burwell Harbour Company, and issued debentures thereunder which were subsequently declared to be illegal in consequence of the road company not having been properly constituted, the Court of Chancery, in the absence of any proof of fraud, refused to order one of the directors of the road company to refund the amount paid to him upon the sale of one of such debentures. *Ib.*

(*c*) The latter part of this section, like section 337, is intended for





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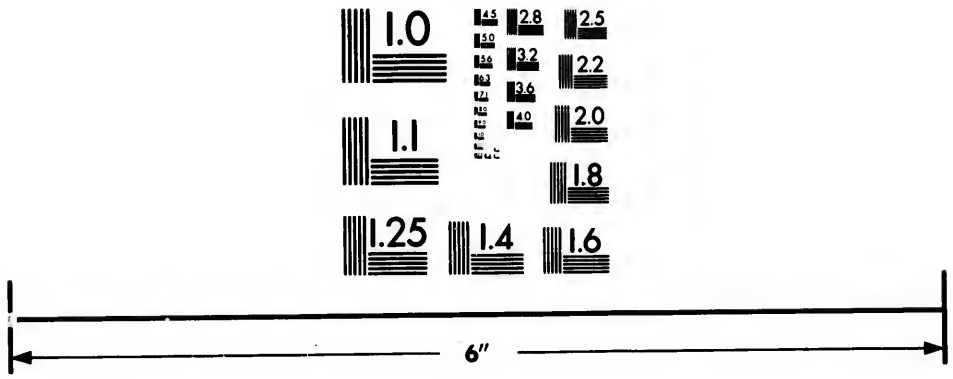

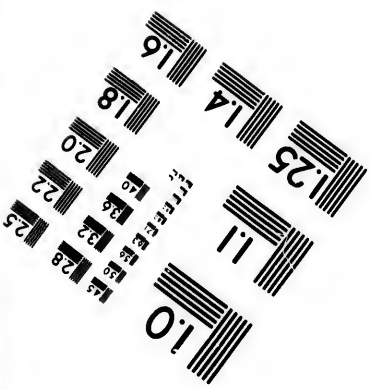

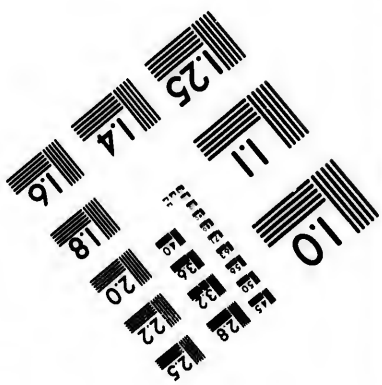

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[*Section* 217 *of* 29-30 V. c. 51, *is as follows* :—

Full amount recoverable, though negotiated at interest exceeding 6 per cent or below par.

217. Any such debenture issued as aforesaid shall be valid and recoverable to the full amount, notwithstanding its negotiation by such Corporation at a rate less than par, or at a rate of interest greater than six per centum per annum, or although a rate of interest greater than six per centum per annum is reserved thereby or made payable thereon.]

In certain cases, debentures valid without corporate seal, &c.

387. Any debenture issued in aid of any railway, or for any bonus, signed or endorsed and countersigned as directed by the by-law, (*e*) shall be valid and binding on the Corporation without the corporate seal thereto, or the observance of any other form with regard to the debenture than such as may be directed in the by-law. (*f*) 36 V. c. 48, s. 297.

Debentures valid notwithstanding defect in form.

388. Any debenture issued under the authority of any by-law which has been promulgated under chapter forty-eight of the Acts passed in the thirty-sixth year of Her Majesty's reign or under this Act, (*g*) shall be valid and binding upon the corporation, notwithstanding any insufficiency in form or otherwise of such by-law, or in the authority of the corporation in respect thereof: (*h*) Provided that the said by-law is in

Proviso.

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the protection of creditors. The duty of the Treasurer to see that the money collected under the By-law is properly applied is made imperative, and no subsequent By-law or resolution of the Council would in law be any excuse for the neglect of that duty. If the By-law authorize the loan for a special purpose only, the treasurer could not, without disregarding his plain duty, apply the money to any other purpose. *Grier* v *Plunket*, 15 Grant 152. But where the misapplication had been actually made before the filing of a bill by a ratepayer complaining of the misapplication, and the same had been made in good faith in discharge of a legal liability of the Municipality, and the Council of the Township approved of and adopted the payment, a bill by a ratepayer to compel the Treasurer to repay the amount and personally bear the loss, was dismissed. *Ib.*

(*e*) See sec. 559 and notes thereto.

(*f*) This is an exception to the general rule, which requires debentures of a Municipal Corporation to be sealed with the seal of the Corporation and signed by the head thereof. Sec. 386. Why such an exception should be either created or preserved, it is difficult to understand; but so the law is written. The effect of the section is, as regards debentures in aid of any railway or for any bonus, that they may be in such form as the By-law directs, and shall be valid notwithstanding the want of the corporate seal thereto.

(*g*) See sec. 319.

(*h*) Were it possible to secure for all money By-laws the stamp of legality, so as to remove all suspicion of informality, irregularity or illegality, the effect would be eminently beneficial. It would beget

accordance with subsections one to five, both inclusive, of section three hundred and thirty or in accordance with section three hundred and thirty-two, (*i*) and has received the assent of the electors where necessary, and that no successful application has been made to quash the same before the end of the next Term after the promulgation thereof. (*k*) 36 V. c. 48. s. 298; 39 V. c. 7, s. 2 (*Sched.*)

Form of debenture.

389. Every debenture issued under the sections of this Act numbered five hundred and fifty-one, five hundred and fifty-two, and five hundred and fifty-three, shall bear on its face the words "*Local Improvement Debenture,*" and shall contain a reference, by date and number, to the by-law under which it is issued. (*l*). 36 V. c. 48, s. 299.

Mode of transfer may be prescribed.

390. Any debentures to be issued by any Municipal Council may contain a provision in the following words:

"This debenture, or any interest therein, shall not, *after* a certificate of ownership has been endorsed thereon by the Treasurer

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a spirit of confidence alike of advantage to the seller and to the buyer of Municipal debentures. Less room would be left for speculation or trade on the fears of men and contingencies of law, and more stability be imparted to the negotiation of Canadian Municipal securities; one consequences of which—and not the least—would be the increase of the market value of the securities. A mode likely to attain an end so desirable was suggested by Mr. Harrison in his preface to the first edition of this work. It was, to require all money By-laws to be approved by some competent public functionary, and when so approved that the debentures should not be liable to be impeached on the ground of informality, or want of technical accuracy, or otherwise.

(*i*) The debentures are only made binding on the Corporation when these provisions of the sections are complied with. See *Trust and Loan Company* v. *Hamilton*, 7 U. C. C. P. 103; *Anglin* v. *Kingston*, 16 U. C. Q. B. 121; *Crawford* v. *Cobourg*, 21 U. C. Q. B. 113; see further, note *b* to sec. 386.

(*k*) See sec. 312, and notes.

(*l*) Ordinary debentures must be sealed with the seal of the Corporation, and be signed by the head thereof. See sec. 386. But as to debentures issued in aid of any railway or for any bonus, see sec. 387. The requirements contained in this section are in addition to the ordinary requirements. The purpose of the section is to distinguish debentures which are secured only on particular localities in a Municipality from those which have all the liable property of the Municipality as security.

of this Municipal corporation, be transferable, (*m*) except by entry by the Treasurer or his deputy in the Debenture Registry Book of

(*m*) Debentures in the United States are held to be negotiable. They are designed for the raising of money for some particular purpose mentioned in the By-law authorizing the same. Unless negotiable, that purpose would be defeated. They pass from hand to hand as other negotiable securities. See *Mercer County* v. *Hacket*, 1 Wall. (U.S.) 83; *Meyer* v. *Muscatine*, *Ib.* 384; *Gelpeke* v. *Dubuque*, *Ib.* 175; *Miami* v. *Waine County*, 2 Black. (U. S.) 722; *Chapin* v. *Railroad Co.*, 8 Gray (Mass.) 575; *Clapp* v. *Cedar County*, 5 Iowa, 15; *Craig* v. *Vicksburg*, 31 Miss. 216; *Moris Canal Co.* v. *Fisher*, 1 Stoct. Ch. (N.J.) 667; *Clark* v. *Janesville*, 10 Wis. 136; *Gould* v. *Sterling*, 23 N. Y. 464; *White* v. *Vermont and Massachusetts Railroad Co.*, 21 How. (U. S.) 575; *Bank* v. *Railroad Co.*, 4 Duer. (N. Y.) 480; *Commissioners* v. *Bright*, 18 Ind. 93; *Aurora* v. *West*, 22 Ind. 197; *De Voss* v. *Richmond*, 18 Gratt. (Va.) 338; *State* v. *Madison*, 7 Wis. 688; *Maddox* v. *Graham*, 2 Met. (Ky.) 56. So the principle of negotiability has been applied to the coupons, even though detached from the debenture. *Thompson* v. *Lee County*, 3 Wall. (U.S.) 327; *Murray* v. *Lardner*, 2 Wall. (U.S.) 110; *City* v. *Lamson*, 9 Wall. (U.S.) 477; *Johnson* v. *Stark Co.*, 24 Ill., 75; *Knox County* v. *Aspinwall*, 21 How. (U. S.) 539; *Railroad Co.* v. *Otoe Co.*, 1 Dillion, C. C. R., 338. Indeed, debentures and coupons have been held in the United States to be so far negotiable as to render persons endorsing them liable as endorsers. *Bull* v. *Sims*, 23 N. Y. 570; see also *Campbell* v. *Polk Co.*, 3 Iowa, 467; *Fairchild* v. *Ogdensburg Railroad Co.*, 15 N. Y. 337; *Hodges* v. *Shuler*, 22 N. Y. 114; *Keller* v. *Hicks*, 22 Cal. 457. The fact that a debenture was, when duly signed and sealed, feloniously stolen from the Corporation and transferred to the plaintiff, a *bona fide* holder, for value, was held to afford no defence. *Trust and Loan Co.* v. *Hamilton*, 7 U. C. C. P. 98; see further *Seybill* v. *National Currency Bank*, 13 Am. 583; *Dinsmore* v. *Duncan*, 15 Am. 534; *Deming* v. *Inhabitants of Houlton*, 18 Am. 253 and note thereto; *Boyd* v. *Kennedy*, 20 Am. 376. Holders for value, without notice of the equities between the original parties, are not bound by such equities. *In re Imperial Land Co. of Marseilles*, L. R. 11 Eq. 478. Where a Corporation issues debentures, knowing they may be assigned, the Corporation may be estopped as against the assignee from setting up, that the debentures were illegally issued. *Webb et al.* v. *Herne Bay*, L. R. 5 Q. B. 642. By an Act of Parliament commissioners were appointed who were to expend money in improving a Town. They were authorized to levy rates on the Town and to borrow money on the security of the rates, giving bonds for the money so borrowed, of which £100 at the least should be chosen by lot and paid off every year. Interest on the bonds had been duly paid, and, except in two years, £100 had been paid off every year, but more than £15,000 remained on the security of the bonds. *Held*, that holders of such bonds to the amount of £800 were not entitled to the immediate payment out of rates or to a receiver of the rates. *Preston* v. *Great Yarmouth*, L. R. 7 Ch. App. 655; see further, *Crouch* v. *Credit Foncier*, L. R. 8 Q. B. 374; *Bissell* v. *Kankakee*, 16 Am. 554.

the said corporation at the Town (*or* Village) of (*n*) ," *or to the like effect.* (*o*).

36 V. c 48, s. 300.

391. The Treasurer of every Municipality issuing any debentures containing the provision in the last section mentioned, shall open and keep a Debenture Registry Book, in which he shall enter a copy of all certificates of ownership of debentures, which he may give, and also every subsequent transfer of any such debenture; (*p*) such entry shall not be made except upon the written authority of the person last entered in such book as the owner of such debenture, or of his executors or administrators, or of his or their lawful attorney, which authority shall be retained by the said Treasurer and duly filed. (*q*) 36 V. c. 48, s. 301. **Debenture registry book.**

392. After such certificate of ownership has been endorsed as aforesaid, such debenture shall only be transferable by entry, by the Treasurer of the Municipality or his deputy, in such Debenture Registry Book, from time to time, as transfers of such debenture are authorized by the then owner thereof, or his lawful attorney. (*r*) 36 V. c. 48, s. 302. **Registered debentures transferred by entry, etc.**

393. The Council of every Municipality may authorize its **Council may authorize**

(*n*) The design of this section is so far to control the negotiability of the debenture as to enable the Municipal Corporation at any time and at all times to have a knowledge of the holder of it. This is in the first instance effected by a declaration against general negotiability on the face of the debenture, in the form given in the section. After the endorsement of ownership by the Treasurer, no legal transfer of the debenture can be made, except by entry by the Treasurer or his Deputy in the Debenture Registry book. The provision is analogous to that against transfer of property in a ship, except in a particular mode, after certificate of ownership granted. See *Sherwood* v. *Coleman*, 6 U. C. Q. B. 614; *Orsey* v. *Mounteney*, 9 U. C. Q. B. 382; *Chisholm* v. *Potter*, 11 U. C. C. P. 165; *Wilson et al.* v. *Cameron*, 22 U. C. C. P. 108. The effect of the provision when applied, will be to a great extent to impede the negotiability of the debentures to which it relates.

(*o*) Or to the like effect—See note *s* to sec, 320.

(*p*) See note *n* to sec. 390.

(*q*) No provision is made for the payment of any fees to the Treasurer for the services directed. The rule is, that a public officer is not entitled to payment for duties imposed upon him by statute in the absence of an express provision for such payment. See *Jones* v. *Carmarthen*, 8 M. & W. 805; *Askin* v. *London*, 1 U. C. Q. B. 292; *Re Pringle and McDonald*, 10 U. C. Q. B. 254; *Regina* v. *Cumberlege*, 36 L. T. N. S. 700.

(*r*) See note *n* to sec. 390.

the borrowing of sums to pay current expenses.

head, with the Treasurer thereof, under the seal of the Corporation, to borrow from any person or bank such sums as may be required to meet the then current expenditure of the Corporation, until such time as the taxes levied therefor can be collected, (*s*) and the Council shall by by-law regulate the amounts to be so borrowed, and the promissory note or notes to be given in security therefor. (*t*) 36 V. c. 48, s. 303.

Without special authority, no bond, etc., to be given for less than $100.

394. No Council shall, unless specially authorized so to do, make or give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars; and any bond, bill, note, debenture or other undertaking issued in contravention of this section, shall be void: (*u*)

(*s*) It is doubtful whether, in the absence of an express authority to borrow money, a Municipal Corporation has the power to borrow even to meet current expenditure. See note *k* to sec. 330. The power to give a promissory note for money borrowed was also a subject of doubt. See *Attorney-General* v. *Lichfield*, 13 Sim. 547; see further, note *u* to sec. 394. In the past, some Municipalities have assumed to borrow money from banks, and to give promissory notes for payment; but the Legislature, to remove all doubt, has in express language conferred the power, subject to certain reasonable limitations.

(*t*) The power is to borrow to meet "the current expenditure of the Corporation," which, under ordinary circumstances, should be met by the collection of taxes. So the duration of the loan is only to be "until such time as the taxes levied therefor can be collected." The security to be given for the loan is a promissory note. The power is to be exercised only by By-law. The By-law should regulate—

1. The amount or amounts to be borrowed.
2. The promissory note or notes to be given as security therefor.

The Corporation cannot make a legal promissory note for a less sum than $100. See sec. 394. In Cities the Council may by By-law require the payment of taxes to be made into the office of the Treasurer by a day named, and in default may impose an additional percentage charge apparently for the purpose of meeting interest on moneys borrowed under this section by reason of the delay in payment of taxes. See note *m* to sec. 251.

(*u*) It has been said that the power to execute bonds, deeds and covenants is inseparable from the existence of all Corporations, public and private. See *Commonwealth* v. *Pittsburg*, 41 Pa. St. 278; see also *Douglass* v. *Virginia City*, 5 Nev. 147. "Generally speaking, all Corporations are bound by a covenant under their corporate seal, properly affixed, which is the legal mode of expressing the will of the entire body, and are bound as much as an individual by his own deed. * * * But where a Corporation is created by an Act of Parliament, *for particular purposes with special powers*, then indeed another question arises, their deed, though under their corporate seal and that regularly affixed, does not bind them if it appear

but nothing herein contained shall be construed to affect or repeal so much of the provisions of sections two hundred and eighteen and two hundred and nineteen of the Act of the Parliament of the late Province of Canada, passed in the Session held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, and chaptered fifty-one, as is intended to prohibit Municipal Councils acting as bankers, or issuing notes to circulate as those of a bank. (*v*) 36 V. c. 48, s. 304. Proviso.

[*Sections* 218 *and* 219 *of* 29–30, V. c. 51, *are as follows* :—

218. No Council shall act as bankers, or issue any bond, bill, note, debenture or other undertaking, of any kind or in any form, in the nature of a bank bill or note, or intended to form a circulating medium, or to supply the place of specie, or to pass as money ; nor, unless specially authorized so to do, shall any Council make or give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars ; and any bond, bill, note, debenture or other undertaking issued in contravention of this section shall be void. Restrictions upon Councils as to banking, issuing bills, bonds, etc.

219. In case any person issues or makes, or assists in issuing or making, or knowingly utters or tenders in payment or exchange, any bond, bill, note, debenture or undertaking, of any kind or in any form, in the nature of a bank bill or note, intended to form a circulating medium, or to supply the place of specie, or to pass as money, contrary to this Act, such person shall be guilty of a misdemeanor.] To issue bank notes, etc., contrary to this Act, declared a misdemeanor.

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by the express provisions of the statute creating the Corporation, or by necessary or reasonable inference from its enactments, that the deed was *ultra vires ;* that is, that the Legislature meant that such a deed should not be made." *Per* Parke, B., in *South Yarmouth R. Co.* v. *Great Northern R. Co.* 9 Ex. 55, 84 ; adopted by Martin, B., in *Payne* v. *Brecon*, 3 H. & N. 579 ; see also *Holdsworth* v. *Dartmouth*, 11 A. & E. 490 ; *Regina* v. *Lichfield*, 4 Q. B. 893 ; *Pallister* v. *Gravesend*, 9 C. B. 774 ; *Nowell et al.* v. *Worcester*, 9 Ex. 457 ; *Kendall* v. *King*, 17 C. B. 483. The power to make bonds, bills, notes, debentures and other undertakings for the security of money borrowed is here expressly recognized and restricted to this extent, that the power shall not be exercised "for the payment of a less amount than $100," and with the emphatic declaration that any such security issued in contravention of the Act "shall be void." An exception is created by sec. 559 sub. 3.

(*v*) Banking, Criminal Law, and Criminal Procedure Law, are all subjects which, under the B. N. A. Act, appertain exclusively to the Dominion Legislature. B. N. A. Act, s. 91, sub. 15 & 27. The Act of 1866 was passed by the Legislature of the late Province of Canada, before Confederation, and therefore at a time when no question of its constitutionality could be properly raised against it. The sections 218 and 219 of the Act to some extent relate to crime, but not to banking, and so the Legislature of Ontario has very pro-

TITLE VI.—RESPECTING THE ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS.

DIV. I.—JUSTICES OF THE PEACE.
DIV. II.—PENALTIES.
DIV. III.—WITNESSES AND JURORS.
DIV. IV.—CONVICTIONS UNDER BY-LAWS.
DIV. V.—EXECUTION AGAINST MUNICIPAL CORPORATIONS.
DIV. VI.—CONTRACTS VOID ALIKE IN LAW AND EQUITY.
DIV. VII.—POLICE OFFICE AND POLICE MAGISTRATE.
DIV. VIII.—BOARD OF COMMISSIONERS OF POLICE AND POLICE FORCE.
DIV. IX.—COURT HOUSES, GAOLS AND OTHER PLACES OF IMPRISONMENT.
DIV. X.—INVESTIGATIONS AS TO MALFEASANCE OF CORPORATE OFFICERS.
DIV. XI.—WHEN MAYOR MAY CALL OUT *Posse Comitatus*.

DIVISION I.—JUSTICES OF THE PEACE.

(*See also Rev. Stat.* c. 72.)

Justices of the Peace, Who are ex officio. *Secs.* 395-397.
Jurisdiction of Mayors of Cities and Towns. Sec. 396.
Jurisdiction of Justices in cases under By-laws. Secs. 398, 399.

Certain persons to be *ex officio* justices of the peace.

395. The head of every Council, and the Reeve of every Town, Township and incorporated Village, shall, *ex officio*, be Justices of the Peace for the whole County, or Union of Counties, in which their respective Municipalities lie, (*a*) and Aldermen in Cities shall be Justices of the Peace for such Cities. (*b*) 36 V. c. 48, s. 306.

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perly said that "nothing herein contained shall be construed to affect or repeal" so much of them "as is intended to prohibit Municipal Councils acting as bankers or issuing notes to circulate as those of a bank." In other instances the Legislature has seen fit, after declaring that nothing herein contained shall be taken or construed to affect or repeal similar sections, to set forth the whole section in in words at length. See secs. 449, 451.

(*a*) The ordinary rule is that the jurisdiction of a local officer is not to be extended beyond the Municipality of which he is an officer. But as many of the criminals who find their way into Cities and Towns are from rural Municipalities, and as some of those who escape from Cities and Towns find their way into rural Municipalities, in order to avoid the backing of warrants in such cases, it has been deemed proper to make the officers in this section mentioned not simply "*ex officio* Justices of the Peace," but *ex officio* Justices of the Peace "for the *whole* County or union of Counties in which their respective Municipalities lie." See *Regina* v. *Mosier*, 4 U. C. P. R. 64.

(*b*) The declaration is not, as in the former part of the section.

Jurisdiction of mayors over certain offences.

396. The Mayor of a Town or City (*c*) where there is no Police Magistrate, (*d*) shall have jurisdiction, in addition to his other powers, to try and determine all prosecutions for offences against the by-laws of the Town or City, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office. (*e*) 36 V. c. 48, s. 309.

Qualification of certain officials.

397. No Warden, Mayor, Reeve, or Alderman, (*f*) after taking the oaths or making the declarations as such, shall be required to have any property qualification, or to take any

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that the officers named shall be *ex officio* Justices of the Peace, but that "Alderman in Cities *shall be Justices of the Peace for such Cities.*" It was formerly provided that before any Alderman should act in the capacity of a Justice of the Peace for the City or County, he should take the same oath of qualification and in the same manner as is by law required by Justices of the Peace. 31 Vict. ch. 30, s. 38. This was an addition to sec. 357 of the Municipal Act of 1866, which contained no such provision; and, in consequence, it was held that a warrant of commitment signed by an Alderman who had not so qualified was invalid to uphold the detention of the prisoner confined under it. *The Queen* v. *Boyle*, 4 U. C. P. R. 256; *S. C.* 4 U. C. L. J. N. S. 256. It is now provided that no Alderman, &c., after taking the oaths or making the declaration as such, shall be required to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace. Sec. 397.

(*c*) Although the Mayor is *ex officio* a Justice of the Peace sec. 395, he is only entitled to act as such where there is no Police Magistrate.

(*d*) Every City and every Town having more than 5,000 inhabitants *shall* have a Police Magistrate. R. S. O. cap. 72 sec. 1. Every other Town *may*, if the Lieutenant-Governor in Council see fit to make such an appointment, have a Police Magistrate. *Ib.*, sec. 2. When the Lieutenant-Governor in Council is of opinion that the due administration of justice requires the temporary appointment of a Police Magistrate for a County or any part of a County, the Lieutenant-Governor in Council may appoint such Police Magistrate accordingly. 41 Vict. cap. 4 sec. 9.

(*e*) The jurisdiction is to try and determine—

1. All prosecutions for offences against the By-laws of the Town or City.

2. All prosecutions for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office.

(*f*) It is the policy of the law to require all persons entitled to discharge the subordinate but responsible and, it may be, arbitrary duties of a Justice of the Peace, to have some property qualification to answer to persons aggrieved by their misconduct. No person can be a Warden, Mayor or Reeve without having some property qualifi-

further oath to enable him to act as a Justice of the Peace. (*g*) 36 V. c. 43, s, 314.

Jurisdiction of Justices under by-laws.

398. Every Justice of the Peace for a County (*h*) shall have jurisdiction in all cases arising under any By-law of any Municipality in such County, where there is no Police Magistrate. (*i*) 36 V. c. 48, s. 310.

Jurisdiction in cases not specially provided for.

399. In case any offence is committed against a by-law of a Council, for the prosecution of which offence no other provision is made, (*j*) any Justice of the Peace having jurisdiction in the locality where the offender resides, or where the offence was committed, whether the justice is a member of the Council or not, may try and determine any prosecution for the offence. 36 V. c. 48, s. 311.

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cation. The possession of these offices, therefore is some guarantee of property. But a Police Magistrate, as such, is not required to possess any property; and it is difficult to understand why he, of all local Justices of the Peace, should be exempt from having a property qualification. See R. S. O. c. 72, s. 5.

(*g*) See note c to s. 396.

(*h*) The authority of Justices of the Peace appointed by the Crown is limited to the locality specified in their commissions. It is in no case attached to the person, so as to be capable of being exercised elsewhere than within those limits. A Justice of the Peace, for the time that he shall make his abode or be out of the County where he is in commission, cannot intermeddle or take any recognizance or any examination, or otherwise exercise his authority in any matter that shall happen within the County where he is in commission. Neither can he cause one to be brought before him out of the County where he is in commission, "for being out of the County where he is in commission, he is but as a private man." See Paley on Convictions, 5 Ed. 18.

(*i*) The meaning of this section is not free from doubt. The language used is very comprehensive. *Every* Justice of the Peace for a county shall have jurisdiction in *all cases* arising under *any* By-law of *any* Municipality in such county where there is no Police Magistrate. This is broad enough to give jurisdiction to County Justices, in the cases mentioned, over offences against By-laws committed in Cities and Towns, provided there be no Police Magistrate in such Cities and Towns.

(*j*) The Corporation of any County, Township, City, Town, or Incorporated Village, may pass By-laws for inflicting *reasonable fines* and penalties not exceeding $50, exclusive of costs, for breach of any of the By-laws of the Corporation, and for inflicting *reasonable punishment or imprisonment*, with or without hard labour, for any period not exceeding 21 days, for breach of any of the By-laws of the Corporation, in case of the non-payment of the fine inflicted for any

DIVISION II.—PENALTIES.

Recovery and enforcement thereof. *Secs.* 400-402.
Where offence against By-Laws. *Sec.* 401.
Application of penalties. *Sec.* 403.

Recovery and enforcement of penalties.

400. Every fine and penalty imposed by or under the authority of this Act (*a*) may, unless where other provision is specially made therefor, (*b*) be recovered and enforced with costs, (*c*) by summary conviction, before any Justice of the Peace for the County, or of the Municipality in which the

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such breach, and there being no distress out of which the fine can be levied, with certain specified exceptions. Sec. 454 subs. 12-14. The jurisdiction of the Justice is made to depend either on the locality where the offender resides or where the offence was committed. A Justice having jurisdiction in either locality may not only try but determine the prosecution. The authority of a Justice, who is so by virtue of his office as Mayor, Reeve, &c., is limited to the county in which his Municipality is situate, and the authority of a Justice of the Peace appointed by commission from the Crown, is limited to the county therein specified. See note *h* to sec. 398.

(*a*) A By-law without a penalty would be nugatory; so power is given to Municipal Councils to pass By-laws for inflicting reasonable punishment, with or without hard labour, either in a lock-up house in some Town or Village in the Township, or in the County Gaol or House of Correction, for any period not exceeding twenty-one days, for breach of any of the By-laws of the Council, sec. 454, sub-sec 14, in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied; except for breach of any By-law or By-laws in Cities, and the suppression of houses of ill-fame, for which the imprisonment may be for any period not exceeding six months, in case of the non-payment of the costs and fines inflicted, and there being no sufficient distress.

(*b*) Where power is given to enforce payment of a penalty in a particular mode, the power to enforce in any other mode is impliedly excluded. *Kirk* v. *Nowill*, 1 T. R. 118, 125; *Hart* v. *Mayor*, &c., 9 Wend. (N.Y.) 571, 588; *Heise* v. *Town Council*, 6 Rich. (S.C.) 404; *Cotter* v. *Doty*, 5 Ohio, 394; *Miles* v. *Chamberlain*. 17 Wis. 446; *Bolle* v. *New Orleans*, 10 La. An. 321; *Grand Rapids* v. *Hughes*. 15 Mich. 54.

(*c*) Before the 18 Geo. III. cap. 19, was passed in England, there was no *general* power enabling a convicting Justice to award costs. Special provisions to that effect were, however, inserted in particular Acts. See *Skingley* v. *Surridge*, 11 M. & W. 503; *Wray* v. *Toke*, 12 Q. B. 492, 510. The Justice cannot delegate to another the power to ascertain the costs. *The King* v. *St. Mary's, Nottingham*, 13 East. 57 *n*; *Sellwood* v. *Mount*, 1 Q. B. 726; *Lock* v. *Sellwood*, *Ib.*, 736; *The Queen* v. *Clark*, 5 Q. B. 887. The amount of costs should be specified in the conviction. *Bott* v. *Ackroyd*, 28 L. J. Mag. Cas.

Imprisonment in default of payment.

offence was committed; (*d*) and in default of payment the offender may be committed to the Common Gaol, House of Correction, or Lock-up House of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting Justice, not exceeding, (unless where other provision is specially made), thirty days, (*e*) unless such fine and penalty, and costs, including the costs of the committal, are sooner paid. (*f*) 36 V. c. 48, s. 315.

Penalties imposed by by-laws.

Award of penalty and costs.

401. The Justice or other authority before whom a prosecution is had for an offence against a municipal by-law, (*g*) may convict the offender on the oath or affirmation of any credible witness, (*h*) and shall award the whole or such part of

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207; see also *The Queen* v. *Ely*, 5 E. & B. 489; See further, *Turry* v. *Newman*, 15 M. & W. 645, 653; *Wray* v. *Toke*, 12 Q. B. 492, 509; *The Queen* v. *Glamorganshire*, 19 L. J. Mag. Cas. 172; *The Queen* v. *Merionethshire*, 1 D. & M. 121; *The Queen* v. *Westmoreland*, 1 D. & L. 178; *Ex parte Holloway*, 1 Dowl. 26. Where the Justices left blanks for the amount of costs, it was held to be an irregularity but not an excess of jurisdiction, so as to render them liable to be sued. *Bolt* v. *Ackroyd*, 28 L. J. Mag. Cas. 207; *The Queen* v. *Ely*, 5 E. & B. 489.

(*d*) See note *a* to sec. 395.

(*e*) A conviction ordering imprisonment in default of payment of fine without any provision for distress under this section, would be illegal. *Regina* v. *Bleakley*, 6 U. C. P. R. 244. See further note *m* to sec. 402.

(*f*) It has been held that where corporal punishment is substituted for the penalty in the event of non-payment, the punishment is not to extend to the non-payment of the costs. *The Queen* v. *Barton*, 13 Q. B. 389; see also *Barton* v. *Bricknell*, *Ib.* 393.

(*g*) See sec. 454, sub. 12.

(*h*) "Credible witness." It might be argued from the use of these words, that the Justice should not be at liberty to examine any witness to whom he might think proper to give credit. But, according to the interpretation put upon similar words in the constitution of the Statute of Frauds, 29 Car. 2, c. 3, sec. 5, *credible* witness is equivalent to *competent* witness. *Hawes* v. *Humphrey*, 9 Pick. (Mass.) 350; *Haven* v. *Hilliard*, 23 Pick. (Mass.) 10; *Amory* v. *Fellows*, 5 Mass. 219; *Sears* v. *Dillingham*, 12 Mass. 288; Jarman on Wills, 3rd ed. 82. So that such witnesses only can be properly examined who are competent witnesses in a Court of Justice. When pecuniary interest amounted to a disqualification, the informer, when entitled to a portion of the penalty, was incompetent both on the ground of interest and on the ground of being a party entered on the record. *The King* v. *Tilly*, 1 Str. 316; *The King* v. *Stone*, 2 Ld. Rayd. 1545; *The King* v. *Blaney*, Andr. 240; *The King* v. *Piercy*, *Ib.* 18; *The King* v. *Robotham*, 3 Burr. 1472; *The King* v. *Shipley*, cited in Gilb. 113;

the penalty or punishment imposed by the by-law as he thinks

The King v. *Cobbold*, Gilb. 111; *Portman* v. *Okeden*, Say. 179; *The King* v. *Blackman*, 1 Esp. 96; but see *Jennings* v. *Hankeys*, 3 Mod. 114; *The King* v. *Johnson*, Willes, 425, note *c*. But, so far as this Act is concerned, it is expressly provided that "the person giving or making the information or complaint, shall be a competent witness." Sec. 404. It is also now expressly declared that on the trial of any *proceeding, matter* or *question* under the Liquor License Act, or under the Municipal Act, or under the Assessment Act, or under any other Act of the Legislature of Ontario, or on the trial of any proceeding, matter or question *before any Justice or Justices of the Peace*, Mayor or Police Magistrate, in any matter cognizable by such Justice or Justices, Mayor or Police Magistrate, *not being a crime*, the party opposing or defending, or the wife or husband of such person opposing or defending, shall be *competent* and *compellable* to give evidence in such proceeding, matter or question. R. S. O. c. 62, s. 9. Interest is now no longer a ground of disqualification in any witness. *Ib.* ss. 2 & 3. Nor, with a few exceptions, is the fact that he is a party to the record. One of these is that no person shall be compellable to answer any question tending to criminate himself, or to subject him to a prosecution for any penalty. *Ib.* sec. 5. None of these provisions relax or affect the law of evidence in regard to criminal procedure. Persons put on trial for a criminal offence cannot testify for or against themselves. See *Winsor* v. *The Queen*, 7 B. & S. 490, L. R. 1 Q. B. 390; 10 Cox. 276; *Attorney-General* v. *Radloff*, 10 Ex. 84. If imprisonment may in the first instance follow the conviction, the proceeding is in general looked upon as a criminal one. *Per* Platt, B., in *Attorney-General Radloff*, 10 Ex. 84. There are many crimes, properly so called, which are liable to be punished on summary conviction. But there are a vast number of acts which in no sense are crimes, which are also punishable; such, for instance as keeping open house after certain hours, and a variety of breaches of police regulations which will readily occur to the mind of any one. *Per* Baron Martin, *S. C.* 96. Where the proceeding is conducted with a view and for the purpose of obtaining redress for the violation of a private right only, the proceeding is a civil one; but, on the other hand, where the proceeding is directed for the punishment of an offence which militates against the general interest of the community, and for the punishment of the infraction of some public duty, such proceeding is a criminal proceeding. *Per* Sir Alexander Cockburn, in arguing same case, p. 86. It is not an easy matter to draw a line, and so be able to decide on which side of it each case should be placed. Reference may be made to the following cases: *Attorney-General* v. *Bowman*, 2 B. & P. 532, n.; *Attorney-General* v. *Siddam*, 1 C. & J. 220; *Huntley* v. *Luscombe*, 2 B. & P. 530; *Rackham* v. *Black*, 9 Q. B. 691; *Cobbet* v. *Slowman*, 9 Ex. 633; *Ex parte Eggington*, 2 E. & B. 717; *Sweeny* v. *Spooner*, 3 B. & S. 329; *Reeve* v. *Wood*, 5 B. & S. 364; *Attorney-General* v. *Sullivan*, 32 L. J. Ex. 92; *Easton's Case*, 12 A. & E. 645; *Cattel* v. *Ireson*, E. B. & E. 91; *Morden* v. *Porter*, 7 C. B. N. S. 641; *Hearne* v. *Garton* 2 E. & E. 66; *Parker* v. *Green*, 2 B. & S. 299; *In re Lucas and McGlashan*, 29 U. C. Q. B. 81; *The Queen* v. *Boardman*, 30 U. C. Q. B. 553; *The Queen* v. *Roddy*, 41 U. C. Q. B. 291.

fit, (*i*) with the costs of prosecution, and may by warrant, under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then under the hand and seal of one of them, (*k*) cause any such pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender. (*l*) 36 V. c. 48, s. 317.

How levied.

Commitment in default of distress.

402. In case of there being no distress found out of which the penalty can be levied, (*m*) the Justice may commit the offender to the Common Gaol, House of Correction, or nearest Lock-up House, for the term, or

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(*i*) It may be that the By-law imposes a fixed penalty for the offence But usually the By-law states a maximum and minimum sum. The power of a Municipal Corporation to impose such a sliding penalty was at one time doubted. See note *w* to sec. 454, sub. 12. The power of the Corporation to delegate to the Justice the fixing of the amount was also doubted. *Ib.* But as a knowledge of the circumstances of each particular case is essential for the exercise of discretion both as to fine and imprisonment, and as this knowledge can only be obtained by the Justice before whom the offender is brought, it has been deemed right expressly to provide that the Justice shall award "the whole or *such* part of the penalty or punishment imposed by the By-law as *he thinks fit.*" *In re Snell and The Corporation of the Town of Belleville*, 30 U. C. Q. B. 81.

(*k*) The warrant must be under "hand and seal," and therefore in writing. See *Hutchinson* v. *Lowndes*, 4 B. & Ad. 118.

(*l*) This section applies only to proceedings for offences against Municipal By-laws. Municipal Corporations have no power to create crime or regulate criminal procedure.

(*m*) The power of imprisonment may be either as the direct punishment for an offence or as the means of enforcing payment of a pecuniary penalty. In the former, the provision would savour of crime, see note *h* to sec. 401; in the latter, of procedure other than criminal procedure. *Ib.* Here the power of commitment is contingent on "there being no distress found out of which the penalty can be levied." The commitment, therefore, ought not to be issued till the fact that there is no sufficient distress is ascertained. *The Queen* v. *Hawkins*, Fort. 272, *per* Parker, C. J.; *Regina* v. *Bleakley* 6 U. C. P. R. 244. A Justice who in such a case commits a party without inquiry as to distress, may, if there be a distress, be sued as trespasser. *Hill* v. *Bateman*, 2 Str. 710. Some statutes only allow the commitment to issue upon due proof upon oath of the want of distress. 50 Geo. III. ch. 108, s. 7. If the same person be convicted of two penalties, and there be goods enough to answer only one, they may be levied under the one and imprisonment follow on the other. *The Queen* v. *Wyatt*, 2 Ld. Rayd. 1195; *S. C.* 11 Mod. 54. Convictions under the Dominion Fishery Act, 31 Vict. ch. 60, are peculiar

some part thereof, specified in the by-law. (*n*) 36 V. c. 48, s. 318.

Fines, how applied.

403. Unless otherwise provided, (*o*) when the pecuniary penalty has been levied under this Act, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the Municipal Corporation, (*p*) unless the prosecution is brought in the name of the Corporation, in which case the whole of the pecuniary penalty shall be paid to the Corporation. (*q*) 36 V. c. 48, s. 319.

[*See as to summary method of enforcing by-laws. Sec.* 455.]

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in allowing imprisonment if the fine be not *forthwith* paid. See *Arnott* v. *Bradly*, 23 U. C. C. P. 1.

(*n*) The commitment must be in writing. *Mayhew* v. *Locke*. 2 Marsh 377. It should be drawn up forthwith after the commitment is ordered. *In re Masters*, 33 L. J. Q. B. 146. Detention of the party without a written warrant cannot be justified further than necessary to make out the warrant. *Hutchinson* v. *Lowndes, et al.*, 4 B. & Ad. 118. But the detention of the party till the return of the warrant of distress may, it seems, be by parol. *Stile* v. *Walls, et al.*, 7 East. 533.

(*o*) If the statute under which the conviction takes place applies the penalty with certainty, it is sufficient for the Justice to award the penalty to be paid and applied according to law. *The King* v. *Barrett*, 1 Salk. 383; *The King* v. *Seale*, 8 East. 573; *The King* v. *Thompson*, 2 T. R. 18; *The Queen* v. *Hyde*, 21 L. J. Mag. Cas. 94; *Re Boothroyd*. 15 M. & W. 1; *The Queen* v. *Cridland*, 7 E. & B. 853; *The Queen* v. *Johnson*, 8 Q. B. 102; see also *The Queen* v. *Glossop*, 4 B. & Al. 616; *Brown* v. *Nicholson*, 5 C. B. N. S. 468; *Seamen's Hospital* v. *Liverpool*, 4 Ex. 180; *Wray* v. *Ellis*, 1 E. & E. 276. If there be any material variance between the conviction and the statute as to the appropriation of the penalty, the conviction will be bad. *Griffith* v. *Harris*, 2 M. & W. 335; *Chaddock* v. *Wilbraham et al.*, 5 C. B. 645.

(*p*) It is the policy of the law under penal statutes to give a portion of the penalty, generally one-half, to the informer. Even this large proportion seldom has its effect. "The moiety of the informer's share of the penalty should be preserved to him. Under the By-law as it stands, he gets no share; and it may damp the energies of a class of people who are supposed by the Legislature to be necessary, and to do good service, if the reward which stimulates them to action is taken away." *Per* Wilson, J., *In re Snell and the Corporation of the Town of Belleville*, 30 U. C. Q. B. 81, 89.

(*q*) Where the statute gives a discretion, either as to the amount of the penalty or its application, the Justice must, on the face of the conviction, show in what manner the discretion has been exercised. *The King* v. *Dimpsey*, 2 T. R. 96; *The King* v. *Symonds*, 1 East. 189; *Re Boothroyd*, 15 M. & W. 1; *The King* v. *Seale*, 8 East. 568, 573;

DIVISION III.—WITNESSES AND JURORS.

Witnesses, who may be. *Sec.* 404.
Ratepayers, members, officers, &c., of corporations as witnesses. *Sec.* 405.
Liable to challenge as jurors. *Sec.* 405.
Compelling attendance of witnesses. *Sec.* 406.

Who may be a witness.

404. Upon the hearing of any information or complaint exhibited or made under this Act, the person giving or making the information or complaint shall be a competent witness, notwithstanding such person may be entitled to part of the pecuniary penalty on the conviction of the offender, and the defendant, and the wife or husband of such persons opposing or defending, shall also be competent witnesses; and all the said persons shall be compellable to give evidence on such hearing. (*r*) 36 V. c. 10, s. 4 : c. 48, s. 320.

Ratepayers, members, &c., officers, &c., of corporation competent witnesses—may be challenged as jurors.

405. In any prosecution, suit, action or proceeding in any civil matter (*s*) to which a Municipal Corporation is a party, no ratepayer, member, officer or servant of the corporation shall, on account of his being such, be incompetent as a witness ; (*t*) but they, and every of them, shall be liable to challenge as a juror, except where the Corporation, the party to such prosecution, suit, action or proceeding, is a County. (*u*) 36 V. c. 48, s. 321.

The King v. *Smith*, 5 M. & S. 133 ; *The Queen* v. *Johnson*, 8 Q. B. 102 ; *Wray* v. *Toke*, 12 Q. B. 492 ; see also *The King* v. *Wyatt*, 2 Ld. Rayd. 1478 ; *The King* v. *Priest*, 6 T. R. 538.

(*r*) This removes all ground for supposing that the informant or complainant is, by reason of pecuniary interest, disqualified, but leaves the question as to the competency of the person complained against to be a witness untouched. See note *h* to sec. 401.

(*s*) As to what matters are civil and what criminal, see note *h* to sec. 401.

(*t*) The Evidence Act, Con. Stat. U. C. ch. 32, long before the passing of the Act from which this section is taken, had removed any such disqualification as is here supposed to exist. See note *h* to sec. 401.

(*u*) If this means anything, it means that the fact of the person called as a juror being a ratepayer of the Corporation—that is, a party to the civil proceeding in which he is called—shall be a peremptory ground of challenge. Before this Act, such a person "was liable to challenge" for cause. The object of this Act must be to make the challenge good as a peremptory challenge. The only exception to the challenge is where the Corporation "is a county."

406. In prosecuting under any by-law, or for the breach of any by-law, witnesses may be compelled to attend and give evidence in the same manner, and by the same process, as witnesses are compelled to attend and give evidence on summary proceedings before Justices of the Peace in cases tried summarily, under the statutes now in force, or which may be hereinafter enacted. (*v*) 36 V. c. 48, s. 322. Compelling witnesses to attend, &c.

DIVISION IV.—CONVICTIONS UNDER BY-LAWS.

Form of Conviction. Sec. 407.

407. It shall not be necessary in any conviction made under any by-law of any Municipal Corporation, to set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made, (*w*) but all such convictions may be in the form following: (*x*) Form of conviction under by-laws.

(*v*) If it be made to appear to any Justice of the Peace by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his summons to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the Justice, or before such other Justice or Justices of the Peace for the territorial division, as may then be there to testify what he knows concerning the information or complaint. Con. Stat. Can. ch. 103, sec. 16. If the person summoned neglect or refuse to appear at the time and place appointed by the summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affimation of the summons having been served upon such person either personally or by leaving the same for him with some person at his last or most usual place of abode) the Justice or Justices before whom such person should have appeared, may issue a warrant under his or their hands and seals, to bring and have such person at a time and place to be therein mentioned before the Justice who issued the summons, or before such other Justice or Justices of the Peace for the same territorial division as may be then there to testify as aforesaid. *Ib.* sec. 17. The warrant may, if necessary, be backed, in order to its being executed out of the jurisdiction of the Justice who issued it. *Ib.*

(*w*) The law was formerly otherwise. *The Queen* v. *Ross*, H. T. 3 Vict. R. & J. Dig. 1979.

(*x*) The conviction should show the By-law to have been passed by the Council of the particular Municipality. *The Queen* v. *Osler*, 32 U. C. Q. B. 332. The omission of the date or title of the By-law

PROVINCE OF ONTARIO, County of , To WIT. } BE IT REMEMBERED that on the day of , A.D. , at , in the County of , *A. B.* is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said County, for that the said *A. B.* (*stating the offence, and time and place, and when and where committed*), contrary to a certain by-law of the Municipality of the of , in the said County of , passed on the day of , A.D. , and intituled (*reciting the title of the by-law*); and I adjudge the said *A.B.*, for his said offence, to forfeit and pay the sum of , to be paid and applied according to law, and also to pay to *C.D.*, the complainant, the sum of for his costs in this behalf. And if the said several sums are not paid forthwith (*or* on or before the day of , *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said *A.B.*; and in default of sufficient distress, I adjudge the said *A.B.* to be imprisoned in the Common Gaol of the said County of (*or*, in the public Lock-up at) for the space of days, unless the said several sums, and all costs and charges of conveying the said *A.B.* to such Gaol (*or* Lock-up), are sooner paid.

Given under my hand and seal, the day and year first above written at , in the said County.

(L.S.) *J. M.*,
J. P.

36 V. c. 48, s. 323.

DIVISION V.—EXECUTION AGAINST MUNICIPAL CORPORATIONS.

Proceedings thereon. *Sec.* 408.
Municipal Officers, also Officers of Court. *Sec.* 409.

Proceedings on writs of execution

408. Any writ of execution against a Municipal Corporation (*a*) may be endorsed with a direction to the Sheriff to

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would not be fatal to the conviction, if the By-law be in other respects sufficiently referred to. (*Ib.*) But some reference to the By-law is necessary. *In re Livingstone*, 6 U. C. P. R. 17.

(*a*) A Municipal Corporation being liable to be sued, see note *d* to sec. 3, is liable to the consequence of a suit, viz., execution. As the assets of the Corporation are not the property of the members of the Council, but of the people whom they represent, the form of proceeding by execution against such a Corporation must, under certain circumstances, differ from that of proceeding by execution against an individual. If it were not for the provisions here made as to execution, it would seem that the judgment creditor's principal remedy would be by writ of mandamus. *Coy* v. *Lyons*, 17 Iowa 1; *Supervisors* v. *United States*, 4 Wall. (U.S.) 435; *Galena* v. *Amy*, 5 Wall. (U.S.) 705; *Olney* v. *Harvey*, 50 Ill. 453; *Frank* v. *San Francisco*, 21 Cal. 668;

levy the amount thereof by rate, (*b*) and the proceedings thereon shall then be the following: (*c*)

against Municipalities.

1. The Sheriff shall deliver a copy of the writ and endorsement to the Treasurer, or leave such copy at the office or dwelling house of that officer, with a statement in writing of the Sheriff's fees, (*d*) and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of the service;

Sheriff to deliver copy of writ and statement of claim to Treasurer.

Schaffer v. *Cadwallader*, 36 Pa. St. 126; *Van Hoffman* v. *Quincy*, 4 Wall. (U.S.)535; *Riggs* v. *Johnson Co.*, 6 Wall. (U.S.) 166; *Weber* v. *Lee Co.*, *Ib.* 210; *United States* v. *Keokuk*, *Ib.* 514; *State* v. *Hug*, 44 Mo. 116; *State* v. *Beloit*, 20 Wis. 79; *State* v. *Milwaukee*, *Ib.*, 87; *Soutter* v. *Madison*, 15 Wis. 30; *State* v. *Wilson*, 17 Wis. 687; *Waterdown* v. *Cady*, 20 Wis. 501; *Ex parte Halman*, 28 Iowa, 88; *Tilson* v. *Putnam*, 19 Ohio, 415. It would seem that the private property of the Corporation, *i. e.* such as is held for profit and free from any public trust, may be sold under execution. *Holladay* v. *Frisbie*, 15 Cal. 630; *Davenport* v. *Insurance Co.*, 17 Iowa, 276; *Louisville* v. *Commonwealth*, 1 Duvall (Ky.) 295. It never could be intended by the Legislature that executions could be enforced against property held for public purposes, such as public buildings, hospitals, school houses, &c. *Schaffer* v. *Cadwallader*, 36 Pa. St. 126; *President* v. *Indianapolis*, 12 Ind. 620; *Lamb* v. *Shays*, 14 Iowa, 567: *Green* v. *Marks*, 25 Ill. 221; *Scott* v. *Union School Sections of Burgess and Bathurst*, 19 U. C. Q. B. 28. There is certainly no right, independently of statute, in the creditor to resort for payment to the private property of the inhabitants. *Horner* v. *Coffee*, 25 Miss. (3 Cush.) 434; see also *Beardsley* v. *Smith*, 16 Con. 368.

(*b*) The writ *may* (not must) be indorsed with a direction to the Sheriff to levy the amount by rate. The writ may also be indorsed, as in the case of writs of execution against individuals, either to levy of goods or lands (*or as the case may be*) of the Corporation, in which event a rate would not be contemplated, and probably would not be necessary. See *Chicago* v. *Hasley*, 25 Ill. 595; see also *Beardsley* v. *Smith*, 16 Conn. 368; *Horner* v. *Coffee*, 25 Miss. (3 Cush.) 434.

(*c*) If the writ be indorsed to levy the amount by rate, the proceedings *shall* be as directed.

(*d*) The sheriff is to deliver—

1. *A copy of the writ* and indorsement to the Treasurer, *or* leave such copy at the office or dwelling-house of that officer.

2. *With a statement in writing* of the Sheriff's fees and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of service.

The sheriff is not entitled to poundage on writs of execution against Municipal Corporations, unless he actually make the money.

If claim not paid, rate to be struck by Sheriff.

2. In case the amount, with interest thereon from the day mentioned in the statement, is not paid to the Sheriff within one month after the service, the Sheriff shall examine the assessment rolls of the Corporation, and shall, in like manner as rates are struck for general municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, (*e*) with such addition to the same as the Sheriff deems sufficient to cover the interest, his own fees, and the Collector's percentage, up to the time when such rate will probably be available;

Sheriff's precept to collector, &c., to levy rate.

3. The Sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the Collector or respective collectors of the Corporation, and shall annex to every precept the roll of such rate, and shall by such precept, after reciting the writ, and that the Corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the Collector or Collectors, within their respective jurisdictions, (*f*) to levy such rate at the time and in the manner by law required in respect of the general annual rates;

Grant v *Hamilton*, 2 U. C. L. J. N. S. 262. Where a settlement is obtained by means of the pressure of the Sheriff, he is entitled to be paid reasonable compensation for the services performed, although no special fee be assigned for such service in any statute or table of costs. *Ib.* If the Sheriff make the money, it would seem that the writ is virtually executed, and that he is entitled to poundage, though he may under this section have levied a rate to collect the amount. *Ib.* See further, *Nash* v. *Dickenson*, L. R. 2 C. P. 252; *Bissicks* v. *Bath, Colliery Co.*, 36 L. T. N. S. 800; *Roe* v. *Hammond*, L. R. 2 C. P. Div. 300.

(*e*) It is the duty of the Sheriff to strike a rate "sufficient," &c. No provision exists for the striking of a second rate, in the event of the first proving insufficient. If the amount levied should be *more* than sufficient, provision is made for the disposition of the surplus. Sub. 5. It would appear to be necessary, where there are in the hands of the sheriff at the same time several writs of execution against the same Corporation, to strike a rate for each particular writ. See *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.

(*f*) The *first* thing for the Sheriff to do is, to deliver a copy of the writ, indorsement and statement, in the first sub-section mentioned.

The *second*, after the expiration of a month, to examine the Assessment Rolls of the Corporation and strike a rate, &c., as in the second sub-section directed.

The *third*, to issue a precept such as in the sub-section here annotated mentioned. If the Corporation withhold the Assessment Rolls from the Sheriff, his remedy would be to apply to the Court by man-

4. In case at the time for levying the annual rates next after the receipt of such precept, the Collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed "*Execution rate in A. B. vs. The Township*" (or as the case may be, adding a similar column for each execution if more than one), and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time they are required to make the returns of the general annual rate, return to the Sheriff (*g*) the precept with the amount levied thereon, after deducting their percentage; **Rate rolls.**

5. The Sheriff shall, after satisfying the execution and all fees thereon, pay any surplus, within ten days after receiving the same, to the Treasurer, for the general purposes of the Corporation. (*h*) 36 V. c. 48, s. 324. **Surplus.**

409. The Clerk, Assessors and Collectors of the Corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the sheriff to carry into effect, the provisions of this Act, with respect to such executions, be deemed to be officers of the Court out of which the writ issued, and as such shall be amenable to the Court, (*i*) and may be proceeded against by attachment, mandamus or otherwise, in order to compel them to perform the duties thereby imposed upon them. 36 V. c. 48, s. 325. **Clerk, Assessors and Collectors to be officers of the court from which writ issues.**

DIVISION VI.—CONTRACTS VOID ALIKE IN LAW AND EQUITY.

Contracts with members of Council void. Sec. 410.

410. In case a member of the Council of any Municipality, either in his own name or in the name of another, and either **Contracts by members with the**

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mmus, to compel them to submit the Rolls to him. See *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.

(*g*) The duties of Collectors under this clause are the following:

1. To add a column to the general Roll, with the heading directed.

2. To insert therein the amount by the precept required to be levied.

3. To levy the amount of the execution rate.

4. To return to the Sheriff, within the time limited, the precept, with the amount levied, after deducting percentage.

(*h*) See note *d* to this section.

(*i*) This is a most important clause. The power of the Court over its officers is of a very summary nature. They may be punished by

Corporation to be void at law if void in equity.

alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale in which the Corporation is a party interested, and which is on that account void or voidable in Equity, (*l*) the same contract, purchase or sale

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process of attachment for contempt in disobeying its rules or orders. See 2 Chit., Archd. 1710, 12 Ed.

(*l*) The settled rule in equity is, that he who is entrusted with the business of others cannot be allowed to make such business an object of interest to himself. This rule does not depend on reasoning technical in its character or local in its application. It is founded upon principles of reason, of morality, and of public policy. It has its foundation in the very constitution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well regulated system of jurisprudence prevails. *Per* the Chancellor, in *Toronto* v. *Bowes*, 4 Grant 504. One who has power, owing to the frailty of human nature, will be too readily seized with the inclination to use the opportunity for securing his own interest at the expense of that for which he is entrusted. *York Buildings Co.* v. *Mackenzie*, 8 Brown, P. C. 42. The wise policy of the law has therefore put the sting of disability into the temptation as a defensive weapon against the strength of the danger which lies in the situation. *Ib.* 64. This conflict of interest is the rock, for shunning which, the disability under consideration has obtained its force, by making that person who has the one part entrusted to him incapable of acting on the other side, that he may not be seduced by temptation and opportunity from the duty of his trust. *Ib.* 66. The law will in no case permit persons who have undertaken a character or a charge, to change or invert that character by leaving it and acting for themselves in a business in which their character binds them to act for others. *Ib.* 66; see further, *Liquidators, &c.*, v. *Coleman et al.*, L. R. 6 H. L. C. 189; *Port* v. *Russell*, 10 Am. 5; *Board of Commissioners* v. *Reynolds*, 15 Am. 245. The application of the rule may in some instances appear to bear hard upon individuals who had committed no moral wrong; but it is essential to the keeping of all parties filling a fiduciary character to their duty to preserve the rule in its integrity, and to apply it to every case as it arises, which justly falls within its principle. *Per* Esten, V. C., in *Toronto* v. *Bowes*, 4 Grant 530. To deny the application of the rule to Municipal bodies, would be to deprive it of much of its value; for the well-working of the Municipal system, through which a large portion of the affairs of this country are administered, must depend very much upon the freedom from abuse with which they are conducted. It is obvious that nothing can more tend to correct the tendency to abuse, than to make abuses unprofitable to those who engage in them, and to have them stamped as abuses in Courts of Justice. *Per* Esten, V. C., *Ib.* 531. The tendency to abuse may indeed be in part corrected by public opinion; but public opinion itself is acted upon by the mode in which Courts deal with such abuses as are brought within their cognizance. It has been well observed that the view taken by Courts of Equity with respect to morality of conduct among all parties is one of the highest morality; and this cannot fail to have a salutary effect upon public opinion itself.

shall also be held void in any action at law thereon against the Corporation. (*m*) 36 V. c. 48, s. 327.

Just as, on the other hand, if a low standard of morality were presented by the Courts, its inevitable tendency would be the demoralization of the public feeling in regard to transactions of a questionable character. *Ib.* Where the Mayor of the City of Toronto secretly contracted to purchase, at a discount, a large amount of the debentures of the City, which were expected to be issued under a future By-law of the City Council, and was himself afterwards an active party in procuring and giving effect to the By-law which was subsequently passed, the Court of Chancery held him to be a trustee for the City of the profit he derived from the transaction. *Toronto* v. *Bowes*, 4 Grant 489; which decision was affirmed in Appeal,—Robinson, C. J., dissenting—6 Grant 1, and afterwards upheld by the Privy Council. So where a member of a Municipal Corporation agreed with another party to take a contract from the Corporation for the execution of certain works in his name, the profits whereof were to be divided between the parties, it was held that such a contract was in contravention of the Municipal law, and the Court of Chancery refused to enforce the agreement for a partnership. *Collins* v. *Swindle*, 6 Grant 282. An action at law on a contract for the sale of goods by a trading partnership, of which a member is also a member of the Municipal Council, may, where the contract is not executed, be resisted on the ground that one of the plaintiffs is a member of the Municipal Council. *Brown et al.* v. *Lindsay*, 35 U. C. Q. B. 509. A bill will lie, by some of the inhabitants of a Municipality alleging an illegal misapplication of Municipal funds by the Mayor, which the Council, though requested, refused to interfere with. See *Paterson* v. *Bowes*, 4 Grant 170; see also *West Gwillimbury* v. *Hamilton and North-Western R. Co.*, 23 Grant 383.

(*m*) In an action at law, the declaration alleged that defendant, as agent of the plaintiffs, undertook to expend certain moneys for them in certain roads and bridges; that he falsely and fraudulently represented to them that he had caused work to be done; and, in collusion with the persons alleged to have done the work, and by drawing false orders in their favour containing such representations, caused a certain sum to be drawn out of the plaintiffs' treasury, whereas the work had not been done and the plaintiffs lost the money. Common money counts were added. It appeared at the trial that the Corporation, by a resolution, directed that $300 should be granted to each Councilor, defendant being one, to be expended on the roads; and, by another resolution, that $100 should be placed to the credit of each Councillor, to be expended by them on the roads and bridges in their respective divisions. This was in accordance with an established practice, by which the Councillors superintended the laying out of moneys in their respective divisions. Defendant granted several orders on the Treasurer to different persons for work alleged to be done, which orders were paid, and it afterwards appeared that the work, though contracted for, had not been done. There was no evidence of fraud or collusion on the part of the defendant, or any gain to himself, except a charge to the Corporation of commission on moneys expended. The jury found for the plaintiffs. The Court ordered a new trial, holding that the special

Division VII.—Police Office and Police Magistrate.

(See also Rev. Stat. c. 72.)

Who to preside in Police Office. Sec. 411.
Clerk of. Sec. 412.

Police offices in cities and towns.

411. The Council of every Town and City shall establish therein a Police Office; and the Police Magistrate, (*n*) or in his absence, or where there is no Police Magistrate, the Mayor of the Town or City shall attend at such Police Office daily or at such times and for such period as may be necessary for the disposal of the business brought before him as a Jus-

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count was not proved; that there could be no recovery on the common counts; and that it was doubtful if, in such a case, there could be any adequate remedy in a Court of Law. *Chatham* v. *Houston*, 27 U. C. Q. B. 550. Contracts such as the foregoing, between Corporations and members to act as Commissioners, Overseers or Superintendents, are now expressly authorized and legalized. See secc. 454, sub. 2.

(*n*) The duty to establish a Police Office for every Town and City is, by this section, apparently an imperative one. Every City and every Town having more than 5,000 inhabitants *shall* have a Police Magistrate, R. S. O. c. 72, s. 1. Other Towns *may* have a Police Magistrate if the Lieutenant-Governor in Council sees fit to appoint one. *Ib.* s. 2. And by 41 Vict. c. 4, sec. 9: "When the Lieutenant-Governor in Council is of opinion that the due administration of justice requires the temporary appointment of a Police Magistrate for a County or any part of a County, the Lieutenant-Governor in Council may appoint such police magistrate accordingly," and he "shall have and exercise within the County or territory for which he is appointed all the powers, authorities, rights, privileges and jurisdiction, so far as the asme are within the authority of the Legislature of Ontario, by law appertaining to Police Magistrates appointed for Cities." *Ib.*

The persons who may preside at the Police Court are the Police Magistrate, Mayor, and any Justice of the Peace having jurisdiction in the Town or City:

1. The Police Magistrate, if able, daily, or at such times and for such period as may be necessary for the disposal of the business.

2. The Mayor, if no Police Magistrate, or in the absence of the Police Magistrate.

3. Any Justice of the Peace having jurisdiction in the Town or City, at the request of the Mayor thereof.

No Justice of the Peace for a City or Town where there is a Police Magistrate, is empowered to act in any case for any City or Town, except in the case of the illness, absence, or at the request of the Police Magistrate." R. S. O. c. 72, s. 6. This part of the section applies to the case of a Town or City where there is no Police Magistrate, and the Mayor is entitled to act as such. Sec. 396.

tice of the Peace; but any Justice of the Peace having jurisdiction in a Town or City may, at the request of the Mayor thereof, act in his stead at the Police Office.

2. Except in cases of urgent necessity, no attendance is required on Sunday, (*o*) Christmas Day, or Good Friday, or any day appointed by proclamation for a Public Fast, Thanksgiving, or Holiday, or on any day set apart by the Council as a Civic Holiday. 36 V. c. 48, s. 328.

Clerk of police office, and his duties

412. The Clerk of the Council of every City or Town, or such other person as the Council of the City or Town appoints for that purpose, shall be the Clerk of the Police Office thereof, and perform the same duties and receive the same emoluments as Clerks of Justices of the Peace; and in case the said Clerk is paid by a fixed salary, the said emoluments shall be paid by him to the Municipality, and form part of its funds, and such Clerk shall be the officer of and under the Police Magistrate. (*r*) 36 V. c. 48, s. 329.

Fees or salary.

(*o*) The statute 29 Car. 2, cap. 7, s. 6, prohibits the execution of any process, warrant, &c., on the Lord's Day, except in cases of treason, felony, or breach of the peace. It is a matter of public policy that no proceedings of the nature described in the statute should be had on a Sunday, and that they cannot be made good by any assent or waiver by the party illegally arrested. *The King* v. *Meyers*, 1 T. R. 265; *Re Ramsden*, 3 D. & L. 748; *Ex parte Egginton*, *Ib.* 754. The statute authorizes arrest on a Sunday for *indictable* offences. *Rawlins* v. *Ellis*, 16 M. & W. 172. It is presumed that the Police or other Magistrate, whose attendance may be required on a holiday, is himself to judge whether the case be one of "urgent necessity," and attend or not as he may determine. Works of necessity and charity are exempted from the operation of the "Act to prevent the profanation of the Lord's Day in Ontario. R. S. O. c. 189, s. 1.

(*r*) The appointment of Police Clerks rests with the Municipal Councils. The Clerk of each Council is to act *ex officio* in the absence of any other appointment. Whether he acts *ex officio* or is appointed to act, if in the receipt of a fixed salary as Clerk of the Council, the fees appertaining to his office as Clerk, either of the Police or Recorder's Court, are to be paid by him to the Municipality and form part of its funds. See *Askin* v. *London District Council*, 1 U. C. Q. B. 292. Where a Municipal Council in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary "in lieu of all fees," and subsequently the Jury Act (13 & 14 Vict. ch. 55) was passed, it was held that the resolution would not debar him from claiming fees allowed by the Statutes for preparing jury books for the following year. *Pringle and Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 254. The Court said, "The Council may, in their discretion, revise their regulation of his salary in consequence of the change made in his duties, if they can insist upon his being paid a fixed salary; but

DIVISION VIII.—BOARD OF COMMISSIONERS OF POLICE IN CITIES AND POLICE FORCE IN CITIES AND TOWNS.

Board, members of. *Sec.* 413.
Powers of, as to Witnesses. *Sec.* 414.
Quorum, who to be. *Sec.* 414.
May license horses, cabs, &c. *Sec.* 415.
By-laws of, how authenticated and proved. *Sec.* 416.
Infraction of, how punishable. *Sec.* 417.
High Bailiffs. *Sec.* 418.
Police Force. *Sec.* 419.
Appointment of. *Sec.* 420.
Regulations for. *Sec.* 421.
Duties of. *Sec.* 422.
Remuneration of. *Sec.* 423.
Constables in Towns where no Police Magistrate. *Sec.* 424.
Dissolution of present Boards. *Sec.* 425.
Arrests without warrant. *Sec.* 426.
Suspension from office. *Secs.* 427, 428.

Board of Commissioners of police in cities and towns, of whom composed.

413. In every City there is hereby constituted a Board of Commissioners of Police, and in every Town having a Police Magistrate the Council may constitute a like Board; (*a*) and such Board shall consist of the Mayor, the Judge of the County Court of the County in which the City or Town is

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it would be unreasonable and unjust to hold that he must be limited to his present salary, and receive nothing for doing the new duties. The Council cannot thus deprive him of the fees which a statute of the Province allows him." *Per* Robinson, C. J., *Ib.* 255. So where by the English Vestry Clerks Act, 13 & 14 Vict., ch. 57, s. 7, the Vestry Clerk is required to make out, when required, the poor rate and to assist the Churchwardens or overseers in preparing and making out all other parochial assessments or accounts, and by the Union Assessment Committee Act Amendment Act, 27 & 28 Vict. c. 39, s. 7, the overseers of a Parish may charge any expense incurred by them with the consent of the Vestry in making out any valuation list upon the poor rate it was held that the valuation list was not an assessment so that the Vestry Clerk was entitled to be paid therefor notwithstanding his salary as Vestry Clerk. *Regina* v. *Cumberlege*, 36 L. T. N. S. 700.

(*a*) Of late it has been deemed expedient to withdraw particular municipal functions from the Councils of certain Municipalities, and to vest such functions in Boards appointed wholly or in part independently of the people. It has been found that Councillors chosen by the people, and directly responsible to the people for their conduct, are not the best custodians of power to be exercised against some of the people for the welfare of the whole people. Matters of Police have for this reason been withdrawn and vested in a Board of Commissioners of Police, created as provided in this section.

situate, and the Police Magistrate; and in case the office of County Judge or that of Police Magistrate is vacant, the Council of the City shall and the Council of the Town may appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require, during such vacancy: (*b*) but the Council of any such Town may at any time, by by-law, dissolve and put an end to the Board, and thereafter the Council shall have and exercise all powers and duties previously had or exercised by the Board. (*c*) 37 V. c. 16, s. 10.

Powers as to witnesses.

414. Such Commissioners shall have power to summon and examine witnesses on oath (*d*) in all matters connected with the administration of their duties; (*e*) and a majority of the Board shall constitute a quorum, and the acts of a majortiy

Majority to constitute a quorum.

(*b*) The intention is, that the Board, when full, shall consist of three persons, and that it shall at all times be full. The Board is made to consist of--

1. The Mayor.
2. The Judge of the County Court.
3. And the Police Magistrate.

The only qualification required of them is that they be residents of the Municipality. Two of the Board constitute a quorum. Sec. 414.

(*c*) While the existence of a Police Board independently of the City Council is supposed to be conducive to efficiency, it is not clear that it is conducive to economy. Where the expenditure of public money is entrusted to a body of men in no manner responsible to the ratepayers who provide the money, there is no limit to the expenditure, except the discretion of those to whom the power of expenditure is entrusted. The knowledge that there must be an annual appeal to the ratepayers is a corrective of extravagance. While there is no power in the case of an extravagant Board of Police in a City to put an end to its existence, the inhabitants of a Town are differently placed, for the Council of a Town "may at any time dissolve and put an end to the Board."

(*d*) The power is "to summon and examine witnesses on oath." This power without more does not amount to much so long as there is no power given to compel the attendance of witnesses, or to punish refractory witnesses when in attendance. The provision is imperfect. Had it been that the Commissioners should have "the same power to summon witnesses, enforce their attendance, &c., as any Court has in civil cases," see sec. 365, it would have been more perfect so if it had been declared that the powers of the Commissioners were to be in all respects the same as the powers of Commissioners under the Statute of Ontario, R. S. O. c. 17, respecting enquiries concerning public matters. See sec. 452.

(*e*) The duties under the Act, are :

shall be considered acts of the Board. (*f*) 36 V. c. 48, s. 334; 37 V. c. 16, s. 10.

Licensing livery stables, cabs, &c.

415. The Board of Commissioners of Police shall in Cities regulate and license the owners of livery stables and of horses, cabs, carriages, omnibuses, and other vehicles used for hire, (*g*)

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1. To regulate and license the owners of livery stables and of horses, cabs, carriages, omnibuses and other vehicles used for hire.

2. To establish the rates of fare to be taken.

3. To provide for enforcing payment of such rates. See secs. 415.

4. To appoint members of the Police Force. Sec. 420

5. To make regulations for the government of the Force, &c. Sec. 421.

(*f*) No provision is made either for the appointment of Chairman, though a Chairman is intended, see sec. 416, or for a casting vote in the event of a tie. See *People* v. *Rector, &c.*, 48 Barb. (N.Y.) 603. Acts done when less than a legal quorum is present are void. *Price* v. *Railroad*, 13 Ind. 58; *Logansport* v. *Legg*, 20 Ind. 315; *Ferguson* v. *Chittenden Co.*, 1 Eng. (Ark.) 479; *McCracken* v. *San Francisco*, 16 Cal. 591; *Piemental* v. *San Francisco*, 21 Cal. 351; *Insurance Company* v. *Sortwell*, 8 Allen, (Mass.) 217; see further, note *a* to sec. 217.

(*g*) Power to a City Council to make such ordinances "respecting streets, carriages, waggons, carts, drays, &c.," as to them should seem expedient and necessary, was held to authorize an ordinance requiring all persons who drive for hire any cart, dray, waggon or omnibus, within the City, to take out a license and to require the vehicle to be numbered, or on failure to do so to pay a fine. *City Council* v. *Pepper*, 1 Rich. S. C. Law, 364; see further, *Bocking* v. *Jones*, L. R. 6 Q. B. 29. Under a similar ordinance the imposition of an annual charge on each car of a street railway company was sustained. *Frankfort Railway Co.* v. *Philadelphia*, 58 Pa. St. 119; *Johnson* v. *Philadelphia*, 60 Pa. St. 445; but see *Mayor, &c.* v. *Avenue Railroad Co.*, 32 N. Y. 261. Authority to license hacks, drays, waggons and other vehicles used within the City for pay does not authorize the taxation of vehicles hauling into and out of the city. *City of St. Charles* v. *Nolle*, 11 Am. 440. The power is by this section restricted to vehicles "used for hire," and so clearly excludes any power to license vehicles used by merchants, manufacturers and others for their own use. *St. Louis* v. *Grove*, 46 Mo. 574. In England, by Stat. 6 & 7 Vict. ch. 86, sec. 33, provision is made for licensing hacks, and a penalty is imposed on the driver of a hackney coach who shall apply for hire elsewhere than at some standing appointed for the purpose. The following cases have been decided under that statute. *Hurrell* v. *Ellis*, 2 C. B. 295; *Rogers* v. *MacNamara*, 14 C. B. 27; *Heath* v. *Brewer*, 15 C. B. N. S. 803; *Ex parte Mitcham*, 5 B. & S. 585; *Buckle* v. *Wrightson*, *Ib.*, 854; *Skinner* v. *Usher*, L. R. 7 Q. B. 423; *Fowler* v. *Lock*, L. R. 7 C. P. 272. So regulations are made under the Metropolitan Public Carriage Act, 32 & 33 Vict. ch. 115, sec. 4, regulating vehicles plying for hire. The

and shall establish the rates of fare to be taken by the owners or drivers, (*h*) and may provide for enforcing payment of such rates, (*i*) and for such purposes shall pass by-laws and enforce the same in the manner and to the extent in which any by-law to be passed under the authority of this Act may be enforced. 36 V. c. 48, s. 335. Shall make by-laws.

416. All by-laws of such Board of Commissioners of Police shall be sufficiently authenticated by being signed by the Chairman of the Board, which passes the same ; (*j*) and a copy of any such by-law written or printed and certified to be a true copy by any member of such Board, shall be deemed authentic, and be received in evidence in any Court of justice without proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original by-law has been forged. (*k*) 36 V. c, 48,. s. 336. How such by-laws authenticated and proved.

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following cases have been decided under it. *Carke* v. *Stanford*, L. R. 6 Q. B. 357 ; *Allen* v. *Tunbridge*, L. R. 6 C. P. 481 ; *Bocking* v. *Jones*, L. R. 6 Q. B. 29 ; see also *Duck* v. *Addington*, 4 T. R. 447 ; *The King* v. *Rawlinson*, 6 B. & C. 23 ; *Cloud* v. *Turfery*, 2 Bing. 318 ; *Blackpool* v. *Bennett*, 4 H. & N. 127 ; decided under other similar Acts in England.

(*h*) The power "to *regulate* and license" vehicles used for hire, would involve the power to establish the rates of fare to be taken by the owner or drivers, as well as the power to make it obligatory upon such owners or drivers to carry the tariff printed in some conspicuous place, for the use of those who employ the vehicles. The Legislature has not left the former part of the proposition open to mere inference.

(*i*) It is intended that the provision for enforcing payment of rates, &c., shall be by By-law. For all the purposes mentioned in the section, the Commissioners are empowered "to pass By-laws and enforce the same in the manner and to the extent in which any By-law to be passed under the authority of this Act may be enforced." The usual mode of enforcing the provisions of a By-law is by fine, to be levied by distress ; and in default, by imprisonment. See secs. 401, 402, and notes thereto. Express provision to that effect is made in section 417.

(*j*) The ordinary mode of authenticating on ordinary Municipal By-law, is to have it under the corporate seal of the Corporation and the signature of the head of the Corporation. Sec. 281. Commissioners of Police are not a Corporation, and therefore have no corporate seal ; so that their By-laws are to be deemed sufficiently authenticated "by being signed by the Chairman of the Board which passes the same."

(*k*) This is in effect a transcript of a similar provision made as to the admission in evidence of ordinary Municipal By-laws. See sec. 282, and notes thereto.

May be enforced by penalties, &c.

417. In all cases where the Board of Commissioners of Police are authorized to make by-laws, either under this or any other Act or law, they shall have power in and by such by-laws to attach penalties for the infraction thereof, (*l*) to be recovered and enforced by summary proceedings before the Police Magistrate of the City for which the same are passed, or, in his absence, before any Justice of the Peace having jurisdiction therein, in the manner and to the extent that by-laws of City Councils may be enforced under the authority of this Act; (*m*) and the convictions in such proceedings may be in the form hereinbefore set forth. (*n*) 36 V. c. 48, s. 337.

How recovered.

High bailiffs.

418. The Council of every City shall appoint (*o*) a High Bailiff but may provide by by-law that the office of High Bailiff and Chief Constable (*p*) shall be held by the same person. 36 V. c. 48, s. 338.

(*l*) See sec. 400, and notes thereto.

(*m*) See R. S. O. c. 72, s. 6.

(*n*) See note *x* to sec. 407.

(*o*) The appointment of High Bailiff rests with the Municipal Council, whereas the appointment of Constables rests with the Board of Police Commissioners. Sec. 420.

(*p*) A Constable is an officer of great antiquity. Bac. Ab. Constable, A. The office was originally instituted for the better preservation of the peace. *Ib.* C. A Constable is the proper officer to a Justice of the Peace, and so is bound to execute warrants. *Ib.* D. If a Constable be sued for anything done in the execution of his office, he and all who assist him may plead the general issue, and give the special matter in evidence. *Ib.* The Council of every Town not having a Police Board, *shall* and the Council of every Incorporated Village, *may* appoint a Chief Constable and one or more Constables for the Municipality. Sec. 424. And in Cities and Towns having a Police Board the force shall consist of a Chief Constable or as many Constables and other officers and assistants as the Council may deem necessary. Sec. 419. The duties of a Chief Constable usually differ from those of the High Bailiff. The latter is, as it were, Sheriff of the City; and yet it has been held that it is the duty of the Sheriff of the County in which the City is situate and not of the High Bailiff of the City, to convey to the Penitentiary prisoners sentenced at the Recorder's Court. *Glass* v. *Wigmore*, 21 U. C. Q. B. 37. Every City must, under the section here annotated, appoint a High Bailiff, and may by By-law direct that the offices of High Bailiff and Chief Constable shall be held by the same person. The Council may suspend the High Bailiff from the duties of his office. Sec. 427. Police officers "are not necessarily Constables or conservators of the peace." See the following note.

419. The Police Force in Cities and Towns having a Board of Commisioners of Police, shall consist of a Chief Constable and as many Constables and other officers and assistants as the Council from time to time deem necessary, (*q*) **Police force in cities and towns.**

(*q*) This section relates to the constitution and number of the Force. It is to consist of a Chief Constable and as many Constables and other officers and assistants as the *Council* from time to time deem necessary; but in cities in no case to be less in number than the *Board* reports to be absolutely required. The only authority of the Council is, subject to the provisions of this section, to fix the number of the Force, but not to appoint the members of the Force. See sec. 420. The Police Force is a force not known to the common law; Police Officer is an officer not known to the common law. It is created by statute. Being so created, such an officer can only exercise such power as the statute confers on him, either by express authority or necessary inference. See *Commonwealth* v. *Hastings*, 9 Metc. (Mass.) 259; *Commonwealth* v. *Dugan*, 12 Metc. (Mass.) 233. In Massachusetts. Police Officers are made Peace Officers. See *Butrick* v. *Lowell*, 1 Allen, (Mass.) 172. So also in Main. See *Mitchell* v. *Rockland*, 52 Maine, 118; *S. C.*, 41 Maine, 363, and 45 Maine, 496. It is by section 422 of this Act enacted that Constables (apparently meaning Policemen under this Act) shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanours, and apprehending offenders; and shall have "generally all the powers and privileges, and be liable to all the duties and responsibilities which belong *by law to Constables duly appointed.*" Where Police Officers are by statute invested with the powers of Peace Officers, or conservators of the peace, they have power to arrest certain offenders on view. Bac. Ab. "Constable," C.; 1 Hale, P. C. 587; *Taylor* v. *Strong*, 3 Wend. (N.Y.) 384; *Commonwealth* v. *Hastings*. 9 Metc. (Mass.) 259; *Bryan* v. *Bates*, 15 Ill. 87; *Main* v. *McCarty*, *Ib.*, 441; *Lafferty* v. *State*, 5 Harring. (Del.) 491. A Constable may on view arrest persons engaged in a breach of the peace. *City Council* v. *Payne*, 2 Nott. & McCord, (S. C.) 475; *White* v. *Kent*, 11 Ohio, St. 550; *Thomas* v. *Ashland*, 12 Ohio, St. 127. Every person, *as well as Constables*, present when a *felony* is committed or a dangerous wound given, not only may apprehend the offender, but is bound to do so. *Beckwith* v. *Philby*, 6 B. & C. 634; *Mathews* v. *Biddulph*, 3 M. & G. 390; 2 Hawk. ch. 12, sec. 1; 1 East. P. C. 377, sec. 1. If a private person be present at an affray, he may stay the affrayers until the heat is over, and then delivery them over to a Constable, and he may stop others coming to join either party. *Timothy* v. *Simpson*, 1 C. M. & R. 757; *Ingle* v. *Bell*, 1 M. & W. 516; 2 Hawk. ch. 13, sec. 8; *Baynes* v. *Brewster*, 2 Q. B. 375; but where his purpose is not so much to prevent the breach of the peace as to prevent an interference with the continuance of the affray, the purpose is illegal. *Hickey* v. *Fitzgerald*, 41 U. C. Q. B. 303. So a private person may arrest after an affray, if there be reasonable ground to apprehend a renewal of it. *Price* v. *Seely*, 10 Cl. & Fin. 28. Any person may arrest any other person found committing any indictable offence in the night. 32 & 33 Vict. ch. 29, sec. 4. Any Peace Officer may, without a warrant,

but in Cities, not less in number than the Board reports to be absolutely required. 37 V. c. 16, s. 11.

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take into custody any person whom he finds lying or loitering in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any felony. *Ib.* sec. 5. Any person found committing an indictable offence, punishable either by indictment or upon summary conviction, may be immediately arrested by any Peace Officer, without a warrant, or by the owner of the property on or with respect to which it is being committed, or by his servant, or by any other person authorized by the owner. *Ib.* sec. 2. If any person to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed on or with respect to such property, he may arrest the offender. *Ib.* sec. 3. It is not suspecting that gives the right to arrest, but good reason or good cause to suspect, and the reason or cause would appear to be traversable. See *The Queen* v. *Tooley et al.*, 11 Mod. 242, 248; *S. C.* 2 Ld. Rayd. 1296, 1301. In ordinary cases, to justify an arrest by a Police Officer even for a misdemeanour, it is necessary that he should have the warrant with him at the time. *The Queen* v. *Chapman*, 12 Cox, C. C. 4. A Constable has a right without a warrant to enter any house (the door of which is unfastened) in which there is a noise amounting to a breach of the peace, and to arrest any person there disturbing the peace in his presence. *Commonwealth* v. *Tobin*, 11 Am. 375. It is no part of a Police Constable's duty as such to assist the occupier of a house in putting out an intruder. *The Queen* v. *Roxburgh*, 12, Cox, C. C. 8, yet he may lawfully do so. *Ib.* If a private individual state facts to a Constable, who thereupon, on his own responsibility, arrests a person, or if he procure a Magistrate to issue a warrant for taking a person, the imprisonment is not his act, and he may show this under the plea of not guilty. *Barber* v. *Rollinson*, 1 C. & M. 330; *Stonehouse* v. *Elliott*, 6 T. R. 315; *Brandt* v. *Craddock*, 27 L. J. Ex. 314; *Grinham* v. *Willey*, 4 H. & N. 496. A Constable is justified is arresting without a warrant upon a reasonable suspicion of a *felony* having been committed and of the person being guilty of it, although no felony has in fact been committed, and whether the reasonable grounds for suspicion are matters within his own knowledge or facts stated to him by another. *Lawrence* v. *Hedger*, 3 Taunt. 14; *Davis* v. *Russell*, 5 Bing. 355; *Beckwith* v. *Philby*, 6 B. & C. 635; *Hogg* v. *Ward*, 3 H. & N. 417; *Dering* v. *The State*, 19 Am. 669. But a Constable is not in general justified in arresting a person who frequents a highway with intent to commit a felony. *Re Timson*, L. R. 5 Ex. 257; see also, *In re Jones*, 7 Ex. 586, or in arresting a person for a *misdemeanor* without a warrant, *Matthews* v. *Biddulph*, 3 M. & G. 390; *Griffin* v. *Coleman*, 4 H. & N. 265; see sec. 426; unless there be a breach of the peace in his presence, *Timothy* v. *Simpson*, 1 C. M. & R. 757; *Derecourt* v. *Corbishley*, 5 El. & B. 188, or danger of a renewal of it. *The Queen* v. *Light*, 27 L. J. Mag. Cas. 1; *The Queen* v. *Walker*, 23 L. J. Mag. Cas. 123; see also, *Pesterfield* v. *Vickers*, 3 Coldw. (Tenn.) 205; see further, secs. 426 and 451 of this Act, and notes thereto. It would seem that a Constable, having a warrant to arrest, is not bound to accept a tender of the fine and costs. See *Arnott* v. *Bradley*, 23 U.

420. The members of such Police Force shall be appointed by and hold their offices at the pleasure of the Board, (*r*) and shall take and subscribe to the following oath :— (*s*) **Appointment of members thereof.**

Oath of office.

I, *A. B.*, do swear that I will well and truly serve or Sovereign Lady the Queen in the office of Police Constable for the of without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowlege, discharge all the duties thereof faithfully according to law.

36 V. c. 48, s. 340.

421. The Board shall, from time to time, make such regulations as they may deem expedient for the government of the force, and for preventing neglect or abuse, and for rendering the force efficient in the discharge of all its duties. (*t*) 36 V. c. 48, s. 341. **Board to make police regulations.**

422. The Constables shall obey all lawful directions, and be subject to the government of the Board, and shall be charged with the special duties of preserving the peace, pre- **Constables to be subject to the board.**

C. C. P. l. He cannot arrest on the mere statement that a person is insane, it must also be stated that the person is dangerous. *Look* v. *Dean*, 11 Am. 323. See further, *Brock* v. *Stimson*, *Ib.* 390.

(*r*) The power to appoint members of the Police Force, unlike that for the appointment of the High Bailiff, is vested in the Board of Police Commissioners. The power to appoint involves the power to remove, so it is declared that the members of the Force shall "hold their offices at the pleasure of the Board." It was at one time held that the Board had no power to fix the salaries or remuneration of the members of the Force, *In re Prince and Toronto*, 25 U. C. Q. B. 175, but the law is now altered. See sec. 423. The members of the Force are in all things made subject to the government of the Board. See secs. 421 and 422. Until the organization of the Board they may be suspended by the Police Magistrate or Mayor. Sec. 427.

(*s*) The taking of the oath is obligatory, and it must not only be taken but subscribed. An assault upon a Constable in the discharge of his duty is indictable, although he never took the oath of office. *Duttrick* v. *Lowell*, 1 Allen (Mass.) 172; *Mitchell* v. *Rockland*, 52 Maine 118.

(*t*) The object of the Police regulations is to render "the Force efficient in the discharge of all its duties." Power to the Board from time to time to make such regulations "as they may deem expedient for the *government* of the Force," involves the power to make regulations to secure efficiency; and such ought to be the regulations, unless the Board "deem it expedient" that the force should not be efficient in the discharge of its duties. So power to make regulations for the efficiency of the Force involves power to

venting robberies and other felonies and misdemeanors, and apprehending offenders; and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to Constables duly appointed. (*u*) 36 V. c. 48, s. 342.

Duties of constables.

Remuneration and contingent expenses.

423. The Council shall appropriate and pay such remuneration for and to the respective members of the force as may be required by the Board of Commissioners of Police; and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries as the Board may from time to time deem requisite and require for the payment, accommodation and use of the force. (*v*) 36 V. c. 48, s. 343.

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make regulations against "neglect" and "abuse." Much of this section is needless: the first part of it involves the second, and the second is therefore unnecessary.

(*u*) There *may* be a wide difference between "a Police Officer" and "a Constable," see note *p* to sec. 418; but under the operation of the section here annotated there can be little, for it is especially declared, among other things, that the Constables shall have generally all the powers which "belong by law" to Constables duly appointed.

(*v*) The three heads are—

1. Payment of the Force.
2. Accommodation of the Force.
3. Use of the Force.

It would only be proper for the Board to furnish to the City Council some details of the proposed expenditure, showing that it will come under one or other of these heads. See *In re Trustees of Brockville*, 9 U. C. Q. B. 302; *In re Trustees of Port Hope*, 4 U. C. C. P. 418; *In re Schools* v. *Toronto*, 20 U. C. Q. B. 302; *Ib.* 23 U. C. Q. B. 203; *In re Coleman* v. *Kerr*, 27 U. C. Q. B. 5; *In re School Trustees of Mount Forest* v. *Mount Forest*, 29 U. C. Q. B. 422. But it is to be noted that no provision is here made in express terms for the giving of an estimate to the Corporation. See *In re Port Rowan High School* v. *Walsingham*, 23 U. C. C. P. 11. The Court, on a motion for a mandamus, is not bound to consider objections, well or ill founded, to certain items in the estimate of the Board. An objection to particular items can form no reason for withholding, arbitrarily and without explanation, every part of an estimate. A different course would have to be taken to raise such an objection. *School Trustees* v. *Toronto*, 23 U. C. Q. B. 203.

If the Council wholly neglect and refuse to appropriate or pay, as required by the Board of Commissioners of Police, for the purposes mentioned, there would be a remedy. See *In re Board of School Trustees of Toronto*, 23 U. C. Q. B. 203. The Council is not bound to follow the dictation of the Board as to the manner of procuring

Constables in towns and villages.

424. The Council of every Town not having a Board of Commissioners of Police (*w*) shall, and the Council of every incorporated Village may, (*x*) appoint one Chief Constable, and one or more constables for the Municipality; (*y*) and the persons so appointed shall hold office during the pleasure of the Council. (*z*) 37 V. c. 16, s. 12.

Dissolution of boards of police commissioners in towns.

425. Wherever in any Town there was on the twenty-fourth day of March, 1874, a Board of Commissioners of Police constituted under the Acts then in force respecting Municipal Institutions in this Province, the Council of said Town may by by-law dissolve and put an end to said Board, and thereafter the Council shall have and exercise all powers and duties which might, under said Acts, have been had or exercised by said Board; (*a*) and unless and until so dissolved and put an end to, the said Board shall have and exercise all the powers and duties which, but for this section, would have been exercised or had by said Board. 37 V. c. 16, s. 13.

Arrests by constables for alleged breaches of the peace not committed in their presence.

426. In case any person complains to a Chief of Police, or to a constable in a Town or City, of a breach of the peace having been committed, (*b*) and in case such officer has reason to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to appre-

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the money. *Ib.* It may be that the Council has surplus funds in hand to meet demands without levying a rate. If so, the levying of a rate, even though asked by the Board, would be unnecessary. See *School Trustees and Galt*, 13 U. C. Q. B. 511, 521. Formerly the Board of Commissioners had not power to fix the remuneration, and when the law was so the Court refused to interfere to compel the Council to pay the remuneration fixed by the Board. *In re Prince and Toronto*, 25 U. C. Q. B. 175.

(*w*) See note *n* to sec. 411.

(*x*) The Council of a Town not having a Board of Commissioners must appoint, but the Council of an incorporated Village may, if it see fit, appoint. In the case of the former there is an imperative duty. In the case of the latter the duty is discretionary.

(*y*) See note *q* to s. 419.

(*z*) See note *r* to s. 420.

(*a*) See note *e* to s. 413.

(*b*) The object of this section is to remove doubts as to the authority of the peace officers named to make arrests without warrant for *misdemeanors* not committed within their view. See note *q* to sec. 419. Caution, must, however, be exercised in making arrests under such circumstances. A Magistrate's warrant is a great shield. Where an arrest is made without it, if it should turn out that the provisions

hend that the arrest of the person charged with committing the same is necessary to prevent his escape or to prevent a renewal of a breach of the peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate or before the Mayor or sitting Justice, such officer may, without warrant, (*c*) arrest the person charged in order to his being conveyed as soon as conveniently may be before the Magistrate, Mayor or Justice, to be dealt with according to law. 36 V. c. 48, s. 345.

Until a board of police is organized, mayor, etc., may suspend chief constable, etc., from office, etc.

427. Until the organization of a Board of Police, every Mayor or Police Magistrate may, within his jurisdiction, suspend from office, for any period in his discretion, the Chief Constable, or any Constable of the Town or City, and may, if he chooses, appoint some other person to the office during such period; (*d*) and in case he considers the suspended officer

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of this section have been neglected, that the wrong person is arrested, the officer might be held liable to an action for false imprisonment.

(*c*) To authorize an arrest without warrant under this section, the following things must concur:

1. There must be a complaint to the officer of a breach of the peace having been committed.

2. The officer must, "have reason to believe" that a breach of the peace has been committed; and,

3. That there is good reason to apprehend that the arrest of the person charged is necessary to prevent his escape, or to prevent a renewal of the breach of the peace, &c.

4. Satisfactory security to prosecute must be given to the officer.

Statutes authorizing Police Officers to make arrests without warrant, being in derogation of personal liberty, should be strictly construed. *Low* v. *Evans*, 16 Ind. 486; *Pow* v. *Beckner*, 3 Ind. 475; *Vandeveer* v. *Mattocks*, *Ib.* 479. Although Police Constables may arrest without warrant for crimes, it does not follow that they have the power to do so in the case of lesser offences. See *Galliard* v. *Laxton*, 2 B. & S. 361; *Regina* v. *Chapman*, 12 Cox. 4; *Codd* v. *Cabe*, 13 Cox. 202, *S. C.* L. R. 1 Ex. Div. 352.

(*d*) The powers of the Mayor or Police Magistrate, under this section are—

1. To suspend from office, for any period in his discretion, the Chief Constable or Constable of the Town or City.

2. To appoint, if he choose, some other person to the office during the period of suspension.

3. To report, if he considers the suspended officer deserving of dismissal, the case to the Council.

deserving of dismissal, he shall, immediately after suspending him, report the case to the Council, and the Council may dismiss such officer, or may direct him to be restored to his office after the period of his suspension has expired ; (*e*) and the City Council shall have the like powers as to the High Bailiff of the City. (*f*) 36 V. c. 48, s. 346.

Incapacity of such officer to act.

428. During the suspension of such officer he shall not be capable of acting in his office except by the written permission of the Mayor or Police Magistrate who suspended him, (*g*) nor during such suspension shall he be entitled to any salary or remuneration. (*h*) 36 V. c. 48, s. 347.

Salary to cease.

DIVISION IX—COURT-HOUSES, GAOLS AND OTHER PLACES OF IMPRISONMENT.

Erection and care of. *Secs.* 429-448.
Who to be confined in. *Secs.* 438, 439, 449, 451, 29-30, V. c. 51, ss. 409, 414 & 415.
Expense of prisoners. *Sec.* 450.

County council may pass by-laws as to county buildings.

429. Every County Council may pass by-laws for erecting, improving and repairing a Court House, Gaol, House of

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But has of himself no power to dismiss—that rests with the Council. And these powers are only to be exercised "until the organization of a Board of Police."

(*e*) During the suspension the suspended officer is incapable of acting in his office except by the written permission of the Mayor or Police Magistrate who suspended him, and is deprived during that period of all salary or remuneration. Sec. 428. The restoration to office is only to take place "after" the period of his suspension has expired. If a person be illegally suspended from the duties of his office, it may be that a mandamus will lie for his restoration, *sed qu.* when the office is one during pleasure. See *The King* v. *Barker*, 3 Burr. 1266 ; Willcocks' Municipal Corporations, 368, pl. 74, 75 ; *Ib.* 377, pl. 96 ; Angell & Ames on Corporations, secs. 702, 706 ; 3 Bl. Com. 110.

(*f*) The power of appointment of the High Bailiff is vested in the Council of the City. Sec. 418. The power of suspension from duty is therefore properly vested, by this section, in the same body.

(*g*) See note *d* to sec. 427.

(*h*) When restored, his restoration can only take effect "after the period of his suspension has expired." The suspension is therefore a deprivation of office for some certain period. During that period another may be appointed to the office. See sec. 427. That other, if appointed, would, in the absence of agreement to the contrary, be entitled to the salary or remuneration.

Correction, and House of Industry, (*a*) upon land being the property of the Municipailty, and shall preserve and keep the same in repair, and provide the food, fuel and other supplies required for the same. 36 V. c. 48, s. 348.

Gaols and court-houses in

430. The Gaol, Court House and House of Correction of the County in which a Town or City, not separated for all

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(*a*) The powers and duties of the County Council under this section are—

1. To erect and improve a Court House, Gaol, House of Correction, and House of Industry, upon land being the property of the Municipality.

2. To preserve and keep the same in repair.

3. To provide the food, fuel and other supplies required for the same.

The Court House, from its very name as well as from the provisions of law requiring the erection of a Gaol and Court House in every County or Union of Counties before they are constituted separate Municipal authorities, is a building devoted to and intended for certain public uses. The Municipal Corporation may be considered as holding the building and the legal estate in it, for and subject to these uses, and would be guilty of a breach of trust and, as regards the Courts of Justice, of a high contempt, if they pretended to prevent its use for such purposes. *Per* Draper, C. J., in *Huron and Bruce* v. *Macdonald et al.*, 7 U. C. C. P. 280. Gaols have always been considered of such universal concern to the public, that until powers were conferred upon Municipal Corporations to erect them, none could be erected except by authority of Parliament. *The King* v. *Newcastle*, Dra. 214; see also *The Queen* v. *Lancashire*, 11 A. & E. 144. But now, where a Municipal Corporation, having power, authorizes the building of a Gaol and Court House, the builder may, on the completion of the work, sue the Corporation for his money. *Keating* v. *Simcoe*, 1 U. C. Q. B. 28, even though there be no contract under seal. *Pim* v. *Ontario*, 9 U. C. C. P. 302, 304. The Corporation, however, is not liable to be sued for the use and occupation of a room engaged by the sheriff for the purposes of a Court room, *Dark* v. *Huron and Bruce*, 7 U. C. C. P. 378, nor for furniture supplied to the Court House on the order of Magistrates in Quarter Sessions. *In re Coombs and Middlesex*, 15 U. C. Q. B. 367. The fact that the Court House is also used as a Shire Hall for the sittings of the County Council, and the furniture made use of by them, can make no difference. *Ib.* Formerly, the responsibility of keeping the Court House in repair was thrown on the District Surveyor; and when the law was so, it was held that the Municipal Corporation was not liable in damages for an injury resulting in death, occasioned to an individual in walking up the Court House steps, which had been allowed to fall into an unsafe condition. *Hawkeshaw* v. *Dalhousie*, 7 U. C. Q. B. 590. The Court has refused a rule for a mandamus to compel a County Council to build a Court House. *Justices of the District of Huron* v. *Huron District Council*, 5 U. C. Q. B. 574. In case the Inspector of Prisons shall at any time find that the Common Gaol in any County or City is out of repair, or has

purposes from a County, (*b*) is situate, shall also be the Gaol, Court House, and House of Correction of the Town or City, and shall, in the case of such City, continue to be so until the Council of the City otherwise directs; (*c*) and the Sheriff, Gaoler and Keeper of the Gaol and House of Correction shall receive and safely keep, until duly discharged, all persons committed thereto by any competent authority of the Town or City. (*d*) 36 V. c. 48, s. 349. Counties and cities, etc., not separated.

431. The Council of any City may erect preserve, improve and provide for the proper keeping of a Court House, Gaol, House of Correction and House of Industry upon lands being the property of the Municipality, (*e*) and may pass by-laws for all or any of such purposes. (*f*) 36 V. c. 48, s. 350. City councils may erect, &c., certain public buildings.

432. The Council of every County may establish and maintain a Lock-up House or Lock-up Houses within the County, (*g*) and may establish and provide for the salary or fees to be paid to the Constable to be placed in charge of Lock-up-houses may be established by county council.

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become unsafe or unfit for the confinement of prisoners, or that the same does not afford sufficient space or room for the prisoners usually confined therein, the County may now be compelled by mandamus to make the necessary repairs. R. S. O. c. 224, s. 21. A similar provision might, with advantage to the public, be enacted as to Court Houses. The Legislature has not as yet shewn as much concern for the health of Judges as of prisoners. See notes to sec. 442.

(*b*) Where a City or Town is separated for *all* purposes from the County in which situate, this section would be inapplicable.

(*c*) It is declared, first, that the Gaol, &c., of the County in which a Town or City is situate, shall also be the Gaol, &c., of the Town or City; and, secondly, in the case of a *City*, continue to be so until the Council of the City, otherwise directs. It is apparently only the Council of a City, and not of a Town, that has power to direct the erection of a separate gaol, &c. See sec. 431.

(*d*) If the committal be for a certain time, unless a fine and costs or a fine or costs be sooner paid, the Sheriff, Gaoler or Keeper to whom the warrant is directed should be careful not to detain the prisoner after payment or tender of the money. See *Smith* v. *Sibson*, 1 Wils. 153; *Chaddock* v. *Wilbraham*, 5 C. B. 645, 650; and *Walsh* v. *Southworth et al.*, 6 Ex. 150.

(*e*) The Gaol, Court-house and House of Correction of the County in which a City is situate is to be the Gaol, Court House and House of Correction of the City, till the latter Municipality otherwise direct.

(*f*) See sec. 430; also note *a* to sec. 429.

(*g*) The powers are—

every such Lock-up House, and may direct the payment of the salary out of the funds of the County. 36 V. c. 48, s 351.

A constable to be placed in charge.

433. Every Lock-up House shall be placed in the charge of a constable specially appointed for that purpose by the Magistrates of the County at a General Sessions of the Peace therefor. (*h*) 36 V. c. 48, s. 352.

Lock-up houses.

434. The Council of every City, Township, Town, and Incorporated Village (*i*) may, by by-law, establish, maintain and regulate Lock-up Houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any by-law of the Council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any Common Gaol or House of Correction, either for trial or

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1. To establish and maintain a Lock-up House or Lock-up Houses within the County;

2. To establish and provide for the salary or fees to be paid to the Constable in charge;

3. To direct the payment of the salary out of the County funds.

A "Lock-up House" is a place for the temporary confinement of a prisoner, or of a prisoner committed for a short space of time. Sec. 449. The Gaol is for the whole County, but in each County or Union of Counties there can be only one Gaol, and that situate in the County Town. But there may be several Lock-up Houses, and situate where most convenient. Councils of *Counties* only are by this section authorized to establish Lock-up Houses. See secs. 434, 435, as to Cities, Townships, Towns and Incorporated Villages. Unfortunately these places of imprisonment (Lock-ups) like Court Houses in this Provi[illegible] are not always what they ought to be. But the responsibility at present rests on the Municipal bodies who have the control of them. It is or ought to be the duty of the Executive Government to see that this control is properly exercised. If the Government have not the power the law is defective and ought to be amended. The laws of health, humanity and decency alike, demand that such buildings as those mentioned should be fit for the purposes for which they are designed. *Per* Harrison, C. J., in *Crawford* v. *Beatie*, 39 U. C. Q. B. 31.

(*h*) While the gaol is to be placed in the care of the Sheriff, sec. 440, each lock-up is to be placed in charge of a Constable, *specially* appointed for that purpose by the Magistrates at a General Sessions of the Peace. The law has made some provision for having gaols in a proper condition to receive prisoners, but none for the condition of the lock-ups. Some of the latter are in a most disgraceful condition. See the last note.

(i) Counties have the power under a different section. Sec. 432.

in the execution of any sentence ; (*k*) and such Councils shall have all the powers and authorities conferred on County Councils in relation to Lock-up Houses. (*l*) 36 V. c. 48, s. 353.

Joint lock-up houses.

435. Two or more Municipalities may unite to establish and maintain a Lock-up House. (*m*) 36 V. c. 48, s. 354.

Land may be acquired for industrial farms, house of industry, refuge, etc.

436. The Council of every County, City or Town separated from a County may acquire an estate in landed property for an Industrial Farm, and may establish a House of Industry and a House of Refuge, and provide by by-law for the erection and repair thereof, and for the appointment, payment and and duties of Inspectors, Keepers, Matrons and other servants for the superintendence, care and management of such Houses of Industry or Refuge, and in like manner make rules and regulations (not repugnant to law) for the government of the same : (*n*)

(*k*) The persons who may, under the operations of this section, be confined in Lock-up Houses, are the following :

1. Those *sentenced* to imprisonment for not more than ten days, under any By-law of the Council ;

2. Those *detained* for examination on the charge of having committed any offence ;

3. Those *detained* for transmission to the Common Gaol or House of Correction.

See further, sec. 449.

In none of the cases mentioned, should the detainer in the Lock-up of persons other than those mentioned be longer than mentioned, or for any other purpose than mentioned. Excess in any of these particulars may subject the persons concerned to an action of trespass. See *Atkins* v. *Kilby*, 11 A. & E. 777.

The committing Magistrate is not in general liable for the sufferings of a person committed to the Lock-up, when that Lock-up is not in a fit condition to receive inmates. *Crawford* v. *Beattie*, 39 U. C. Q. B. 31.

(*l*) See sec. 432 and notes thereto.

(*m*) The power to unite in establishing and maintaing a Lock-up House, it is apprehended, includes the power to make a valid agreement as to the terms which each shall contribute towards its establishment and maintenance. The keeper of a County Lock-up may be paid either by salary or fees. See sec. 432.

(*n*) The powers under this section are :

1. To acquire land for an Industrial Farm ;

2. To establish a House of Industry and House of Refuge ;

3. To provide by By-law for the erection and repair thereof ;

Proviso as to united or contiguous counties.

2. Any two or more United Counties, or any two or more contiguous Counties, or any City and one or more Counties, or any Town or one or more Counties, may agree to have only one House of Industry or Refuge for such united or contiguous Counties, or City and Counties, or Town and Counties, and maintain and keep up the same in the manner herein provided. (*o*) 36 V. c. 48, s. 355.

Inspectors to keep and render accounts of expenses, etc.

437. The Inspector of a House of Industry or Refuge appointed as aforesaid, shall keep an account of the charges of erecting, keeping, upholding and maintaining the House of Industry or Refuge, and of all materials found and furnished therefor, together with the names of the persons received into the house, as well as of those discharged therefrom, and also of the earnings; (*p*) and such account shall be rendered to the County Council every year, or oftener when required by a by-law of the Council; (*q*) and a copy thereof shall be presented to the Legislature. 36 V. c. 48, s. 356.

By-laws may be passed establishing workhouses and houses of correction.

438. The Council of every City and Town may respectively pass by-laws:

1. For erecting and establishing within the City or Town, or on such Industrial Farm, or on any ground held by the corporation for public exhibitions, a Work-house or

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4. To provide by By-law for the appointment and duties of Inspectors, Keepers, Matrons, and other servants;

5. To make rules and regulations for the government of the same.

At first the powers were only permissive (Con. Stat. U. C. ch. 54, secs. 415, 419); then compulsory, 29 & 30 Vict. ch. 51, sec. 413; and now again permissive. As the names indicate, Houses of Industry and Refuge are intended for the poor, the destitute, and the idle. See sec. 451.

(*o*) See note *m* to sec. 435.

(*p*) The duties of Inspectors are, under this section, to keep an account showing the following:

1. The charges for erecting, keeping, upholding and maintaining the House of Industry or Refuge, and of all materials found and furnished therefor;

2. The names of the persons received into the House, as well as those discharged therefrom, and also of the earnings.

(*q*) The duty to render the account to the County Council, is made to depend on the passing of a By-law. The account is to be rendered every year or oftener, when required by a By-law of the Council.

House of Correction, and for regulating the government thereof; (*r*)

Who liable to be committed thereto.

2. For committing and sending, with or without hard labour, to the Workhouse or House of Correction, or to the Industrial Farm, by the Mayor, Police Magistrate, or any Justice of the Peace, while having jurisdiction in the City or Town respectively, such description of persons as may by the Council be deemed, and by by-law be declared expedient; (*s*) and such farm or ground held as aforesaid shall, for the purposes in this subsection mentioned, be deemed to be within the City or Town and the jurisdiction thereof. (*t*) 36 V. c. 48, s. 357.

Until houses of correction be erected, the common gaols in each respective county are constituted houses of correction.

439. Until separate Houses of Correction are erected in the several Counties in Ontario, the Common Gaol in each County respectively shall be a House of Correction; and every idle and disorderly person, or rogue and vagabond, and incorrigible rogue, and any other person by law subject to be committed to a House of Correction, shall, unless otherwise provided by law, be committed to the said Common Gaols respectively. (*u*) C. S. U. C. c. 127, s. 11.

Custody of gaols.

440. The Sheriff shall have the care of the County Gaol, gaol offices and yard, and gaoler's apartments, and the appointment of the keepers thereof, (*a*) whose salaries shall be

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(*r*) The powers are—

1. To erect and establish a Workhouse, &c.;

2. To regulate the government thereof.

(*s*) Workhouses or Houses of Correction are intended to be places of punishment, for the commitment thereto may be "with or without hard labour." The description of persons liable to be so committed is left to the determination of the Council by By-law.

(*t*) Municipal Councils cannot in general acquire property for any purpose without the limits of the Municipality. Here the power is to erect and establish a Workhouse "within or without" the City or Town. But for all the purposes of the section the property is, for obvious reasons, to be deemed to be within the City or Town, and the jurisdiction thereof. See note *u* to sec. 18, and note *b* to sec. 277.

(*u*) Gaols are designed for the imprisonment of criminals where reformation may or may not be an object of the imposition of punishment, but where the person, although not a criminal, is idle, disorderly, a rogue or a vagabond, the House of Correction, if any, is the proper place for his incarceration. The County Gaol is to be used for such a purpose only where, in the particular County, there is no House of Correction.

(*a*) Some disputes having hitherto existed between Sheriffs and

Keepers.

fixed by the County Council, subject to the revision or requirement of the Inspector of Prisons and Public Charities. (*b*) 36 V. c. 48, s. 358.

Gaoler to have a yearly salary in place of all fees, perquisites or impositions whatever.

441. The salary of the gaolor shall be in lieu of all fees, perquisites or impositions of any sort or kind whatever; and no gaoler or officer belonging to the Gaol shall demand or receive any fee, perquisite or other payment from any prisoner confined within the Gaol or prison. (*c*) C. S. U. C. c. 127, s. 5.

County council to have care of court-house, etc.

442. The County Council shall have the care of the Court-House and of all offices and rooms and grounds connected therewith, whether the same forms a separate building or is connected with the Gaol, (*d*) and shall have the appointment of the keepers thereof, whose duty it shall be to attend to the proper lighting, heating and cleaning thereof; and shall from time to time provide all necessary and proper accommoda-

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Municipal Councils, arising out of a real or supposed conflict of jurisdiction as to Court Houses and Gaols: See *Huron and Bruce* v. *Macdonald*, 7 U. C. C. P. 278, the object of this and the three following sections is, so far as language can do so, to remove all cause of dispute. Though it is by sec. 429 enacted that the County Council may pass By-laws for erecting, improving, and repairing the Gaol, &c., and shall preserve and keep it in repair, and provide the fuel, food, and other supplies required, it is here enacted that the Sheriff shall have the *care* of the Gaol, Gaol offices and yard, and Gaolor's apartments, and the *appointment* of the Keepers. While upon the Council rests the responsibility of keeping the building, &c., in repair, and of providing the necessaries, upon the Sheriff rests the responsibility of management and internal government.

(*b*) While the appointment of the Keepers is vested in the Sheriff, the amount of salaries is to be fixed by the County Council, subject, however, to the revision of the Inspector of Prisons.

It is not said who is to decide as to the number of Keepers. The Keepers are necessary for the care of the Gaol. As the care of the Gaol is cast on the Sheriff it is presumed that he must decide as to the number of Keepers, but that their salaries shall be fixed by the County Council. Should the salaries be fixed at such a sum as to render it impossible to obtain fit men for the office an appeal to the Inspector of Prisons and Public Charities, is provided.

(*c*) See note *q* to s. 391.

(*d*) While the care of the Gaol is entrusted to the Sheriff, the care of the Court House is entrusted to the County Council. It is, however, expressly declared that the Council "*shall* from time to time provide all necessary and proper accommodation for the Courts of Justice other than Division Courts, and for *all officers connected with such Courts*."

tion, fuel, light and furniture for the Courts of Justice other than the Division Courts, and for all officers connected with such Courts. 36 V. c. 48, s. 359.

City gaols to be regulated by by-laws of city council.

443. In any City not being a separate County for all purposes, (*e*) but having a Goal or Court House separate from the County Goal or Court House, the care of such City Gaol or Court House shall be regulated by the By-laws of the City Council. (*f*) 36 V. c. 48, s. 360.

Upon separation of union of counties, gaol and court-house regulations to continue.

444. In case of a separation of a Union of Counties, all rules and regulations, and all matters and things in any statute for the regulation of, or relating to Court-Houses or Gaols in force at the time of the separation, shall extend to the Court-House and Gaol of the Junior County. (*g*) 36 V. c. 48, s. 361.

Liability of cities and towns separ

445. Cities and Towns separated from Counties shall, as

A public officer suffering loss through the failure of the Municipal Council to provide proper Office accommodation, has an action for the recovery of damages against the Muncipal Corporation. *Lees* v. *Carleton*, 33 U. C. Q. B. 409 ; see further, *Griffin* v. *City of Hamilton*, 37 U. C. Q. B. 519.

Gaols have, at all times, been considered of universal concern to the public, and are still considered so to such an extent that to a great extent they have been placed under the control of a public officer —the Inspector of Prisons. See note *a* to sec. 429. Court Houses should not be deemed of less public concern, unless the lives of Judges are to be deemed of less value than the lives of felons and other criminals. It was a mistake ever to have placed the building and control of Court Houses elsewhere than with the Government. In the adjoining Province of Quebec a different policy has been adopted, and the contrast between the Court Houses there and here establishes the wisdom of the Government policy. It is not too late for the Legislature to give a controlling power as regards the construction and maintenance of Court Houses to the Government. The administration of justice is not a matter of mere local concern ; and the reason which has impelled the Legislature to place the erection and maintenance of Gaols under the control of the Government, applies with as great force to the erection and maintenance of Court Houses.

(*e*) Every City is a county of itself for municipal purposes. See *The Queen* v. *Smith*, 7 U. C. L. J. 66 ; *The Queen* v. *Rochester*, *Ib.*, 101, 102.

(*f*) So long as the Gaol and Court House are the property of the City—and it is the policy of the Legislature to give the control of such buildings to Municipal bodies—the right of the City Council to the control, in preference to that of any other Municipal body, cannot be questioned.

(*g*) See sec. 35 and notes thereto.

ated from counties for erection and maintenance of court-house.

parts of their respective Counties for judicial purposes, (*l*) bear and pay their just share or proportion of all charges and expenses from time to time as the same may be incurred of erecting, building and repairing and maintaining the Court-House and Gaol of their respective Counties, (*m*) and of the proper lighting, cleansing and heating thereof, and of providing all necessary and proper accommodation, fuel, light, and furniture for the Gaol and Courts of Justice, other than the Division Courts, and for all officers connected with such Courts; (*n*) and in case the Council of the City or Town separate as aforesaid, and the Council of the County in which such City or Town is situate for judicial purposes cannot by agreement from time to time settle and determine the amount to be so payable by such City or Town respectively, then the same shall be determined by arbitration, according to the provisions of this Act. (*o*) 39 V. c. 34, s. 1.

Reference to arbitration in case of disagreement.

Compensation by city or town for use of court-house, etc.

446. While a City or Town uses the Court-House, Gaol or House of Correction of the County, the City or Town shall pay to the County such compensation therefor, (*a*) and for the

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(*l*) Though there is a separation for municipal, there is not for judicial purposes. See note *e* to sec. 443.

(*m*) The inhabitants of Cities and Towns separated from Counties, although contributing nothing towards either the erection or maintenance of Court Houses built and maintained by the Counties in which such Cities and Towns are situate, like the inhabitants of other local Municipalities, such as Townships and Villages in a County, use the Court House and Gaol of the County in common. This being so, it is only fair that all should bear a just share or proportion of all charges and expenses from time to time incurred in and about erecting and maintaining the Court House and Gaol. The obligation is certainly a moral one, but it has been found that moral obligations are not strong enough to compel Municipal Corporations to be just to each other. See note *a* to sec. 446. The result is that the Legislature has here to some extent converted the moral into a legal obligation.

(*n*) The addition of the proper lighting, cleansing and heating, and of providing all necessary and proper accommodation, fuel, light and furniture for the Gaol and Courts of Justice (other than the Division Courts), and for all officers connected with such Courts, was first made by sec. 1 of 39 Vict. cap. 34, Ont.

(*o*) See note *c* to sec. 446.

(*a*) In consequence of the separation of the City of Toronto from the County of York for judicial purposes, a deed was executed between the respective Corporations, in which the City covenanted to pay the County a certain annual sum for the use of the Court House. The deed also contained other agreements as to the use of the Gaol. This arrangement was to continue in force until twelve months'

care and maintenance of prisoners, as may be mutually agreed upon, (*b*) or settled by arbitration under this Act. (*c*) 36 V. c. 48, s. 364.

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notice to determine it should be given. By the Law Reform Act, which came into force in February, 1869, the City was re-united to the county for judicial purposes, and on the 21st March; 1869, the city gave the county the stipulated notice as to intended discontinuance of the use of the Gaol, stating that, as to the Court House, the action of the Legislature had virtually terminated the provision respecting it, and that no further payment would therefore be made. *Held*, that the contention of the City was correct; that it had been released from its covenant to pay by the operation of the Law Reform Act; and that there was no legal liability on the part of the City even for an aliquot portion of the half-year's rent which would have become due on the 21st March following. *Toronto* v. *York*, 21 U. C. C. P. 95. And it was afterwards held, in a subsequent suit between the same parties, that in the absence of express legislation, the city was not bound to pay the county any compensation whatever for the use of the Court House. *S. C.* 22 U. C. C. P. 514. Hagarty, C. J., said, "The city makes no special use of the Court House apart from the County of York. It can hold no courts of its own. Its user is the same in a larger degree as the user by the Town of Newmarket or the Village of Yorkville. Unless there be some express provision in the statute law, I do not see how there can be any special liability created." *Ib.* 517; and again, "the city is now to all judicial intents and purposes a part of the County of York. Except as part of such County, in common with other Municipalities throughout the county, it makes no use of the Court House, and in the absence of express enactment providing therefor, I think our judgment must be for the defendants." *Ib.* 578. It is presumed that the previous section, is the legislation thus invoked.

(*b*) *Agreed upon.* It would be well that the agreement should be by deed or by a By-law under seal, but where the contract is shewn to be an executed one, proof of such an agreement or By-law is unnecessary. *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 585.

(*c*) Arbitrators were appointed by articles of agreement, dated 28th December, 1855, to settle certain differences recited as pending between the City of London and the County of Middlesex, respecting the compensation to be paid by the city to the county for the use of the County Court House and Gaol, and concerning certain financial matters then depending between the respective Municipalities. On the same day they awarded, first, that the stock held by the county in certain railways should be divided in the proportion of one-fifth to be transferred to the city, the remaining four-fifths still to belong to the county; secondly, that the city should pay the county £2,675 on account of the county roads, and should keep such roads in repair within the city limits; thirdly, that the city should pay the County £1,966 in full of its portion of the County debt; fourthly, that in future each of the Municipalities should pay the expense of all prisoners committed to the County Gaol by each of them respectively, and that the portion of such expense incurred by the City should be paid over by them in January of each year; fifthly,

When the amount of compensation may be re-considered.

447. In case after the lapse of five years from such compensation having been so agreed upon or awarded, or having been settled by statute, and whether before or after the passing of this Act, it appears reasonable to the Lieutenant-Governor in Council, upon the application of either party, that the amount of the compensation should be reconsidered, he may, by an Order in Council, direct that the then existing arrangement shall cease after a time named in the order, (*d*) and after such time the Councils shall settle anew, by agreement (*e*) or by arbitration under this Act, the amount to be paid from the time so named in the order. (*f*) 36 V. c. 48, s. 365.

Existing lock-up

448. Nothing herein contained shall affect any Lock-up

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that in future the City should pay to the County one-third of all incidental expenses connected with the Court House and Gaol, including repairs and insurance, together with one-third of all expenses connected with the administration of justice not paid by Government such payment to be made in the month of January in each year; sixthly, that the City should pay to the County the sums mentioned in the first, second, and third clauses of the award, with interest, in twelve months from the 1st of January, 1856, except that the City Council should pay its share of the railway stock at the time the County debentures given therefor should become payable; seventhly that the award should take effect on the 1st January, 1855, and remain in force till the 1st January, 1860. *Held*, that the giving to the award a retrospective effect—to the 1st January, 1855, being the time when London was declared a City—was not objectionable, but proper; that the arbitrators had authority to give time for payment, as in the sixth clause; that the limiting the continuance of the award till 1st January, 1860, was inconsistent with the 12 Vict. ch. 81, sec. 200 (so far as material the same as sec. 447 of this Act), and rendered the award bad as to the fourth and fifth clauses respecting the Court House and Gaol; that the fourth clause of the the award was also bad, because it authorized a ratable division of the expenses, instead of awarding the payment of an annual sum (*sed qu.* under this Act); that the fourth and fifth clauses might be separated from the rest, and the award be set aside as to them only. *In re Middlesex and London*, 14 U. C. Q. B. 334; *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 585.

(*d*) After the lapse of five years, the amount of compensation may, if the Lieut.-Governor in Council see fit, be reconsidered. If the Lieut.-Governor in Council so decide, then the existing arrangement is made to cease after a time named in the order in Council, in which event the Councils must settle anew, either by agreement or arbitration. The power here conferred appears to be rather a legislative than an executive power. See note *l* to sec. 9.

(*e*) See note *b* to sec. 446.

(*f*) See note *c* to sec. 446.

House (*g*) heretofore lawfully established, (*h*) but the same shall continue to be a Lock-up House as if established under this Act. 36 V. c. 48, s. 366. Houses to continue.

449. Nothing herein contained shall be taken or construed to affect or repeal section four hundred and nine of the Act passed in the session of the Parliament of the late Province of Canada, held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, chaptered fifty-one. (*i*) 36 V. c. 48, s. 367. This act not to affect 29-30 V. c. 51, s. 409.

[*Section* 409 *of* 29-30 V. c. 51, *is as follows* :—

409. Any Justice of the Peace of the County may direct by warrant in writing under his hand and seal, the confinement in a Lock-up House within his County, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, and either dismissed or fully committed for trial to the Common Gaol, and until such person can be conveyed to such Gaol; also the confinement in such Lock-up House, not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath, and generally may commit to a Lock-up House, instead of the Common Gaol or other House of Correction, any person convicted on view of the Justice, or summarily convicted before any Justice or Justices of the Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or municipal By-law. (*j*) Justice may direct imprisonment in certain cases.

450. The expense of conveying any prisoner to, and of keeping him in a Lock-up House, shall be defrayed in the same manner as the expense of conveying him to and keeping Expense of conveying and maintaining prisoners.

(*g*) See note *g* to sec. 432.

(*h*) This section preserves only Lock-up Houses *lawfully* established.

(*i*) The reason that this section, though not repealed or affected by this Act, is here set forth in words at length, will be found explained in note *v* to sec. 394.

(*j*) The following classes of offenders may be committed to Lock-up Houses :

1. Any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, &c. ;

2. Any person found in a public street or highway in a state of intoxication ;

3. Any person convicted of desecrating the Sabbath ;

4. Any person convicted on view, or summarily convicted, of any offence under any statute or Municipal By-law.

The duration of imprisonment, it will be observed, varies in regard to the description of the offender and nature of his offence.

him in the Common Gaol of the County. (*k*) 36 V. c. 48, s. 368.

This act not to affect 29-30 Vict. c. 51, ss. 414, 415, which enact that

451. Nothing herein contained shall be taken or construed to affect or repeal sections four hundred and fourteen and four hundred and fifteen of the Act passed in the Session of the Parliament of the late Province of Canada, held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, and chaptered fifty one. (*l*) 36 V. c. 48, s. 369.

[*Sections* 414 *and* 415 *of* 29–30 V. c. 51, *are as follows*:—

Justices, etc., may commit persons who are

414. Any two of Her Majesty's Justices of the Peace or of the Inspectors appointed as aforesaid may, by writing under their hands and seals, commit to the House of Industry or of Refuge, to be employed and governed according to the rules, regulations, and orders of the House—

Indigent.

(1) All poor and indigent persons who are incapable of supporting themselves; (*ll*)

Idle.

(2) All persons without the means of maintaining themselves, and able of body to work, and who refuse or neglect so to do; (*m*)

Lewd.

(3) All person leading a lewd, dissolute or vagrant life, and exercising no ordinary calling or lawful business sufficient to gain or procure an honest living; (*n*)

Frequenters of public-houses.

(4) And all such as spend their time and property in public-houses, to the neglect of any lawful calling; (*o*)

(*k*) The whole of the expenses of the administration of criminal justice in Ontario should be paid out of the Consolidated Revenue Fund of the Province. Rev. Stat. Ont. ch. 86, s. 1. All accounts of or relative to such expenses, must be audited, vouched and approved under such regulations as the Governor in Council from time to time directs and appoints. *Ib.* sec. 2. The several heads of expense mentioned in the schedule to the Act are deemed expenses of the administration of criminal justice within the meaning of the Act. *Ib.* sec. 1. See *In re Pousett and Lambton*, 21 U. C. Q. B. 472; *S. C.* 22 U. C. Q. B. 80.

(*l*) The reason that these sections, though not repealed or affected by this Act are here set forth will be found explained in note r to sec. 394.

(*ll*) That is, poor by impotency or defect, as the aged, decrepit, or deformed.

(*m*) That is, poor who, though not so by impotency or defect, yet, from laziness or some similar cause, "refuse or neglect" to work.

(*n*) That is, poor by prodigality and debauchery, sometimes called thriftless poor.

(*o*) That is, persons who, though not really poor, are persons much the same as those described in the last note—persons neglecting a lawful calling, and spending their substance in public houses.

(5) And idiots. (*p*)

Idiots.

Punishment of refactory inmates.

415. Every person committed to the House of Industry or of Refuge, if fit and and able, shall be kept diligently employed at labour during his continuance there; and in case any such person is idle and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient or disorderly, such person shall be punished according to the rules and regulations of the House of Industry or of Refuge in that behalf.]

(*p*) An idiot or natural fool is one without understanding from his nativity, and therefore presumed not likely ever to attain understanding.

These several classes of persons are commonly described as vagrants—loose, idle and disorderly persons, or pests of society. They are the subject in a more extended form of legislation under an Act of the Dominion Legislature. 32 & 33 Vict. ch. 28. It declares that the following persons shall be deemed vagrants—loose, idle or disorderly persons—and be liable to be proceeded against as such:

1. All idle persons who, not having visible means of supporting themselves, live without employment.

2. All persons who, being able to work, and thereby or by other means to maintain themselves and families, wilfully refuse or neglect to do so.

3. All persons openly exposing in any street, road, public place or highway, any indecent exhibition, or openly or indecently exposing their persons.

4. All persons who, without a certificate, signed within six months by a Priest, Clergyman or Minister of the Gospel, or two Justices of the Peace residing in the Municipality where the alms are being asked, that he or she is a deserving object of charity, wander about and beg, or who go about from door to door, or place themselves in the streets, highways, passages or public places to beg or receive alms.

5. All persons loitering in the streets or highways and obstructing passengers by standing across the footpaths, or by using insulting language, or in any other way, or tearing down or defacing signs, breaking windows, breaking doors, or door-plates, or the walls of houses, roads or gardens, destroying fences, causing a disturbance in the streets or highways by screaming, swearing or singing, or being drunk, or impeding or incommoding peaceable passengers.

6. All common prostitutes or night walkers wandering in the fields, public streets or highways, lanes, or places of public meeting or gathering of people, not giving a satisfactory account of themselves. See *The Queen* v. *Levecque*, 30 U. C. Q. B. 509

7. All keepers of bawdy-houses, or houses of ill-fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves.

8. All persons who have no peaceable profession or calling to maintain themselves by, but who do, for the most part, support themselves by gaming or crime, or by the avails of prostitution.

The principal Vagrant Act in England is 5 Geo. IV. ch. 83. The decisions under it will be found in Paley on Convictions, 685, 686,.

DIVISION X.—INVESTIGATIONS AS TO MALFEASANCE OF CORPORATE OFFICERS.

Investigation by county judge of charges of malfeasance by municipal officers.

452. In case the Council of any Municipality at any time passes a resolution requesting the Judge of the County Court of the County in which the Municipality is situate to investigate any matter to be mentioned in the resolution, (*q*) and relating to a supposed malfeasance, breach of trust or other misconduct (*r*) on the part of any member of the Council or officer

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5th ed. Its provisions have been extended by the Eng. Stat. 31 & 32 Vict. ch. 52, and enforced by the Eng. Stat. 34 & 35 Vict. ch. 112, intituled "An Act for the more effectual Prevention of Crime." Although vagrants may be proceeded against criminally under the general law, it would seem that under a power "to regulate the Police of the City," By-laws may be passed for arresting and fining vagrants, so long as the By-laws are not in conflict with the general law. See *St. Louis* v. *Bentz*, 11 Mo. 61; *State* v. *Cowan*, 29 Mo. 330; *Shafer* v. *Mumma*, 17 Md. 331; *Byers* v. *Commonwealth*, 42 Pa. St. 89. Such By-laws are looked upon as mere Police regulations rather than laws against crime. See *Adeline Nott's Case*, 11 Maine, 208; *Portland* v. *Bangor*, 42 Maine, 403. The welfare of the citizens does not depend so much on the existence of laws against vagrants as in the proper enforcement of them. These laws are as much disregarded by the Police as by the thriftless and vicious class against whom they are enacted.

(*q*) Provision is made by sec. 365 for an inquiry, under certain circumstances, into "the financial affairs of the Corporation and things connected therewith." This section contemplates a much wider range of inquiry. The matters as to which inquiry may be made under this section are—

1. Supposed malfeasance, breach of trust, or other misconduct on the part of any member of the Council or officer of the Corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer or other person to the Municipality.

2. Any matter connected with the good government of the Municipality, or the conduct of any part of the public business thereof.

The inquiry, in any case, is to be made by the County Judge, on a resolution requesting him to make the inquiry.

The subject matter of the inquiry should be mentioned in the resolution.

The duty of the County Judge to make the inquiry, on the passing of a proper resolution, is imperative. Having made the inquiry, it is also his duty, with all convenient speed, to report to the Council—

1. The result of the inquiry; and,

2. The evidence taken thereon.

Apparently no provision is made for the expenses of the inquiry, as in the case of inquiries into the finances of the Corporation. Sec. 366.

(*r*) "Or other misconduct." What is here meant, no doubt, is

of the corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer or other person, to the Municipality, or in case the Council of any Municipality sees fit to cause enquiry to be made into or concerning any matter connected with the good government of the Municipality, or the conduct of any part of the public business thereof, (*s*) and if the Council at any time passes a resolution requesting the said Judge to make the inquiry, the Judge shall inquire into the same, and shall for that purpose have all the powers which may be conferred upon Commissioners under *The Act respecting inquiries concerning Public Matters*, (*t*) and the Judge shall, with all convenient speed, report to the Council the result of the

Judge to have powers mentioned in Rev. Stat. c. 17.

misconduct in the nature of malfeasance or breach of trust of some kind, appertaining to the duties of the office. According to the general construction of Statutes, where general words follow particular words, they are to be construed *ejusdem generis* with the particular words which have preceeded them. *The King* v. *Manchester and Salford Water Works Co.* 1 B. & C. 630; *The King* v. *Mosley*, 2 B. & C. 226; *Lyndon* v. *Standbridge*, 2 H. & N. 46; *The Queen* v. *Neath*, L. R. 6 Q. B. 707; *The Queen* v. *Cleworth*, 9 L. T. N. S. 682.

(*s*) The design of this part is to embrace cases not falling within the preceding part of the section, and, as it were, to widen the field of inquiry. The phrases, "any matter connected with the good government of Municipality," and "the conduct of any part of the public business thereof," are as general as can well be made. They are taken from the statute 31 Vict. c. 6, Ont. (R. S. O. c. 17), to which reference is made in the next note.

(*t*) Commissioners so appointed have the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things as such Commissioners deem requisite to the full investigation of the matters into which they are appointed to examine. R. S. O. c. 17, s. 1; and the Commissioners have the same power to enforce the attendance of such witnesses, and to compel them to give evidence, as is vested in any court of law in civil cases. *Ib.* sec. 2. The words formerly contained in 31 Vict. c. 6, s. 2, to the effect that "any wilfully false statement made by any such witness on oath or solemn affirmation shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury," were repealed by Stat. Ont. 32 Vict. c. 27, sec. 3, as being beyond the competence of the local Legislature. See note *v* to sec. 394. But they are the same as previously used in Con. Stat. Can. c. 13, sec. 1, sub 2, which is still in force. No party, in such an inquiry, can be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution. See sec. 2 of R. S. O. ch. 17, and sec. 1, sub. 2 of Con. Stat. Can. c. 13. In this respect there is a marked difference between inquiries here authorized and

inquiry and the evidence taken thereon. (*u*) 36 V. c. 48, s. 370.

DIVISION XI.—WHEN MAYOR MAY CALL OUT *Posse Comitatus*.

Mayor may call out *posse comitatus*.

453. The Mayor of any City or Town may call out the *posse comitatus* (*v*) to enforce the law within his Municipality should exigencies require it, but only under the same circumstances in which the Sheriff of a County may now by law do so. 36 V. c. 48, s. 371.

PART VII.

POWERS OF MUNICIPAL COUNCILS.

TITLE I.—IN GENERAL.
TITLE II.—AS TO HIGHWAYS AND BRIDGES.
TITLE III.—AS TO WORKS PAID FOR BY LOCAL RATE.
TITLE IV.—AS TO RAILWAYS.

TITLE I.—POWERS IN GENERAL.

DIV. I.—OF COUNTIES, TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.
DIV. II.—OF COUNTIES, CITIES, TOWNS AND INCORPORATED VILLAGES.
DIV. III.—OF TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.
DIV. IV.—OF COUNTIES, CITIES AND SEPARATED TOWNS.
DIV. V.—OF CITIES, TOWNS AND INCORPORATED VILLAGES.
DIV. VI.—OF CITIES AND TOWNS.
DIV. VII.—OF TOWNS AND INCORPORATED VILLAGES.
DIV. VIII.—OF COUNTIES ONLY.
DIV. IX.—OF TOWNSHIPS ONLY.

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election inquiries. See sec. 211. Witnesses, it is apprehended, would not be entitled to compensation for loss of time. See note *a* to sec. 365.

(*u*) The Judge is required to report not only the *result* of the inquiry but the evidence taken thereon. This intends that the evidence at the inquiry shall be reduced to writing.

(*v*) "*Posse Comitatus*," or power of the County, includes the aid of and attendance of every person above the age of fifteen within the County. Persons able to travel are required to be assistant in this service. It is used when a riot is committed, a possession is kept on a forcible entry, or any force or rescue made, contrary to the Queen's writ or in opposition to the execution of justice. The power is

DIVISION I.—POWERS OF COUNCILS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.

Respecting the obtaining of property. *Sec.* 454 (1).
" *Appointment of certain officers.* *Sec.* 454 (2,3)
" *Aid to Agricultural, &c., Societies.* *Sec.* 454 (4).
" " *Manufacturing Establishments.* *Sec.* 454 (5).
" " *to Road Companies.* *Sec.* 454 (6).
" " *Indigent persons and charities.* *Sec.* 454 (7).
" *Census.* *Sec.* 454 (8).
" *Driving.* *Sec.* 454 (9).
" *Drainage.* *Sec.* 454 (10).
" *Mode of Egress from Buildings.* *Sec.* 454 (11)
" *Fines and Penalties.* *Sec.* 454 (12–14).
" *Purchase of Wet Lands.* *Sec.* 454 (15).
" *Ornamental Trees.* *Sec.* 454 (16).
" *Sale of Liquors.* *Sec.* 454 (17).
" *Seizure of Bread of short weight.* *Sec.* 454 (18).
Summary Remedy if By-laws not obeyed. *Sec.* 455.
Compensation for Lands taken. *Sec.* 456–459.

454. The Council of every County, Township, City, Town and incorporated Village (*w*) may pass by-laws :— Councils may make by-laws.

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nually summoned by the Sheriff. But with respect to writs that ame in the first instance to arrest in civil suits, the Sheriff is not bound to take the *posse* to assist him in the execution of them ; though he may do so if he pleases, on forcible resistance to the execution of the process. Sheriffs, &c., are to be assisting Justices of the Peace in suppressing riots, &c., and raise the *posse* by charging any number of men to attend for that purpose, who may take with them such weapons as shall be necessary, and they may justify the beating and even killing such rioters as resist or refuse to surrender ; and persons refusing to assist in the *posse* may be fined and imprisoned. It is lawful for a peace officer to assemble a competent number of people and sufficient power to suppress rebels, rioters, &c. ; but there must be great caution, lest under a pretence of keeping the peace, the peace officer cause a breach of it ; and Sheriffs, &c., are punishable for using heedless violence or alarming the country in these cases without just ground. See Watson's Office of Sheriff, 2nd ed. 2, 73, 193.

(*w*) The powers conferred by this section can only be exercised by by-law. See *Grand Junction Railway Co.* v. *County of Hastings*, 25 Grant 40.

Obtaining Property.

For obtaining property, real and personal, etc.

1. For obtaining such real and personal property as may be required for the use of the Corporation, (*a*) and for erecting, improving and maintaining a hall, and any other houses and buildings required by and being upon the land of the Corporation, (*b*) and for disposing of such

(*a*) The right of a Municipal Corporation to acquire property independently of statute is by no means free from doubt. See note *v* to sec. 222. But in order that there should be no doubt as to the right of the Corporation to acquire property for corporate purposes, express power is here conferred. It is not to be extended to the acquirement of land for speculation or profit. *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *Davison College* v. *Chambers' Executors*, 3 Jones, Eq. (N. C.) 253-253; *State Bank* v. *Brackenridge*, 7 Blackf. (Ind.) 395; *McCartee* v. *Orphan Society*, 9 Cow. (N. Y.) 437; *Chambers* v. *St. Louis*, 29 Mo. 543. But the acquirement of wet lands, with a view to their improvement and sale, is expressly authorized. Sub-sec. 15, of this section. In the event of the Corporation lending money on mortgage of realty, if default be made in the payment of the mortgage money, the Corporation is entitled to a decree of foreclosure, notwithstanding the Statutes of Mortmain, and is not restricted to a decree for sale of the land. *Oxford* v. *Bailey*, 12 Grant 276; see further *Brown* v. *McNab*, 20 Grant 179. And it would also seem that a Municipal Corporation may give time to a debtor and take a mortgage on real estate to secure its payment. See *Belleville* v. *Judd*, 16 U. C. C. P. 397; but see *Brown* v. *McNab*, 20 Grant 179. The laying out, upon a map of an intended town, of squares or other open spaces for public recreation or amusement, or for any other public purpose, renders them as sacred to such purpose as the streets themselves. *Per* Spragge, V. C., in *Guelph* v. *The Canada Company*, 4 Grant 654; see further *Wyoming* v. *Bell*, 24 Grant 564; and if an alienation to a different purpose, by a person pretending to have the right to alienate, be attempted, the Court of Chancery would interfere by injunction to restrain it. *Ib.* So, if the Municipal Corporation itself be a trustee of land for a public purpose, and without authority attempt to alienate it, in breach of the trust for which it is held, the Court of Chancery would interfere by injunction to restrain the alienation, or, if actually made, would order a reconveyance. *Attorney-General* v. *Goderich*, 5 Grant 402.

(*b*) The power to erect a hall and other buildings required by the Corporation does not, it is apprehended, include a saw-mill, erected with the avowed intention of benefiting the Municipality. See *Kinloss* v. *Stauffer*, 15 U. C. Q. B. 414. The Court of Queen's Bench refused a rule *nisi* for mandamus at the instance of the Justices of the Huron District, to compel the Municipal Council of the Huron District to build a Court House. *Justices of the Huron District* v. *Huron Council*, 5 U. C. Q. B. 574. It was decided under the 10 & 11 Vict. c. 6, that a District Council cannot be made liable in damages for negligence in repairing the steps leading to a Court-House, : and when an individual in consequence thereof fell and lost his life, an action was held not to lie against the Corporation, at the suit of the

property when no longer required; (*c*) 36 V. c. 48, s. 372 (1).

Appointing certain Officers.

2. For appointing (*d*) such—

Pound-keepers,	Road Surveyors,
Fence-viewers,	Road Commissioners,
Overseers of Highways,	Valuators,

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representatives, under Lord Campbell's Act. *Hawkeshaw* v. *Dalhousie*, 7 U. C. Q. B. 590. A By-law passed by the Municipal Council of Prescott and Russell, to tax the County of Russell alone for the erection of a registry office for the use of the United Counties, was set aside. *Smith* v. *Prescott and Russell*, 10 U. C. Q. B. 282. A By-law to raise money wherewith to build a Town Hall and Market approved by the ratepayers did not specify any site on which the buildings were to be erected. Held, that this left the Councillors unfettered in the choice of site, although at the time there was a resolution on the minutes of the Council adopting a particular one, and which had been conveyed to the Corporation for the purpose. *Little* v. *Wallaceburgh*, 23 Grant 540.

(*c*) This includes a Town Hall and the site on which it stands, when it is deemed that a new Town Hall in another situation would be more convenient for the public. *In re Hawke and Wellesley*, 13 U. C. Q. B. 636.

The Court under special circumstances refused to quash a By-law for the erection of a Town Hall, the objection being that they had already by a previous By-law acquired a different site and contracted to build on it. *Forester and The Corporation of Ross*, 24 U. C. Q. B. 388. The Court of Chancery has not the power of restraining the Councillors of an incorporated Village in the due exercise of their constitutional power from changing the site of a proposed Town Hall, and Market although the first site has been acquired for the purpose it not being shewn that any change of circumstances had been made by parties on the faith of it, or that any corrupt or improper motive actuated the members of the Council in making the change. *Little* v. *Wallaceburgh*, 23 Grant 540.

(*d*) It is not here expressed in what manner, that is, whether under corporate seal or otherwise, the officers in this section named are to be appointed. The Municipal Bill of 1858, when introduced to the House of Assembly, had the words "under the corporate seal"; but these words were, for some reason, afterwards struck out in committee. It has always been a recognized qualification of the principle which requires the use of the seal, that there are certain small matters of such frequent occurrence in the course of conducting affairs by a Corporation, that it appears to be of necessity that Corporations should be allowed to transact them without going through the formality of a sealed instrument. The hiring of servants to perform their ordinary duties has from a very early period been one of these exceptions. *Raines* v. *The Credit Harbour Co.*, 1 U. C. Q. B. 174.

May appoint certain officers.

and such other officers as are necessary in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature, (*e*) or for the removal of such officers; (*f*) but nothing in this Act shall prevent any member of a Corporation from acting as commissioner, superintendent or overseer, over any road or work undertaken and carried on, in part or in whole, at the expense of the Municipality; and it shall be lawful for said Municipality to pay any such member of the Corporation acting as such commissioner, superintendent or overseer; (*g*) 36 V. c. 48, s. 372 (2). *See Rev. Stat.* c. 188, s. 2; c. 192, s. 5.

Whether the officers named in this section come within the exception is, to say the least of it, doubtful. The old law required such appointments to be under corporate seal, 12 Vict. ch. 81, s. 31, sub. 5, and the intendment of this subsection, which must be taken in connection with the general words at the commencement of this section, appears to be that the appointment should be by By-law.

(*e*) The power is not only to appoint the officers named, but "such *other* officers as are *necessary* in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature." There are those who contend that it is incident to the powers of a Municipal Corporation to appoint all officers necessary in the affairs of the Corporation. *Vintners* v. *Passey*, 1 Burr. 235; *Hastings Case*, 1 Mod. 24; *The King* v. *Barnard*, Comb. 416: *Hoboken* v. *Harrison*, 1 Vroom. (N. J.) 73; *White* v. *Tallman*, 2 Dutch. (N. J.) 67; *People* v. *Bedell*, 2 Hill (N. Y.) 196; *Field* v. *Girard College*, 54 Pa. St. 233. But where an Act makes provision for the appointment of principal officers named, and other necessary officers, the statute must so far as possible, be followed, and no appointments be made, in contravention of it or otherwise, at directed by it. *The King* v. *Weymouth*, 7 Mod. 373; *The King* v. *Bumstead*, 2 B. & Ad. 699; *The King* v. *Spencer*, 3 Burr. 1827; *The King* v. *Chitty*, 5 A. & E. 609; *Stadler* v. *Detroit*, 13 Mich. 346; *Vason* v. *Augusta*, 38 Geo. 542.

(*f*) Words authorizing the appointment of any public functionary include the power of removing him, reappointing him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested. Rev. Stat. Ont. cap. 1 s. 8 sub. 25. But the power of removal cannot, unless expressly delegated, be exercised by a portion merely of the Corporation, but by the Corporation as a corporate body acting duly and regularly. *Lord Bruce's Case*, 2 Str. 819; *The King* v. *Lyme Regis*, (*Fane's Case*), Doug. 149; *The King* v. *Richardson*, 1 Burr. 517; *The King* v. *Doncaster*, Say. 38; *The King* v. *Taylor*, 3 Salk. 231; *The King* v. *Feversham*, 8 T. R. 356; *State* v. *Jersey City*, 1 Dutch (N. J.) 536.

(*g*) If it were not for some provision of this kind, the contract, as it were, between the Corporation and the member to act as a Commissioner, &c., would be void both at law and in in equity. See sec. 410 and notes thereto.

3. For regulating the remuneration, fees, charges and duties of such officers, (*h*) and the securities to be given for the performance of such duties (*i*); 36 V. c. 48, s. 372 (3). *See* s. 273 *ante*. May fix fees and securities.

Aiding Agricultural and other Societies.

4. For granting money or land (*k*) in aid of the Agricultural and Arts Association of Ontario, or of any duly organized Agricultural or Horticultural Society in Ontario, or of any incorporated Mechanics' Institute within the Municipality, or within any adjoining Municipality; 36 V. c. 48, s. 372 (4); 40 V. c. 17, s. 113. *See also Rev. Stat.* c. 35, s. 113. May grant aid to agricultural societies.

Aiding Manufacturing Establishments.

5. For granting aid by way of bonus for the promotion of manufactures within its limits, by granting such sum or sums of money to such person or body corporate, and in respect of such branch of industry as the said Municipality may determine upon; and to pay such sum, either in one sum or in annual or other periodical payments, with or without interest, and subject to such terms, conditions and restrictions May give aid by way of bonus to manufactures.

(*h*) It is the duty of the Council to provide for the payment of all Municipal officers, whether the remuneration is settled by statute or by By-law of the Council. See note *c* to sec. 273.

(*i*) See note *q* to sec. 246.

(*k*) Municipal Corporations have no power to grant the money of the ratepayers for purposes other than those expressly authorized, or for such purposes as are necessary to carry out powers expressly conferred upon them or existing by necessary intendment. To such an extent has this very proper limitation been carried in the United States, that the power of a Corporation to grant money for the celebration of their national birthday, 4th July, has been denied. *Hodges v. Buffalo*, 2 Denio. (N. Y.) 110; see also *Tash* v. *Adams*, 10 Cush. (Mass.) 252. The powers here conferred are to grant money or land in aid—

1. Of the Agricultural and Arts Association of Ontario;

2. Of any duly organized Agricultural or Horticultural Society in Ontario or any adjoining Municipality.

3. Of any Incorporated Mechanics' Institute within the Municipality, or any adjoining Municipality.

The land intended to be granted is land held otherwise than for corporate purposes, and so not clothed with a trust for the use of the public. See note *a* to sub-section 1 of this section.

as the said Municipality may deem expedient, and may take security therefor; (*l*)

Assent of electors necessary.

(*a*) No such by-law shall be passed until the assent of the electors has been obtained, in conformity with the provisions of this Act in respect of by-laws for creating debts. (*m*)

Security may be required.

(*b*) Any Municipality granting such aid, may take and receive of and from such person or body corporate that may receive any such aid, security for the compliance with the terms and conditions upon which such aid is given. (*n*) 36 V. c. 48, s. 372 (5). [*And see section* 349 *as to exempting manufacturing establishments from taxation.*]

Aiding Road Companies.

Aid for roads, bridges and harbours.

6. For taking stock in or lending money, or granting bonuses to any incorporated company, in respect of any road, bridge or harbour, within or near the Municipality, under and subject to the respective statutes in that behalf, or for granting aid by way of bonus to any incorporated road or bridge company; (*o*)

(*l*) In the United States it has been held that the Legislature cannot constitutionally authorize a Town to loan its credit to persons who will in consideration thereof maintain a manufacturing enterprize in the Town for their own private emolument. *Allen* v. *Jay*, 11 Am. 185.; *Brewer Brick Co.* v. *Brewer*, 16 Am. 395; see further, *Commercial National Bank* v. *City of Iola*, 2 Dillon C. C. 353. But no such question has been raised in this Province. A Municipal Council, under sec. 349 of this Act, has power to exempt any manufacturing establishment, in whole or in part, from taxation for any period not longer than ten years, and to renew the exemption for a further period of ten years. The object is to encourage manufacturing establishments within the limits of the Municipality. See note *a* to sec. 349. This subsection contemplates the granting of money by way of bonus for like purposes. Where the majority of the members of the Council granting the bonus were also stockholders in the Company proposed to be benefited the By-law was set aside. *Re Baird and Almonte*, 41 U. C. Q. B. 415.

(*m*) See sec. 333, *et seq.*

(*n*) It is optional with the Municipality to grant the money or not. Therefore the grant may be made only on particular terms and conditions. The object of this enactment is to enable the Municipality granting the aid to accept security for compliance with the terms and conditions of the grant.

(*o*) Any Municipal Council having jurisdiction within the locality through or along the boundary of which any such road passes, *may subscribe for, hold, sell, and transfer stock* in any Company formed

(*a*) No such by-law granting such aid by way of bonus shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts. (*p*) 37 V. c. 16, s. 14 ; 39 V. c. 34, s. 9.

Aiding Indigent Persons and Charities.

May aid indigent persons and charities.

7. For aiding in maintaining any indigent person belonging to or found in the Municipality at any Work-House, Hospital or institution for the insane, deaf and dumb, blind or other public institution of a like character ; or for granting aid to any charitable institution or out-of-door relief to the resident poor (*q*) ; 36 V. 48, s. 372 (7). *See post*, s. 467 (11).

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under the general Act (Rev. Stat. Ont. ch. 152), or any former Act passed for the like purpose, and may from time to time direct the Mayor, Reeve, Warden or other chief officer of the Municipality, on behalf thereof, to subscribe for such stock in the name of the Municipality, and to act for and on behalf of the Municipality in all matters relative to such stock, and the exercise of the rights of the Municipality as a shareholder ; and the Mayor, Reeve, Warden or other chief officer shall, whether otherwise qualified or not, be deemed a shareholder in the company, and may vote and act as such, subject to any rules and orders in relation to his authority made in that behalf by the By-laws of the Municipal Council or otherwise, and may vote according to his discretion in cases not provided for by the Municipality. *Ib.* sec. 67. The Municipal Council may pay all instalments upon the stock they subscribe for and acquire, out of any moneys belonging to the Municipality, and which are not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the said stock, or from the sale thereof, to any purpose to which unappropriated moneys belonging to the Municipality may lawfully be applied. *Ib.* sec. 68. So the Municipal Council of any locality through or along the boundary of which any such road passes, or within which any such work connected therewith is constructed, may out of any moneys belonging to the Municipality, and not appropriated to any other purpose, *lend money* to the company authorized to make the road, &c., upon such terms and conditions as may be agreed on between the company and the Municipality making the loan ; and the Municipality may recover the money so loaned, and appropriate the money so recovered to the purposes of the Municipality. *Ib.* sec. 70. The Municipal Council may issue debentures for the payment of any loan negotiated by them with any such company, in the same manner, and subject to the same conditions, as required by law with regard to the issuing of other debentures. *Ib.* sec. 71.

(*p*) See sec. 333 *et seq.*

(*q*) The Legislature here, in a few words, have enabled but not required Municipal Councils to pass By-laws for aiding in maintaining

Census.

Local census.

8. For taking a census of the inhabitants, or of the resident male freeholders and householders in the Municipality; (*r*) 36 V. c. 48. s. 372 (8).

Driving on Roads and Bridges.

To regulate driving on roads and bridges.

9. For regulating the driving and riding of horses and other cattle on highways and public bridges, and for preventing racing, immoderate or dangerous driving or riding thereon; (*s*) 36 V. c. 48, s. 372 (9).

Drainage.

Opening or stopping up drains and water-courses, etc.

10. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers or water-courses, within the jurisdic-

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any indigent person belonging to or to be found in the Municipality at a public institution, or for granting aid to any charitable institution or to the resident poor. Though the Legislature have given full authority to Municipal Councils of their own motion to aid the resident poor, they have left a discretion to be exercised in regard thereto. In England the 43 Eliz. ch. 2, makes it the duty of Justices to provide for the relief of the poor. The words used in the English Act are, "shall and may tax, rate and assess," and then provides for overseers of the poor, who have power to call for and administer the necessary funds. We have no such organization in Ontario. It is not therefore competent for our Courts to proceed upon the case of any individual applicant, for it does not rest with the Courts to dictate to Municipal Councils what particular cases of distress call for public relief. *Per* Robinson, C. J., *In re McDougall and Lobo*, 21 U. C. Q. B. 82; *S. C.* 7 U. C. L. J. 316.

(*r*) The B. N. A. Act provides for a decennial census (sec. 8), and the Dominion Legislature has made provision for the taking of the decennial census. 33 Vict. ch. 21; 34 Vict. ch. 18. But it may be that the Municipal Council desire to have a census more frequently, or to check the census of the particular locality made by the Dominion authorities; in either of which events, power is here conferred for taking the requisite census. The census is to be of the inhabitants or of the resident male freeholders and householders in the Municipality.

(*s*) No person is allowed to race with or drive furiously any horse or other animal upon any highway. Rev. Stat. Ont. ch. 183, sec. 5. So every person who has the superintendence and management of any bridge exceeding thirty feet in length, is allowed to put up a notice thereon forbidding persons riding or driving on or over it at a

tion of the Council, (*t*) and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in this Act contained; (*u*) 36 V. c. 48, s. 372 (10).

Egress from Buildings.

11. For regulating the size and number of doors in churches, theatres and halls, or other buildings used for places of worship, public meetings, or places of amusement, and the street gates leading thereto, and also the size and structure of stairs and stair railing in all such buildings, and the strength of beams and joists, and their supports; (*v*) 29-30 V. c. 22, s. 4. **For regulating construction of churches, etc.**

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faster rate than a walk *Ib.* sec. 8; and persons violating any of the provisions of the statute are subject to penalties which the statute imposes. *Ib.* secs. 10, 11, 12.

(*t*) It has been held under former statutes that a Municipal Council has no right to bring down water in any quantity upon the land of an individual, and leave the water to stagnate there, without showing that it could not otherwise have been got rid of, and without showing that it was not in the power of the Council to lead the water away from the plaintiff's land after the Council had conducted it there. See *Brown* v. *Sarnia*, 11 U. C. Q. B. 87; *Perdue and Chinguacousy*, 25 U. C. Q. B. 61: *Rowe* v. *Rochester*, 29 U. C. Q. B. 590. See further *Merryfield* v. *Worster*, 14 Am. 592; *Attorney-General* v. *Hackney Local Board*, L. R. 20 Eq. 626.

(*u*) By the 456th section it is provided that every Council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken or used by the Corporation in the exercise of any of its powers, or injuriously affected by the exercise of its powers, due compensation for any damages (including cost of fencing when required) necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work. It is clear, therefore, that no Municipal Corporation has a legal right to say they may trespass a little upon the property of a private person, doing no unnecessary damage, unless they show it was necessary and convenient for them for the purposes of the road, street or other work. Besides, it should be shown that there was a By-law authorizing the work. *St. George's Church* v. *County of Grey et al.*, 21 U. C. Q. B. 265. Unless a By-law were shown, the Corporation would be looked upon as trespassers; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. (*Ib.*)

(*v*) The protection and safety of life should be two great objects of Municipal Government. This enactment is made in pursuance of these objects.

Fines and Penalties.

(*See also secs.* 400-403, p. 309.)

Fines and penalties

12. For inflicting reasonables fines and penalties (*w*) not

(*w*) The corporate powers are not only limited but must be reasonably exercised and not only strictly within the limits of the charter but in perfect subordination to the constitution and general law of the land and the rights dependent thereon and that power if properly exercised may be enforced by good and competent penalties. *Per* Dickinson, J., in *Waters* v. *Leech*, 3 Ark. 115; see further note *f* to sec. 279. It was at one time supposed that, under power to a Corporation to impose a reasonable fine not exceeding a certain amount, for violation of the provisions of a By-law, the Corporation was bound to fix a certain sum in the By-law, and had no power to reserve a discretion as to the amount within the limits prescribed, and *Wood* v. *Searl*, Bridgman Rep. 139, was cited as an authority for that position. But in a subsequent case, where that case was cited to the Court Parke, B., said, "The only case we have been able to find bearing on this question is that cited in the argument for the plaintiff—*Wood* v. *Searl*, Bridgman Rep. 139—in which the penalty was such a sum as the Master, Wardens, &c., should assess, not exceeding 40*s.*; but this case is no authority either way, for the By-law was held to be bad, and it might have been so held upon other objections, or upon this. In the absence of any other authority to the contrary, we do not see any objection to this mode of fixing the penalty. It is a certain penalty of £5, with a power of mitigation not below £2, and we do not think this is unreasonable. We therefore think the second objection ought not to prevail." *Piper* v. *Chappell*, 14 M. & W. 624-648. Again, assuming the right of the Corporation to so fix a penalty, its power to delegate the discretionary power to a convicting Justice was doubted: *Peters* v. *The President and Board of Police of London*, 2 U. C. Q. B. 543; *In re Fennell and Guelph*, 24 U. C. Q. B. 238-243. But now, whether the fine be fixed in the By-law or not, it is enacted that the convicting Justice "shall award the whole or such part of the penalty or punishment imposed by the By-law, as he sees fit." Sec. 401. A By-law without fine or penalty would be in effect nugatory. *State* v. *Cleveland*, 3 Rh. Is. 117. So it has been held that Corporations have an implied power to enforce By-laws by the imposition of reasonable fines or penalties. *Fisher* v. *Harrisburg*, 2 Grant (Pa. Cas.) 291; *Barter* v. *Commonwealth*, 3 Pa. (Pen. & W.) 253; *Zylstra* v. *Charleston* 1 Bay. (S. C.) 382. The fine or penalty should be imposed on the person who violates the By-law, and not, if an unauthorized trader, on the person with whom he deals. *Cuddon* v. *Fastwick*, 1 Salk. 192; *Fezakerley* v. *Wiltshire*, 1 Str. 469; Wille. on Corp. 155 pl. 369. What is reasonable within the limits prescribed, must depend on circumstances. *Mobile* v. *Yeulle*, 3 Ala. 137. A penalty, although small, fixed on every stroke of the hammer which an unauthorized person uses in his trade of a goldsmith would be unreasonable. Willc. on Corp. 154, pl. 368; see also *New York* v. *Ordronan*, 12 Johns. (N. Y.) 122. The Corporation cannot multiply one offence into many, and punish for each. See *Crepps* v. *Durden*

exceeding fifty dollars exclusive of costs, (*x*)

(*a*) Upon any person for the non-performance of his duties who has been elected or appointed to any office in the Corporation, (*y*) and who neglects or refuses to accept such office, unless good cause is shown therefor, or to take the declaration of office, and afterwards neglects the duties thereof; (*z*) and — for neglect of duty,

(*b*) For breach of any of the by-laws of the Corporation; (*a*) 36 V. c. 48, s. 372 (11). — or breach of by-laws.

13. For collecting such penalties and costs by distress and sale of the goods and chattels of the offender; (*b*) 36 V. c. 48, s. 372 (12). — Collecting penalties and costs.

Cowp. 640; *Hart* v. *Mayor, &c.*, 9 Wend. (N. Y.) 571; *Stokes* v. *New York*, 14 Wend. (N. Y.) 87; *New York* v. *Ordronaux*, 12 Johns. (N. Y.) 122. But a By-law fixing one penalty for the first offence, and a larger one for the second, and a still larger one for every subsequent offence, does not appear to be bad. *Butchers' Co.* v. *Bullock*, 1 L. & P. 434. Where the penalty is fixed by a By-law, it cannot be changed by any authority inferior to that which fixed it. *The King* v. *Ashwell*, 12 East. 29; *Scarning* v. *Cryers*, 3 Leon. 7.

(*x*) The limitation is fifty dollars, exclusive of costs. This is the maximum. The Corporation may fix a less but cannot fix a greater fine or penalty for infraction of a By-law. It cannot do indirectly that which it is not allowed directly to do. It cannot, by multiplying into many that which is in reality only one offence, and annexing a penalty to each, evade the statute. (See preceding note.) But where such transaction is really a distinct offence, and may be so declared, and the punishment for each is within the competence of the Corporation, the fines would not be illegal though in the aggregate exceeding fifty dollars, exclusive of costs. *Heise* v. *Town Council*, 6 Rich. (S. C.) Law. 404; see also *Chicago* v. *Quimby*, 38 Ill. 274.

(*y*) Every qualified person duly elected or appointed to be a *Mayor*, *Alderman*, *Reeve* or *Deputy Reeve*, *Councillor*, *Police Trustee*, *Assessor* or *Collector*, who refuses to accept office, is subject to a penalty of not more than eighty dollars nor less than eight dollars. Sec. 272. This section must be taken to apply to officers other than those for which the Act has made express provision.

(*z*) As to what is "neglect," "refusal," or "good cause" for not accepting, see notes to sec. 272.

(*a*) See note *w* to sub. 12, of this section.

(*b*) The power to enforce the payment of fines by distress *and sale* is one that must be expressly conferred. *White* v. *Tallman*, 2 Dutch (N. J.) 67; *Bergen* v. *Clarkson*, 1 Halst. (N. J.) 352; see also *Clerk* v. *Tucket*, 3 Lev. 281; *Lee* v. *Wallis*, 1 Ken. Cas. 292; *Adley* v. *Reeves*, 2 Maule & Sel. 60.

Imprisonment when allowed, and time of.

14. For inflicting reasonable punishment, by imprisonment with or without hard labour, either in a Lock-up House in some Town or Village in the Township, or in the County Gaol or House of Correction, for any period not exceeding twenty-one days, for breach of any of the by-laws of the Council, in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied: (*c*) except for breach of any by-law or by-laws in Cities, and the suppression of houses of ill-fame, for which the imprisonment may be for any period not exceeding six months, in case of the non-payment of the costs and fines inflicted, and there being no sufficient distress as aforesaid; (*d*) 36 V. c. 48, s. 372 (13).

Purchasing Wet Lands.

Purchase of wet lands from Government.

15. For purchasing from the Government or any Corporation or person, at a price (in case of Crown Lands, to be fixed by the Lieutenant-Governor in Council, and which

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(*c*) There is no power conferred to provide in the first instance for imprisonment. The power is to impose the imprisonment in case of non-payment of the fine inflicted, and there being no distress found out of which such fine can be levied. See note *m* to sec. 402. It is not usual to provide that a Municipal Corporation shall have power to imprison in the first instance for non-payment of a fine. See *London* v. *Wood*, 12 Mod. 686; *Clark's Case*, 5 Co. 64; *Bab* v. *Clerk*, Moore, 411; *The King* v. *Merchant Taylor's Co.* 2 Lev. 200; *Chilton* v. *Railway Co.* 16 M. & W. 212; *Barter* v. *Commonwealth*, 3 Pa. (Pen. & W.) 253; *New Orleans* v. *Costello*, 14 La. An. 37; *Burlington* v. *Kellar*, 18 Iowa, 59; *Brieswick* v. *Mayor, &c. of Brunswick*, 21 Am. 240.

(*d*) The ordinary limit of imprisonment in default of payment of fine, or distress for same, is twenty-one days. *In re McLeod and Kincardine*, 38 U. C. Q. B. 617. Unless there be some misprint in this section, there are *two* exceptions:

1. Breach of *any* By-law or By-laws *in Cities*.

2. *And* the suppression of houses of ill-fame.

For such, the imprisonment may be for any period not exceeding six months in case of non-payment, &c.

It may be that the Legislature only intended *one* exception, viz., By-laws for the suppression of houses of ill-fame in Cities. But in this case the words "*and* the suppression" should be read "*for* the suppression," in which case there would be no difficulty. In all probability this is what is intended. A conviction under Con. Stat. Can. cap. 105, for keeping a house of ill-fame or being an inmate of such a house, adjudicating that the accused should pay a fine of fifty dollars forthwith and be imprisoned for three months unless the fine be sooner paid, was held to be illegal. *In re Slater and Wells*, 9 U. C.

price the Lieutenant-Governor in Council is hereby authorized to fix), all the wet lands at the disposal of the Crown or such Corporation or person in any such Township; (*e*) and such lands may be sold accordingly to the Corporation of any such Township; 36 V. c. 48, s. 372 (15).

Raising money for purchasing and draining same.

(*a*) The purchase and draining of such lands shall be one of the purposes for which any such Corporation may raise money by loan or otherwise, or for which they may apply any of its funds not otherwise appropriated. (*f*) 36 V. c. 48, s. 372 (16).

May hold or dispose of such land.

(*b*) The Corporation of any Township may possess and hold the land so purchased, and may, whenever they deem it expedient, sell or otherwise depart with or dispose of the same by public auction, in like manner as they may by law sell or dispose of other property, and upon such terms and conditions, and with such mortgages upon the land so sold, or other security for the purchase money or any portion thereof, (*g*) as they may think most advantageous. 36 V. c. 48, s. 372 (17).

Proceeds of sale.

(*c*) The proceeds of the sale of such lands shall form part

L. J. 21; *The Queen* v. *Munro*, 24 U. C. Q. B. 44; see further, *The Queen* v. *Rice*, L. R. 1 Crown Cases, 21.

(*e*) Municipal Corporations are not in general authorized to deal in lands. The Council of every County, Township, City, Town and Incorporated Village may pass By-laws for obtaining such real and personal property as may be required for the use of the Corporation. Sub. 1 of this section. The additional power is here conferred on the Councils of Townships to purchase all the wet lands at the disposal of the Crown, or any Corporation or person. It is now the well settled policy of the Provincial Legislature, that the swamps and wet lands of the Province should be drained. See R. S. O. c. 33.

(*f*) Unless power were conferred to drain the wet [illegible], the purchase of which is authorized by the preceding sub-section, the lands would be of little value to the Township Corporation. Here it is declared that the purchase *and* draining of such lands shall be one of the purposes for which any Township Corporation may raise money by loan or otherwise, or for which it may apply any of its funds not otherwise appropriated.

(*g*) The powers to purchase and drain would not be of much value without a power to sell when drained. But the sale can only be by public auction. This is intended as a provision against favouritism. As to the power to foreclose such mortgages. See *Orford* v. *Bailey*, 12 Grant 276.

of the general funds of the Municipality. (*h*) 36 V. c. 48, s. 372 (18).

Ornamental Trees.

Regulations as to trees, shrubs, etc., in public places.

16. For causing any tree, shrub or sapling, growing or planted on any public place, square, highway, street, lane, alley or other communication under its control, to be removed, if and when such removal is deemed necessary for for any purpose of public improvement; (*i*) but no such tree, shrub or sapling shall be so removed until after one month's notice thereof is given to the owner of the adjoining property, and he is recompensed for his trouble in planting and protecting the same: nor shall such owner, or any pathmaster or other public officer, or any other person, remove or cut down or injure such tree, shrub or sapling, on pretence of improving the public place, square, highway, street, road, lane, alley or other communication or otherwise, without the express permission of the Municipal Council having the control of the public place, square, highway, street, road, lane, alley or other communication; and any Council may expend money in planting and preserving shade and ornamental trees upon any public place, square, highway, street, road, lane, alley or other communication within the Municipality, and may grant sums of money to any person or association of persons to be expended for the same pur-

(*h*) As the purchase money may be taken from any funds not otherwise appropriated or raised by way of loan or otherwise, payable out of the general funds of the Municipality, it is only right that the proceeds of sale should form part of the general funds of the Municipality.

(*i*) The policy of the Municipal law is to encourage the planting and growth of trees in public highways, squares and streets, for purposes of ornament or shade. Each such tree is made the property of the adjoining proprietor. R. S. O. c. 187, s. 4 sub. 2. But no such tree is to be so planted that the same may be or become a nusisance in the highway, or obstruct the fair and reasonable use of the same. *Ib.* sec. 4 sub. 1. The removal under the section here annotated, is only to take place when necessary for any purpose of public improvement. Besides, it is not to take place until one month's notice thereof shall be given to the owner of the adjoining property, and he be recompensed for his trouble in planting and protecting the tree. It is not in the power of the owner, pathmaster, or other officer or person, to cut down a tree without the express permission of the Municipal Council having the control of the public place, &c., where the tree is standing.

poses; (*j*) 34 V. c. 31, ss. 3 & 5; 36 V. c. 48, s. 372 (19).

Temperance Laws.

17. For prohibiting the sale of intoxicating liquors and the issue of licenses therefor, (*k*) according to the provisions

Enforcing Temperance Acts.

(*j*) In 1871 the Legislature of Ontario for the first time enabled a Municipal Council to expend money in the planting and preserving of shade and ornamental trees upon the highways within the Municipality, 34 Vic. ch. 31, sec. 5, and to grant sums of money to any person, or association of persons, to be expended for such a purpose /A. The latter part of the section under consideration is a re-enactment of the last mentioned provisions. Besides Municipal Councils are empowered to allow to any person who shall plant any fruit trees or any trees, shrubs or saplings suitable for affording shade, on any highway within the Municipality, in abatement of statute labour or out of the general funds, a sum of not less than twenty-five cents for every tree so planted. Sec. 461, sub. 20. The R. S. O. c. 187, s. 5, also provides that any person who—

1. Shall tie or fasten any animal to any such tree, shrub or sapling;

2. Shall injure or destroy, or suffer or permit an animal in his charge to injure or destroy the same;

3. Shall remove any such tree, shrub or sapling;

4. Shall receive the same, knowing it to have been so removed;

shall, upon conviction before a Justice of the Peace, forfeit and pay such sum of money, not exceeding twenty-five dollars, beside costs, as the Justice may award, to be levied of his goods, and in default, imprisonment for thirty days.

(*k*) The Court of Queen's Bench in *Mottashed and Prince Edward*, 30 U. C. Q. B. 74, intimated that many, if not most of the provisions of 27 & 28 Vict. cap. 18, referring to the granting of licenses and the preventing the issuing of licenses, and for prosecuting and punishing parties for violating the laws made on those subjects, are superseded, if not repealed, by the provisions of the Statutes of Ontario, 32 Vict. cap. 32. This section, which assumes to enable Municipal Councils of Counties, Townships, Cities, Towns and Incorporated Villages to pass By-laws prohibiting the sale of intoxicating liquors, *according to the provisions and limitations contained* in that Act, may, if constitutional, be held to revive and restore the provisions of the Act, though in conflict with the subsequent statute. What the Court suggested in *In re Mottashed and Prince Edward* was, that the Legislature should repeal those sections of the Act of 1864 which are inconsistent with the Act of 1869. The Legislature, instead of repealing them, has apparently given new life to them. See *In re Lake and Prince Edward*, 26 U. C. C. P. 173. When the 27 & 28 Vict. cap. 18, was passed, there was no doubt of the power of the Legislature to pass it. It was passed before Confederation. But now that the power to pass laws for the regulation of trade and commerce is vested exclusively in the Parliament of the Dominion, there may be some doubt as to

27 & 28 V. c. 8. and limitations contained in "*The Temperance Act of* 1864,"

the constitutional power of the Local Legislature either itself to pass what is commonly called a prohibitory liquor law or to authorize Municipal bodies to do so. There is a great difference between a regulation and a prohibition. That which in the one case is lawful, *sub modo*, in the other is illegal. The question is whether a prohibitory By-law is not more than a Police regulation. "By the general Police powers of the State, persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State." *Per* Redfield, C. J., in *Thorpe* v. *Rutland and Burlington Railroad Co.*, 27 Vt. 150. It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its exercise. *Commonwealth* v. *Alger*, 7 Cush. (Mass.) 84; see also *Commonwealth* v. *Tewksbury*, 11 Metc. (Mass.) 55; *Hart* v. *Albany*, 9 Wend. (N.Y.) 571; *New Albany and Salem Railroad Co.* v. *Tilton*, 12 Ind. 3; *Indianapolis and Cincinnati Railroad Co.* v. *Kercheval*, 16 Ind. 84; *Baltimore* v. *The State*, 15 Md. 380; *People* v. *Draper*, 25 Barb. (N. Y.) 374; *Ohio & Mississippi Railroad Co.* v. *McClelland*, 25 Ill. 140. In the United States the exclusive power "to regulate commerce with foreign nations and among the several States and with the Indian tribes" is with Congress. Story on Const. s. 1056. Chief Justice Marshall, in *Dartmouth College* v. *Woodward*, 4 Wheat. (U. S.) 518, 629, said that "the framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions adapted for internal government, and that the instrument they have given us is not to be so construed." See also *Suydam* v. *Moore*, 8 Barb. (N. Y.) 358; *Waldon* v. *Renseslaer and Saratoga Railroad Co.*, *Ib.* 390; *Galena and Chicago Railroad Co.* v. *Loomis*, 13 Ill. 548; *Fitchburg Railroad Co.* v. *Grand Junction Railway Co.*, 1 Allen (Mass.) 552; *Peters* v. *Iron Morriston Railroad Co.*, 33 Mo. 107; *Grannahan* v. *Hannibal, &c., Railroad Co.*, 30 Mo. 546; *Veazie* v. *Mayo*, 45 Me. 560; *Indianapolis, &c., Railroad Co.* v. *Kercheval*, 16 Ind. 84; *Galena, &c., Railroad Co.* v. *Appleby*, 28 Ill. 233. Laws prohibiting the sale of intoxicating liquors have, in the United States, been again and again assailed as being contrary to the Constitution of the United States; but their constitutionality appears to have been affirmed by the majority of the Supreme Court of the United States, after appeal from several States, and after most able and exhaustive arguments. *Thurlow* v. *Massachusetts*, 5 How. (U. S.) 504, 574, 589, 606, 608; see also *Brown* v. *Maryland*, 12 Wheat. (U. S.) 419; *People* v. *Hawley*, 3 Mich. 330; *Reynolds* v. *Geary*, 26 Conn. 179; *Lincoln* v. *Smith*, 27 Vt. 335; *State* v. *Robinson*, 49 Me. 285; *Bradford* v. *Stevens*, 10 Gray (Mass.) 379; *Bode* v. *The State*, 7 Gill. (Md.) 326; *Jones* v. *The People*, 14 Ill. 196; *State* v. *Wheeler*, 25 Conn. 290; *Santo* v. *The State*, 2 Iown, 202; *Commonwealth* v. *Clapp*, 5 Gray (Mass.) 97. Indeed, some of the Courts have gone so far as to hold that Municipal Corporations, under a general power to prevent pauperism and crime and the abatement of nuisances, may declare that the act of selling spirituous liquors is a nuisance. *Goddard* v. *Jacksonville*, 15 Ill. 589; *Jacksonville* v. *Holland*, 19 Ill. 271; *Byers* v. *Olney*, 16 Ill. 35; *Prendergast* v. *Peru*, 20 Ill. 51; *Pekin* v. *Smelzel*, 21 Ill. 464; *Block* v. *Jacksonville*, 36 Ill.

and "*The Temperance Act of Ontario;*" 36 V. c. 48, s. 372 (14). Rev. Stat. c. 182.

301; *Strauss* v. *Pontiac*, 40 Ill. 301; *Mount Carmel* v. *Wabash*, 50 Ill. 69; see also *Commonwealth* v. *Kendall*, 12 Cush. (Mass.) 414; *Commonwealth* v. *Howe*, 13 Gray (Mass.) 26; *Reynolds* v. *Geary*, 26 Conn. 179; *Oviatt* v. *Pond*, 29 Conn. 470; *People* v. *Gallagher*. 4 Mich. 244; *State* v. *Prescott*, 27 Vt. 194; *Lincoln* v. *Smith*, *Ib.* 328. But in one case a learned Judge said, with much force, speaking of nuisances. "The mere declaration by the City Council that a certain structure was an encroachment or obstruction did not make it so, nor could such delaration make it a nuisance unless it in fact had that character. It is a doctrine not to be tolerated in this country, that a Municipal Council, without any general laws either of the City or of the State within which a given structure can be shown to be a nuisance, can, by the mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the City itself. This would place every house, every business, and all the property in the City, at the uncontrolled will of the temporary local authorities." *Per* Miller, J., *Yates* v. *Milwaukee*, 10 Wall. (U. S.) 505; see also *Underwood* v. *Green*, 42 N. Y. 140; *Crosby* v. *Warren*, 1 Rich. (S. C.) 385; *Roberts* v. *Ogle*, 30 Ill. 459; *Salem* v. *Railroad Co.*, 98 Mass. 431; *Dingley* v. *Boston*, 100 Mass. 544. These remarks may, with perfect propriety, be turned against a By-law making the sale of spirituous liquors to a man a nuisance. Whatever doubt there may be as to the constitutionality of a By-law prohibiting the sale of spirituous liquors, there appears to be none as to By-laws regulating its sale. They are looked upon as ordinary Police regulations, such as the State may make or delegate to Municipal bodies to make, in respect to all classes of trades and employments. *Bode* v. *The State*, 7 Gill. (Md.) 326; *Bancroft* v. *Dumas*, 21 Vt. 456; *The License Cases*, 5 How. (U. S.) 504; *Thomas* v. *Mount Vernon*, 9 Ohio, 290; *Clintonville* v. *Keeting*, 4 Denio. (N. Y.) 341; *City* v. *Haisembrittle* 2 McMullen (S. C.) 233; *City Council* v. *Arens*, 4 Strob. (S. C.) 241. In the last mentioned case, Evans, J., said, "I do not see how it can be supposed that the ordinance forbidding it (spirituous liquor) to be kept in certain places can be said to be an interference with the power of Congress to regulate trade. As well might it be said, that because gunpowder was imported and subject to duty, the State laws, which prohibit vendors keeping it in their stores, were in violation of the Constitution of the United States." Such a By-law must not be inconsistent with the laws of the Dominion regulating either Customs or Excise. See *Ex parte Harrington* v. *Rochester*, 10 Wend. (N. Y.) 547; *People* v. *Morris*, 13 Wend. (N. Y.) 325. The license of the Government to sell spirituous liquors is only an authority to sell according to law. *License Cases*, 5 How. (U. S.) 632; see also *Meeker* v. *Van Rensselaer*, 15 Wend. (N. Y.) 397. The power ought not to be gathered by mere inference. *Commonwealth* v. *Turner*, 1 Cush. (Mass.) 493; *Dunham* v. *Rochester*, 5 Cow. (N. Y.) 462; *Commonwealth* v. *Dow*, 10 Metc. (Mass.) 382; *Ex parte Burnett*, 30 Ala. 461; *State* v. *Clark*, 8 Fost. (N. H.) 176; *State* v. *Ferguson*, 33 N. H. 424; *Intendant* v. *Chandler*, 6 Ala. 89; *Perdue* v. *Ellis*, 18 Geo. 586; *License Cases*, 5 How. (U. S.) 632. As to the powers of Cities, Townships, Towns

Seizing Bread, etc.

Light weight and short measure.

18. For seizing and forfeiting bread or other articles when of light weight or short measurement. (*l*) 37 V. c. 16, s. 16. See *also post* 466 (10) (12).

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and villages as to tavern and shop licenses, see R. S. O. c. 181; ss. 17, 21, 24, 32.

(*l*) The assize of bread has from the earliest times been deemed necessary. See Burn's Justice, Title "Bread." The power to seize, as forfeited, bread or other property for light weight or short measurement is one that cannot be inferred from a mere power to regulate. Power "to regulate everything which relates to bakers" was held to give authority to provide for a forfeiture of bread baked contrary to the provision of a By-law. *Mobile* v. *Yuille*, 3 Ala. 137. So a By-law, providing a forfeiture for the use of the City Workhouse of bread so baked, was held legal. *Guillotte* v. *New Orleans*, 12 La. An. 432; *Page* v. *Fazakerly*, 36 Barb. (N.Y.) 392. The sale of bread is now in England regulated by 6 & 7 Will. IV. cap. 37. In it there was an exception of bread which, when the Act was passed, was known under the denomination of French or fancy bread. When this fancy bread became afterwards bread in ordinary and common use, and was so sold, it was held that the exception had ceased. *The Queen* v. *Wood*, L. R. 4 Q. B. 559. "The object of the Legislature in passing the Act was to liberate the trade from the restrictions of the Assize Act, and leave the baker at liberty to make bread of any size and shape he pleased, and to charge his own price for it; but in order to protect the customer from imposition, it required the baker to sell by weight. He is no longer at liberty to sell at so much a loaf; he must sell at so much per pound, and the customer is to be supplied with so many pounds of bread, unless he chooses to have an article of an exceptional quality—something that is not ordinary bread; and if he buy that, the baker is at liberty to sell it without reference to weight. But, unless it is of an exceptional character, if it is the common article of consumption, the baker must sell it as such. It is obvious that if what is now ordinary bread is to be treated as exceptional and an article of luxury, because it was so at the date of the Act, the enactment will become a dead letter." *Per* Lush, J., *Ib.* 562. In another case, under the same Act, Cockburn, C. J., said, "We think, when a customer asks for bread by weight, that clearly is a case in which, whether the baker chooses to give him ordinary bread or fancy bread, the baker is bound to sell by weight. We by no means say the baker was bound to weigh in the presence of the customer, but he was bound to weigh the bread at some time or other before he sold it, and to sell it by weight instead of by the denomination of household bread, fancy bread, or any other denomination." *The Queen* v. *Kennett*, L. R. 4 Q. B. 565-567; see further, *The Aerated Bread Co.* v. *Gregg*, L. R. 8 Q. B. 355.

The power to seize, forfeit and destroy the property of another is an extreme power, and only to be exercised when expressly conferred. *Donovan* v. *Vicksburg*, 29 Miss. (7 Cush.) 247; *Miles* v. *Chamberlain*,

SUMMARY REMEDY IF BY-LAWS NOT OBEYED.

Mode of compelling performance of certain matters directed to be done by council, &c.

455. Whenever any Municipal Council has any authority to direct, by by-law or otherwise, that any matter or thing should be done by any person or corporation, such Council may also, by the same or another by-law, direct that in default of its being done by the person, such matter or thing shall be done at the expense of the person in default, and may recover the expense thereof with costs by action or distress; (*m*) and, in case of non-payment thereof, the same shall be recovered in like manner as municipal taxes. (*n*) 36 V. c. 48, s. 377.

COMPENSATION FOR LANDS TAKEN.

Owners of lands taken by corporation, etc., to be compensated.

456. Every Council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken or used by the Corporation in the exercise of any of its powers, (*a*)

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17 Wis. 446; *Cincinnati* v. *Buckingham*, 10 Ohio 257; *Rosebaugh* v *Saffin*, *Ib.* 32; *Phillips* v. *Allen*, 41 Pa. St. 481; *Mobile* v. *Yuille*, 3 Ala. 137.

(*m*) The usual penalty for non-compliance with a By-law is a fine. See sec. 455, sub. 12. Power to enforce the provisions of a By-law otherwise than by fine must be expressly given. See notes to sub. 12 of sec. 454. But where the object of the By-law is really that somebody should do the thing required, power to permit the thing to be done at the expense of the party in default is a reasonable one, and is here expressly given. In the case of By-laws for the removal of snow such a power has for a long time existed. See sec. 466, sub. 41. The power is now extended to all cases wherever a Municipal Corporation has authority, by By-law *or otherwise*, to direct that "*any* matter or thing" should be done by "*any* person or Corporation." Suffering a party wall of less than the requisite thickness to remain, is not *per se* "a continuing offence." The more appropriate remedy is the removal of the structure at the expense of the owner, where the By-law permits of such a course being adopted. See *Marshall* v. *Smith*, L. R. 8 C. P. 416.

(*n*) Municipal rates may be recovered either by action or distress. But in either case there is a Roll shewing the person rated and for how much he is rated. This is, as it were, the judgment against him for the amount. No provision is here expressly made for the placing of the name of the person in default on the Roll. Whether such power is intended remains to be decided.

(*a*) An interference with the enjoyment of property belonging to another, *prima facie* gives a right of action. This being so, the right to maintain the action exists, unless shewn to have been taken away by Act of Parliament. The burden of shewing that it has been

or injuriously affected by the exercise of its powers,

taken away rests upon those who interfere with the enjoyment of the property of others. See *Clowes* v. *Staffordshire Potteries Water Works Co.*, L. R. 8 Ch. Ap. 125. But social duties and obligations are paramount to individual rights and interests. In all civilized countries there is what is called the power of eminent domain. By this is meant the right of the public to appropriate private property for public uses. See *The Divisional Counsel of the Cape Division and De Villiers*, L. R. 2 Ap. Cases 567. This right is generally subject to the limitation that private property shall not be taken for public use without due compensation. See *Wells* v. *London, Tilbury and Southend R. W. Co.*, L. R. 5 Ch. Div. 130. Such is one of the limitations in almost each State constitution in the United States. See *Southwestern R. W. Co.* v. *Southern and Atlantic Telegraph Co.*, 12 Am. 585; *Witham* v. *Osburn*, 18 Am. 287; *Osborn* v. *Hart*, 1 Am. 161; *Wild* v. *Deig*, 13 Am. 399. Such is also one of the generally understood limitations in the unwritten constitution of Great Britain. "It is said this is for the general benefit of the inhabitants, &c., and it is only opposed by a few interested individuals. The usual answer to this kind of argument is, that if it is for the general benefit of the inhabitants to take from a few interested individuals their property, let the public pay the interested individuals for that of which they deprive them," *Per* Richards, C. J., in *Burritt and Marlborough*, 29 U. C. Q. B. 119-131; see further, *In re Albany Street*, 11 Wend. (N. Y.) 148; *Embury* v. *Conner*, 3 Comst. (N. Y.) 511; *In re Webster and West Flamborough*, 35 U. C. Q. B. 590. The Legislature may, under proper restrictions, delegate this power of eminent domain for particular purposes to Municipal Corporations and other Corporations essentially public in their nature and ends. *People* v. *Smith*, 21 N. Y. 595; *Willson* v. *Blackbird Creek Marsh Co.*, 2 Pet. (U. S.) 251; *West River Bridge Co.* v. *Dix*, 6 How. (U. S.) 507; *Bloodgood* v. *Railroad Co.*, 18 Wend. (N. Y.) 9; *Mercer* v. *Railroad Co.*, 36 Pa. St. 99; *Commonwealth* v. *Charlestown*, 1 Pick. (Mass.) 180; *Scudder* v. *Trenton, &c. Falls Co.*, Saxt. (N. J.) 694; *Shaffner* v. *St. Louis*, 31 Mo. 264; *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Swan* v. *Williams*, 2 Mich. 427; *Embury* v. *Connor*, 3 Comst. (N. Y.) 511; *Alexander* v. *Baltimore*, 5 Gill. (Md.) 383; *West* v. *Blake*, 4 Blackf. (Ind.) 234. The purposes for which private property is to be appropriated should be specified in the Act delegating the power. *In re Claiborne*, 4 La. An. 7; *In re Exchange Alley*, 4 La. An. 4; *East St. Louis* v. *St. John*, 47 Ill. 463; *Kane* v. *Baltimore*, 15 Md. 240. Such an Act, as being an interference with the rights of property, must be strictly construed. *Dennis* v. *Hughes*, 8 U. C. Q. B. 444. Doubts with respect to what lands are authorized to be taken are generally given in favour of the landowner. *Webb* v. *Manchester and Leeds R. W. Co.*, 4 M. & Cr. 116; *Simpson* v. *South Staffordshire Water Works Co.*, 11 L. T. N. S. 411, 12 L. T. N. S. 360; *St. Louis* v. *St. John*, 2 Withrow 169; *S. C.* 42, Ill. 9; *Wild* v. *Deig*, 13 Am. 399. If there be no doubt as to the land authorized, &c., the conditions precedent should be strictly pursued. *Shaffner* v. *St. Louis*, 31 Mo. 264; *Mayor, &c.*, v. *Long*, *Ib.* 369; *Dyckman* v. *New York*, 1 Seld. (N. Y.) 439; *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Cincinnati* v. *Combs*, 16 Ohio 131 (1847); *Mitchell* v. *Kirkland*, 7 Conn.

due compensation for any damages (including cost of fencing when required) (*b*) necessarily resulting from the exercise of such powers, beyond any advantage which the

229; *Nichols* v. *Bridgeport*, 23 Conn. 189; *Judson* v. *Bridgeport*, 25 Conn. 426; *Van Wickle* v. *Railroad Co.*, 2 Green (N.J.) 162; *Adams* v. *Railroad Co.*, 10 N. Y. 328; *People* v. *Brighton*, 20 Mich. 57; *Kidder* v. *Peoria*, 29 Ill. 77; *Bennett* v. *Buffalo*, 17 N. Y. 383; *Hunt* v. *Utica*, 18 N. Y. 442; *Kyle* v. *Malin*, 8 Ind. 34; *Street Case*, 16 La. An. 393. Notice of some kind should be given to the party whose property is to be appropriated. *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Baltimore* v. *Bouldin*, 23 Md. 328; *McMicken* v. *Cincinnati*, 4 Ohio St. 394; *Molett* v. *Keenan*, 22 Ala. 484; *Darlington* v. *Commonwealth*, 41 Pa. St. 68; *Nichols* v. *Bridgeport*, 23 Conn. 189; *Cruger* v. *Railroad Co.*, 12 N. Y. 190; *Myrick* v. *LaCrosse*, 17 Wis. 442; *Rathbun Acker*, 18 Barb. (N. Y.) 393; *Risley* v. *St. Louis*, 34 Mo. 404; *Welker* v. *Potter*, 18 Ohio St. 85; *Sh[illegible]rt* v. *Board of Police*, 25 Miss. 479; *Palmyra* v. *Morton*, 25 Mo. [illegible]; *Swan* v. *Williams*, 2 Mich. 427. In the absence of statutory provision to the contrary, the Corporation appropriating the property must pay the compensation and expenses connected therewith. *Morris* v. *Chicago*, 11 Ill. 650; *Trustees of Illinois and Michigan Canal* v. *Chicago*, 12 Ill. 403; see also *Dennis* v. *Hughes*, 8 U. C. Q. B. 444; *Lafferty* v. *Stock*, 3 U. C. C. P. 1. But a provision directing the expenses to be paid by some persons especially interested in the proposed work, is not illegal. *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. It is now clearly established in England that an Act which authorizes the doing of works makes their execution lawful, and so takes away the right of action, which would have arisen but for such Legislation. *Governor, &c., of British Cast Plate Manufacturers* v. *Meredith*, 4 T. R. 794; *Dungey* v. *The Mayor, &c., of London*, 38 L. J. C. P. 298; *Cracknell* v. *Mayor of Thetford*, L. R. 4 C. P. 629; *Dunn* v. *Birmingham Canal Co.*, L. R. 7 Q. B. 244; *S. C.*, L. R. 8 Q. B. 42; *Geddis The Bann Reservoir Co.*, Ir. L. R. 11 C. L. 160. And it is a well understood rule in England, although the action is taken away, compensation is only recoverable when provided for by the statutes and in the manner prescribed by them *per* Montagu Smith in *Mayor of Montreal* v. *Drummond*, L. R. 1 Ap. Div. 410.

(*b*) Whether damage can be recovered under the words "injuriously affected" now depends upon whether the damage might have been the subject of an action if the works which caused it had been done without the authority of Parliament. This was the rule adopted in *Caledonia Railroad Co.* v. *Ogilvy*, 2 Mecq. Sc. Ap. Ca. 229; followed in *Re Penny*, 7 E. & B. 660, generally adhered to since notwithstanding some adverse decisions; *Beckett* v. *Midland Railway Co.*, L. R. 3 C. P. 82; *The Queen* v. *St. Luke's* L. R. 7 Q. B. 148; *Bigg* v. *London*, L. R. 15 Eq., 376; and now approved by the House of Lords. *Ricket* v. *Metropolitan Railway Co.*, L. R. 2 E. & I. Ap. 175; see further: *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 E. & I. Ap. 418; *McCarthy* v. *Metrtopolitan Board of Works*, L. R. 7 C. P. 508; *S. C.* L. R. 8 C. P. 191; *S. C.* L. R. 7 H. L. 243; *Mayor, &c., of Montreal* v. *Drummond*, L. R. 1 App. Cas. 384. Reference may also be made to *Eaton* v. *Boston, Concord & Montreal Railroad*, 12 Am. 147; *Stafford* v. *Providence*, 14 Am.

Differences to be determined by arbitration.

claimant may derive from the contemplated work; (*c*) and any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration under this Act. (*d*) 36 V. c. 48, s. 373.

710; *Drewer* v. *Western Railroad, Ib.* 726. *In re Collins and Water Commissioners, Ottawa*, 42 U. C. Q. B. 378.

(*c*) The question is, what damage will the owner sustain by reason of his property being entered upon, taken or used (according to the fact) by the Corporation? If *all* his property be taken by contemplated work, he should receive pay for the value of his land. *In re Furman Street*, 17 Wend. (N. Y.) 650; *William and Anthony Streets*, 19 Wend. (N. Y.) 678. If *part* only be taken, the question arises, how much the remaining part will be benefited by the contemplated work: and that, whatever it may be, ought to be deducted from the value of the part taken. *In re Canada Southern Railroad Co. and Nowell*, 41 U. C. Q. B. 195; *Meacham* v. *Railroad Co.*, 4 Cush. (Mass.) 291; *Dickenson* v. *Fitchburg*, 13 Gray (Mass.) 546; *Upton* v. *Railroad Co.* 8 Cush. (Mass.) 600; *Farewell* v. *Cambridge*, 11 Gray (Mass.) 413; *Robins* v. *Railroad Co.*, 6 Wis. 636; *Dwight* v. *County Commissioners of Hampden*, 11 Cush. (Mass.) 201; *Howard* v. *Providence*, 6 Rh. Is. 541. "The compensation under the statute, is for damages resulting from the taking of the land: the award, therefore, must be taken to be for so much as the property of the claimant was thereby reduced in value." *Per* Spragge, C., in *Dunlop* v. *York*, 16 Grant 216-223. This raises the question as to the title of the claimant. It is not to be assumed that the person in possession is the absolute owner of the land. He may not have any title, an imperfect title, or a title subject to encumbrances. Unless a charge of the land were made a charge upon the compensation, the security would be impaired at the expense of the chargee. The money becomes as it were impressed with the trusts to which the land was subject, and stands in its place. *Dunlop* v. *York*, 16 Grant, 216; *In re East Lincolnshire R. Act*, 1, Sim. N. S. 260; *Greaves* v. *Newfoundland Co.*, 23 L. T. 53; *In re Cuckfield Burying Board*, 19 Beav. 153; *Lippincott* v. *Smyth*, 2 L. T. N. S. 79; *Hall* v. *London, Chatham and Dover Railway Co.*, 14 L. T. N. S. 351; *Cooper* v. *Gostling*, 9 L. T. N. S. 77.

(*d*) The claim for damages in an action of trespass, assumes that the Acts in respect of which they are claimed are unlawful, while the claim for compensation supposes that the Acts are rightfully done under statutable authority; and this distinction is one of substance, for it affects not only the nature of the proceedings, but the tribunal in which recourse should be had. *Jones* v. *Stanstead, &c. R. W. Co.*, L. R. 4 P. C. 98; *Mayor, &c. of Montreal* v. *Drummond*, L. R. 1 App. Cas. 413. Where the statute gives a specific remedy to the owner, and the land be taken possession of under the provisions of the statute or with the consent of the owner, the latter is restricted to the method given by the statute for securing compensation. *Cotton* v. *Hamilton and Toronto Railway Co.*, 14 U. C. Q. B. 87; *Rankin* v. *Great Western Railway Co.*, 4 U. C. C. P. 463; *Grimshawe* v. *Grand Trunk Railway Co.*, 19 U. C. Q. B. 493; *Welland* v. *Buffalo & Lake Huron Railway Co.*, 30 U. C. Q. B. 147; *S. C.* 31 U. C. Q. B. 539; *Jones* v. *Stanstead, Shefford and Chambly Railway Co.*, L. R. 4 P. C.

How title acquired to lands when owned by corporations, tenants in tail vested in trustees etc.

457. In the case of real property which a Council has authority under this Act to enter upon, take or use, without the owner's consent, (*e*) corporations, tenants in tail or for life, guardians, committees and trustees, shall, on behalf of themselves, their successors and heirs respectively, and on behalf of those they represent, whether infants, issue unborn, lunatic, idiots, married women or others, have power to act, as well in reference to any arbitration, notice and action under this Act, as in contracting for and conveying to the Council any such real property, or in agreeing as to the amount of damages arising from the exercise by the Council of any power in respect thereof. (*f*)

98, 120; *McLean* v. *Great Western Railway Co.*, 33 U. C. Q. B. 198. If the land be taken without the consent of the owner, otherwise than according to the statute, it would seem that the owner may maintain trespass or ejectment for the assertion of his rights at common law. *Doe d. Hutchinson* v. *Manchester, Bury and Rosendale Railway Co.*, 14 M. & W. 687; *Smalley* v. *Blackburn Railway Co.*, 2 H. & N. 158; see also *Floyd* v. *Turner*, 23 Texas, 293; *Cushman* v. *Smith*, 34 Maine, 247; *Sower* v. *Philadelphia*, 35 Pa. St. 231. Where the land is taken as the statute prescribes, due compensation is to be made, and the amount, if not mutually agreed upon, is under this section to be determined by arbitration. The Court set aside an award against a Municipal Corporation as to damages in favour of a person through whose land a road had been opened, where it appeared that no notice had been given to the Municipal Corporation at the meeting of the arbitrators. *In re Johnson and Gloucester*, 12 U. C. Q. B. 135. A Municipal Council by By-law opened a road across plaintiff's property, and arbitrators were appointed, one by the Council, one by the plaintiff, and the third by the Judge of the County Court, to determine what compensation should be paid him. Afterwards a resolution was passed by the Council that the arbitrators so chosen should be instructed to take into consideration the damage to the plaintiff's crops, so that all differences might be settled and they awarded separate sums for the opening of the road and for damages. Held, in an action of debt on the award, that the Corporation could not, under the plea of no award, dispute the arbitrators' authority to award the latter sum. *Hodyson* v. *Whitby*, 17 U.C.Q.B. 230. Where in a similar action it appeared that plaintiff named one arbitrator and the Reeve another, and they being unable to agree on the third, the County Judge appointed the third, and the first and third mentioned arbitrators made an award in favour of plaintiff for £40 for compensation for land taken for a road, it was held that plaintiff was entitled to recover. *Harpel* v. *Portland*, 17 U. C. Q. B. 455. Afterwards the Council called another meeting of the arbitrators, when all three attended, and the two first mentioned arbitrators made an award giving plaintiff only £3 10*s*. It was held that the second award was invalid. *Ib.*

(*e*) See note *a* to sec. 456.

(*f*) The object of this section is to enable the Corporation to get a

If there be no party who can convey, etc.

2. In case there is no such person who can so act in respect to such real property, or in case any person interested in respect to any such real property is absent from this Province, or is unknown, or in case his residence is unknown, or he himself cannot be found, the Judge of the County Court for the County in which such property is situate may, on the application of the Council, appoint a person to act in respect to the same for all or any of the said purposes. (*g*) 36 V. c. 48, s. 374.

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good title to the land required, and to get that title if necessary from persons not having themselves the complete title. With this object it is declared that Corporations, tenants in tail or for life, guardians, committees and trustees, shall have power to act, not simply on behalf of themselves, their successors and heirs respectively, but "on behalf of those they represent, whether infants, issue unborn, lunatics, idiots, married women or others." It has been held, under a similar Act, that a tenant in tail, under an Act of Parliament, might sell and convey so as to bar his heirs in tail and the remaindermen, notwithstanding his statutory disability to bar the entail. *In re Cuckfield Burial Board*, 19 Beav. 153. So where land stood limited to one life, with remainder to a husband and wife in fee, it was held that the interest of the married woman would pass. *Cooper* v. *Gostling*, 9 L. T. N. S. 77. Where the contract was made with a person of unsound mind—not, however, found so by inquisition—the money paid was held to be paid in respect of land belonging to a person seized in fee and competent to sell. *In re East Lincolnshire Railway Co.*, 1 Sim. N. S. 260; but see *Midland Railway Co.* v. *Oswin*, 1 Col. C. C. 74; *S. C.*, 3 R. & C. C. 497. Where the land was in mortgage, and the mortgagor of unsound mind, the Court, in the absence of a committee, appointed a guardian *ad litem* to appear for the lunatic. *Greaves* v. *Great Northern Railway Co.*, 23 L. T. 53; see also *Lippincott* v. *Smyth*, 2 L. T. N. S. 79; 8 W. R. 336; *Hall* v. *London, Chatham and Dover Railway Co.*, 14 L. T. N. S. 351; *Slipper* v. *Tottenham and Hampstead J. Railway Co.*, L. R. 4 Eq. 112; *Governors of St. Thomas's Hospital* v. *Charing Cross Railway Co.*, 1 J. & H. 400; *In re Taylor*, 1 McN. & G. 210; *In re Briscoe*, 2 DeG. J. & S. 249; *In re Walker*, 7 R. & C. C. 129.

It has recently been held that a father who was a tenant for life of a settled estate could, as guardian by nature of his infant son who was entitled to the inheritance in remainder, concur on the son's behalf in a grant by himself of part of the settled estate as a site for a Church under Eng. Stat. 36 & 37 Vict. ch. 50, sec. 1. *In re Marquis of Salisbury and Ecclesiastical Commissioners*, L. R. 2 Ch. Div. 29.

(*g*) The jurisdiction of the County Judge only arises in case—

1. There is no person who can so act.

2. The person interested is absent from the Province, is unknown, or residence unknown, or he himself cannot be found.

Application, etc., of purchase money where party has not an absolute estate in the property.

458. In case any person acting as aforesaid has not the absolute estate in the property, (*h*) the Council shall pay to him the interest only at six per centum per annum on the amount to be paid in respect of such property, and shall retain the principal to be paid to the person entitled to it whenever he claims the same and executes a valid acquittance therefor, unless the Court of Chancery, or other Court having equitable jurisdiction in such cases, in the meantime directs the Council to pay the same to any person or into Court; (*i*) and the Council shall not be bound to see to the application of any interest so paid, or of any sum paid under the direction of such Court. (*j*) 36 V. c. 48, s. 375.

Purchase money subject to charges on property.

459. All sums agreed upon, or awarded in respect of such real property, shall be subject to the limitations and charges to which the property was subject. (*k*) 36 V. c. 48, s. 376.

If there be any person known who can be said, within the meaning of the first part of the section, to represent others, dealings should be had with him.

(*h*) See note *f* to sec. 457.

(*i*) A railway company agreed to pay a landowner, tenant for life, a sum of money for the benefit of him or other the owner for the time being, for indemnifying him from the expense of making a new road, &c., and as a compensation for the annoyance which he or such other owners might sustain in consequence of the construction of the railway; and the company agreed to pay a further sum as the price of the land taken. Both sums were paid into court. The application of the tenant for life for the absolute payment to him of the first sum was refused. The costs of the road, &c., were paid out of it, and the rest invested. *Re Duke of Marlborough's Estates*, 13 Jur. 738; see also *Pole* v. *Pole*, 2 Dr. & Sm. 420, and *Earl of Shrewsbury* v. *North Staffordshire Railway Co.*, L. R. 1 Eq. 593.

(*j*) It was a rule in equity that a person paying money to a trustee, &c., was bound to see to the application of the money. This has been found to work such hardship, that as between individuals it is now enacted that a person paying money upon an express or implied trust is not bound to see to the application or be answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust. Rev. Stat. Ont. cap. 99, s. 7; cap. 107, s. 7.

(*k*) In the absence of special clauses for that purpose, the effect of a provision enabling a person under disability, &c., to convey land for some authorized public purpose, is not to alter the course of devolution of property without the consent of the owner; and therefore if a Municipal Council, railway company, &c., contract with incapacitated persons for the purchase of land, the money is in equity to be considered as real and not as personal estate. *Midland Counties Railway Co.* v. *Oswin*, 8 Jur. 138. Money paid into court

DIVISION II.—POWERS OF COUNCILS OF COUNTIES, CITIES, TOWNS, AND INCORPORATED VILLAGES.

Respecting Harbours, Docks, &c. Sec. 460.

By-laws may be made for—

460. The Council of every County, City, Town and incorporated Village may pass by-laws for the following purposes :—

Harbours, Docks, &c.

The cleanliness of wharves, docks, etc.

1. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, harbour, bay, river or water. (*n*) 36 V. c. 48, s. 378 (1).

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by a railway company for land taken from a person who was in a state of mental imbecility, and who continued in that state until his death, but was not the subject of a commission of lunacy, was ordered after his death not to be reinvested in or considered as land, but to be paid to his executors. *In re East Lincolnshire Railway Act*, 1 Sim. N. S. 260. Money paid into court for land taken under the compulsory powers of the English Act 5 & 6 Will. IV. ch. 69, for a Poor Law Union, during the life of a tenant for life, who by the failure of intermediate limitations became tenant in fee simple, passed as real estate to his heir. *In re Horner's Estate*, 16 Jur. 1063. Where the purchase money of land, taken under the compulsory powers of an Act of Parliament for public purposes, is paid into court subject to be reinvested in the purchase of land, free of expense to the parties beneficially interested, on their petition, it is impressed with real uses, and is *prima facie* to be treated as real estate. *In re Stewart's Estate*, 16 Jur. 1063. If the person absolutely entitled to money for land has a right to elect to take it as personalty, a mere acquiescence in its remaining invested in consols during his life, and his will by which he bequeaths personal estate only and does not devise realty, are not such proofs of election as to prevent the funds descending on his death to his heirs. *Ib.* See further, *Dunlop* v. *York*, 16 Grant 216.

(*n*) All powers of Municipal Corporations over public wharves, docks, slips, &c., must be derived from the Legislature. *Snyder* v. *Rockport*, 6 (Ind.) Porter 237 ; *Carrollton Railroad Co.* v. *Winthrop*, 5 La. An. 36. The Legislature of Ontario has no power to make laws as to navigation and shipping. B. N. A. Act, sec. 91, sub. 10. "Mr. Crompton presses upon us that Acts relating to trade and navigation have not a legal but as it were a sort of parliamentary meaning, by which they are restricted so far as not to include the Merchant Seamen's Act, and that they form as it were a code which takes them out of the general law of the land. In some cases that may be possibly true, but we are called upon to look to the plain and ordinary meaning of this Act of Parliament," &c. *Per* Pollock, C. B., in *Seaman's Hospital* v. *Liverpool*, 4 Ex. 180-184. According to the plain and ordinary meaning of this sub-section, "the regulating or preventing

2. For directing the removal of door steps, porches, railings or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water, or the banks or shores thereof, at the expense of the proprietor or occupant of the property connected with which such projections are found; (*o*) 36 V. c. 48, s. 378 (2). The removal of doorsteps, etc., obstructing wharves, etc.

3. For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof; (*p*) 36 V. c. 48, s. 378 (3). The making, etc., of wharves, docks, etc.

4. For regulating harbours; for preventing the filling up or encumbering thereof; for erecting and maintaining the beacons, Regulating harbours,

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encumbering, injuring or fouling by animals, vehicles, vessels or other means, of any public wharf," &c., cannot be held otherwise than matter of Municipal concern. The welfare and good government of a Municipality demands that things likely to be injurious to health and, as it were, nuisances, should, under certain restrictions, be prevented, and, if they cannot be prevented, that they should be so regulated as to be as little hurtful to the public as consistent with their existence. A By-law that any person encumbering, injuring or fouling any public wharf should be liable to a penalty named, and in default of payment or sufficient distress to imprisonment "for not less than ten nor more than thirty days" was held to be void. *In re McLeod and Kincardine*, 38 U. C. Q. B. 617. The power is restricted to public wharves, &c. Whether a wharf can be said to be public or private depends upon circumstances; such as the purposes for which it was built, the uses to which applied, the place located, and the character of the structure, &c. *Dutton* v. *Strong*, 1 Black. (U. S.) 23.

(*o*) See note *m* to s. 455.

(*p*) The preceding sections relate to the regulation, for the good of the public, of public wharves, docks, slips, &c., but this does more; it enables the Municipal Corporation to make, open, preserve, alter, improve, and maintain public wharves, &c. The charter of a city authorized it to establish wharves and public landings, to fix the rate of wharfage, and to regulate the anchorage and mooring of all boats within the city. Held, that the city had the power to forbid any person owning a lot abutting on the river, and on which no wharf or public landing had been established, to use such lot as a wharf or landing without the permission of the city and the payment of wharfage. *Dubuque* v. *Stout*, 32 Iowa, 80; *S. C.* 7 Am. Rep. 171. When a Municipal Corporation are riparian owners they have, it is held, an implied authority to erect wharves, &c. See *Murphy* v. *City Council*, 11 Ala. 586; *Boston* v. *Lecraw*, 17 How. (U. S.) 426; *Commonwealth* v. *Roxbury*, 9 Gray, (Mass.) 514-519; *Baltimore* v. *White*, 2 Gill. (Md.) 444. A Municipality which charges and receives wharfage assumes the obligation to provide safe wharves

wharves, elevators, etc.

necessary beacons, and for erecting and renting wharves, piers and docks therein, and also floating elevators, derricks, cranes and other machinery suitable for loading, discharging or repairing vessels; for regulating the vessels, crafts and rafts arriving in any harbour; (*q*) and for imposing and collecting such reasonable harbour dues thereon as may serve to keep the harbour in good order, and to pay a harbour master. (*r*) 36 V. c. 48, s. 378 (4).

Vessels, etc.

Harbour dues.

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and to keep the wharf in repair. *Fennesmore* v. *New Orleans*, 2 Withrow. 371.

(*q*) The duty of those having control of a harbour is, so long as it is open to the public, to have it reasonably safe for the public use, and this whether tolls are collected or not for the use of it. *Parnaby* v. *Lancashire Canal Co.*, 11 A. & E. 223; *Metcalfe* v. *Hetherington*, 11 Ex. 257; *S. C.*, 5 H. & N. 719; *Gibbs* v. *Liverpool Docks*, 3 H. & N. 164; *S. C.*, L. R. 1 H. L. C. 93, 104, 122; *Longmore* v. *Great Western Railway Co.*, 35 L. J. C. P. 135; *Francis* v. *Cockrell*, L. R. 5 Q. B. 184; *Webb* v. *Port Bruce Harbour Co.*, 19 U. C. Q. B. 626; *Coe* v. *Wise*, L. R. 1 Q. B. 711; *Winch* v. *Conservators of the Thames*, L. R. 7 C. P. 471; see also *Pittsburg* v. *Grier*, 22 Pa. St. 54; *Eastman* v. *Meredith*, 36 N. H. 284-295; *People* v. *Albany*, 11 Wend. (N. Y.) 539; *Buckbee* v. *Brown*, 21 Wend. (N Y.) 110; see further, *Sweeney* v. *Port Burwell Harbour Co.*, 17 U. C. C P. 574; reversed, 19 U. C. C. P. 376; *Berryman* v. *Port Burwell Harbour Co.*, 24 U. C. Q. B. 34.

(*r*) It is not clear that the Local Legislature can enable a Municipal Corporation to impose harbour dues, for such is certainly an interference with shipping. See B. N. A. Act. s. 91, sub. 10. But assuming the power to exist, it cannot be exercised for purposes of revenue. See *In re Hagaman and Owen Sound*, 20 U. C. Q. B. 583. The power is here conferred in its lowest form, viz., to impose and collect such *reasonable* harbour dues *as may serve to keep the harbour in good order, and to pay the harbour master.* See *In re Campbell and Kingston*, 14 U. C. C. P. 285. If the wharf, &c., be the property of the city, it may be that the right to impose and collect tolls would be held to be a mere incident of the ownership of property. See note *p.* to subs. 3 of this section. But the right to e..t *public* wharves and to demand tolls for their use would appear to be a franchise requiring competent legislative authority. *People* v. *Broadway Wharf Co.*, 31 Cal. 33; *Wharf Case*, 3 Bland. Ch. (Md.) 383; *Wiswall* v. *Hall*, 3 Paige Ch. (N.Y.) 313; *Thompson* v. *New York*, 11 N. Y. 115. The power conferred is to pass By-laws for regulating the vessels, crafts and rafts arriving in any harbour, and for imposing and collecting such reasonable harbour dues thereon, &c. It is to impose the duty on the vessels, craft, rafts, &c. See *In re Bogart* v. *Belleville*, 6 U. C. C. P. 425, and not on the shippers, consignees, &c. *Re McLeod et al. and Kincardine*, 38 U. C. Q. B. 617. But see *The President, &c., of the Bronte Harbour* v. *Co.* v. *White*, 23 U. C. C. P. 164.

DIVISION III.—POWERS OF COUNCILS OF TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.

Respecting Polling Subdivisions. Sec. 461 (1.)
" *Disqualification of Electors.* Sec. 461 (2.)
" *Billiard or Bagatelle Tables.* Sec. 461 (3.)
" *Victualling Houses.* Sec. 461 (4, 5.)
" *Schools.* Sec. 461 (6)
" *Cemeteries* Sec. 461 (7, 8.)
" *Cruelty to Animals.* Sec. 461 (9.)
" *Dogs.* Sec. 461 (10, 11.)
" *Fences.* Sec. 461 (12.)
" *Division Fences.* Sec. 461 (13.)
" *Watercourses.* Sec. 461 (14.)
" *Weeds.* Sec. 461 (15.)
" *Filth in Streets.* Sec. 461 (16)
" *Burning Stumps, Brush, &c.* Sec. 461 (17.)
" *Exhibitions, Shows, &c.* Sec. 461 (18.)
" *Graves.* Sec. 461 (19.)
" *Shade Trees.* Sec. 461 (20.)
" *Injury to property and notices.* Sec. 461 (21, 22.)
" *Gas and Water Companies.* Sec. 461 (23,24.)
" *Public Morals.* Sec. 461 (25-34.)
" *the Establishment of Boundaries.* Sec. 461, (35.) 462.
" *Pounds.* Sec. 463.
" *Public Health.* Sec. 464.
" *Lock-up Houses.* Sec. 434.
" *Tavern and Shop Licenses. Rev. Stat.* c. 181.

461. The Council of every Township, City, Town or incorporated Village (*a*) may pass by-laws :— By-laws may be made for—

Polling Subdivisions.

1. For dividing the Wards of such City or Town, or for dividing such Township or Village into two or more convenient polling subdivisions, and for establishing polling places therein, and for repealing or varying the same from time to time; and such polling subdivisions shall be made or varied whenever the electors in any Ward, Township, Village or polling subdivision exceed two hundred, and shall be made and varied in such a manner that the number of electors in Dividing city or town into wards, etc. And townships and villages into polling subdivisions, etc.

(*a*) Counties not embraced within this section.

any polling subdivisions shall not exceed at any time two hundred ; (*b*) 36 V. c. 48, s. 379 (1).

Polling sub divisions to be the same for elections to Legislative Assembly and municipal elections.

(*a*) Where a Municipality is divided into polling sub-divisions, (*bb*) the same polling sub-divisions shall be used both for the election of members of the Legislative Assembly and for municipal elections ; and the polling sub-divisions for elections to the Legislative Assembly and municipal elections shall hereafter be made the same in all cases, except that the Municipal Council of every City, Town or incorporated Village, may by by-law unite, for the purposes of municipal elections, any two adjoining polling sub-divisions. 40 V. c. 12, ss. 2 & 3.

Council of city, town or incorporated village may unite adjoining sub-divisions.

Disqualification of Electors not paying Taxes.

Disqualifying electors in arrear for taxes.

2. For disqualifiying any elector from voting at municipal elections who has not paid all municipal taxes due by him on or before the fourteenth day of December next preceding the election ; (*c*) 36 V. c. 48, s. 379 (2). *See also sec.* 248.

Billiard or Bagatelle Tables.

Licensing and regulating the use of billiard and bagatelle tables.

3. For licensing, regulating and governing all persons who, for hire or gain, directly or indirectly keep, or have in their possession, or on their premises, any billiard or bagatelle table or who keep or have a billard or bagatelle table in a house or place of public entertainment or resort, whether such billiard or bagatelle table is used or not, and for fixing the sum to be paid for a license so to have or keep such billiard or bagatelle table, and the time such license shall be in force. (*d*) 36 V. c. 48, s. 379 (3).

(*b*) The powers here conferred are for—

1. Dividing the Municipality into two or more polling subdivisions
2. Establishing Polling Places therein ;
3. And may from time to time repeal or vary the same.

Under circumstances stated it is made obligatory to create polling subdivisions. The circumstances are, whenever the electors in any Ward, Township, Village or polling subdivision exceed two hundred. In such a case it is made the duty of the Council so to vary the polling subdivisions as not to exceed two hundred electors in each polling subdivision.

(*bb*) As to appointment of Deputy Returning Officers for polling subdivisions, see sec. 94 *d*.

(*c*) See note *r* to sec. 78.

(*d*) From a very early period in the history of this Province, persons

Victualling Houses, &c.,

4. For limiting the number of and regulating victualling houses, ordanaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and all other places for reception, refreshment or entertainment of the public; (*e*) 36 V. c. 48, s. 379 (4). Victualling houses, etc., number and regulation of.

5. For licensing the same when no other provision exists therefor, and for fixing the rates of such licenses not exceeding twenty dollars; (*f*) 36 V. c. 48, s. 379 (5). License and fee for same.

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keeping billiard tables for hire have been subject to Legislative control. Stat. 50 Geo. III. ch. 6; see also *Church q. t.* v. *Richards*, 3 U. C. Q. B. 562. In some instances power was given to *suppress* such a use of billiard tables. See *The King* v. *Home District*, 4 U. C. Q. B. O. S. 9; see further *People* v. *Sergeant*, 8 Cow. (N. Y.) 139. The power here conferred is only to *license*, *regulate* and *govern*. Power to license or regulate does not confer power to suppress. See *Yates* v. *Milwaukee*, 10 Wall. (U. S.) 497. A By-law requiring payment of $300 for a licence is not a prohibitory By-law. *In re Neilly and Owen Sound*, 37 U. C. Q. B. 289. It is in the power of a Municipal Council to insist that there shall be no internal communication of the room in which the billiard table is placed with any room or place in which spirituous liquors are sold. *Ib.* A By-law that no billiard table shall be kept in a tavern or inn is good. *In re Arkell and St. Thomas* 38 U. C. Q. B. 594. On the trial of a billiard-table keeper charged with allowing a minor to play at billiards without the consent of parent or guardian, the burden of proving that the parent or guardian did not consent is on the prosecution. *Conyers* v. *The State*, 15 Am. 686.

(*e*) It was held that under a general power to pass By-laws "for the *well-being* of the City," there was power to regulate restaurants and other places of public resort. *State* v. *Freeman*, 38 N. H. 426; see also *State* v. *Clark*, 8 Fost. (N. H.) 176; *Morris* v. *Rome*, 10 Geo. 332; *Hudson* v. *Geary*, 4 Rh. Is. 485. A room for the sale of lemonade and ginger beer is a place for the entertainment of the public. *Howes* v. *The Board of Inland Revenue*, L. R. 1 Ex. Div. 385.

(*f*) Exacting payment of a fee for a license to be allowed to follow a particular vocation within a Municipality is not the imposition of a tax. *City* v. *Clutch*, 6 Iowa 546: *Mobile* v. *Yuille*, 3 Ala. 137; *Boston* v. *Schaffer*, 9 Pick. (Mass.) 415; see also *Cincinnati* v. *Bryson*, 15 Ohio 625; *New Orleans* v. *Turpin*, 13 La. An. 56; *Municipality* v. *Dubois*, 10 La. An. 56; *Charity Hospital* v. *Stickney*, 2 La. An. 550; *Carrol* v. *Mayor, &c.*, 12 Ala. 173; *Mayor, &c.* v. *Hartridge*, 8 Geo. 23. Under a power "to license, regulate and restrain amusements," it was considered there was power to exact payment of a specific sum for the privilege, this being considered as a means necessary to the regulation of them. *Hodges* v. *Mayor*, 2 Hump. (Ten.) 61; see also *Carter* v. *Dow*, 16 Wis. 298; *Tenny* v. *Lenz*, *Ib.* 566; *Dunham* v. *Rochester*, 5 Cow. (N. Y.) 462. So under a power to

Schools.

Acquiring land for public schools, etc.

6. For obtaining such real property as may be required for the erection of Public School-Houses thereon, and for other public school purposes, (*g*) and for the disposal thereof when no longer required; (*h*) and for providing for the establishment and support of Public Schools according to law; (*i*) 36 V. c. 48, s. 379 (6).

Cemeteries.

Acquiring land for cemeteries, etc.

7. For accepting or purchasing land for public cemeteries, as well within as without the Municipality, (*j*) but not within any City, Town or incorporated Village, and for laying out,

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license "on such terms and conditions as may be just and reasonable." *Boston* v. *Schaffer*, 9 Pick. (Mass.) 419; but see *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562, 527. But power merely "to make By-laws *relative* to hucksters, grocers, and victualling shops" is not sufficient to enable the Municipality to exact money for a license. See *Dunham* v. *Rochester*, 5 Cow. (N. Y.) 462; *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562; *Mays* v. *Cincinnati*, 1 Ohio St. 268.

(*g*) See notes *a* and *b* to sub. 1 of s. 454.

(*h*) See note *c* to same.

(*i*) Township Councils may grant to School Trustees authority to borrow money. *In re School Trustees and Sandwich*, 23 U. C. Q. B. 639; *In re Doherty* v. *Toronto*, 25 U. C. Q. B. 409. It is made the duty of Cities, Towns and Villages to provide such money as may be required by School Trustees. *In re School Trustees* v. *Port Hope*, 4 U. C. C. P. 418; *In re Dunlop and Douro*, 18 U. C. Q. B. 227; *In re School Trustees and Toronto*, 20 U. C. Q. B. 302; *In re School Trustees and Toronto*, 23 U. C. Q. B. 203; *In re Coleman and Kerr*, 27 U. C. Q. B. 5. A County Council may, under some circumstances, own land held for school purposes, although situate within the limits of a City. *County of Carleton* v. *Public School Board of Ottawa*, 25 U. C. C. P. 137.

(*j*) As a rule, the jurisdiction of every Council is confined to the Municipality the Council represents. See note *u* to sec. 18. Here an authority beyond the limits of the Municipality is given. That authority is to accept or purchase land for public cemeteries, as well within as *without* the Municipality. The acceptance or purchase is to be by By-law, declaring in express terms that the land is appropriated for a public cemetery, and *for no other purpose*. When this is done, the land, although without the Municipality, becomes part thereof for purposes of local government. This provision differs in this respect from that in sec. 556, which provides that the Council of any City Town or Incorporated Village (Townships are not included) may, from time to time as occasion may require, acquire and hold by purchase or otherwise, for the public use of the Municipality, lands situate outside the limits of such City, Town or Incor-

improving and managing the same; (*k*) but no land shall be accepted or purchased for such purpose except by a by-law declaring in express terms that the land is appropriated for a public cemetery, and for no other purpose; and thereupon such land, although without the Municipality, shall become part thereof, and shall cease to be a part of the Municipality to which it formerly belonged; and such by-law shall not be repealed; and the trustees of any burial ground may agree for the sale or transfer thereof to the Municipality which desires to acquire the same; and in cases where such grounds have not been used for burials, the municipality may dispose thereof, and acquire other ground instead thereof; 36 V. c. 48, s. 379 (7). *See also Rev. Stat.* c. 170. **Proviso.**

8. For selling or leasing portions of such land for the purpose of interment, in family vaults or otherwise, and for declaring in the conveyance the terms on which such portion shall be held; 36 V. c. 48, s. 379 (8). (*l*) **Selling portion of such land for certain purposes.**

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porated Village, but the lands so acquired shall not form part of the Municipality of such City, Town or Incorporated Village, but shall continue and remain as of the Municipality where situate.

(*k*) Under a power to a City Corporation "to establish cemeteries or burial places within or without the City," it was held that the City was authorize to establish cemeteries of its own and to regulate them, but that it did not empower the Council to subject to the control of the City Sexton cemeteries, other than those belonging to the City, nor to pass a By-law for prohibiting lot owners in private cemeteries, though within the City limits, from entering to bury their dead without permission of the City Sexton and the payment of a fee to him. *Bogert* v. *Indianapolis*, 13 Ind. 134. If the burden to support a cemetery be cast on all the citizens, a By-law imposing the burden on a particular class would be bad. *Beuroljohn* v. *Mayor, &c.*, 27 Ala. 58. Cemeteries are not *per se* nuisances. It is not enough to compel their removal to shew that they affect the value of property in the neighbourhood. *New Orleans* v. *St. Louis*, 11 La. An. 244; *Musgrove* v. *The Catholic Church of St. Louis*, 10 La. An. 431; *Lake View* v. *Letz*, 44 Ill. 81; see further note z to sub. 19 of sec. 461. Cemeteries are not to be subjected to sale to satisfy liens on them for the improvement of adjoining streets, especially where the disturbance of cemeteries is a criminal offence. *Louisville* v. *Nevin*, 19 Am. 78. So, a Municipal Corporation cannot, without special authority given by Statute, take for a highway the lands of a cemetery. *Trustees of First Evangelical Church* v. *Walsh*, 11 Am. 21; *Evergreen Cemetery Association* v. *City of New Haven*, 21 Am. 643.

(*l*) There is no limitation as to the interest to be conveyed. When a Municipality is seized in fee simple, the conveyance may be made either for ever or for years. The power is to "sell" or "lease."

Cruelty to Animals.

Preventing cruelty to animals and destruction of birds.

9. For preventing cruelty to animals; (*m*) and for preventing the destruction of birds; the by-laws for these purposes not being inconsistent with any statute in that behalf; 36 V. c. 48, s. 379 (9).

Dogs.

Regulations as to dogs.

10. For restraining and regulating (*n*) the running at large

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(*m*) A cock has been held to be a domestic animal within the meaning of the English statutes for the prevention of cruelty to animals. *Budge* v. *Parsons*, 3 B. & S. 382; see further *Morley* v. *Greenhalgh*, *Ib.* 374; *Clark* v. *Hague*, 2 E. & E. 281; *Coyne* v. *Brady*, 12 Ir. C. L. R. 577; see also *Murphy* v. *Manning*, L. R. 2 Ex. Div. 307. The words of our acts respecting cruelty to animals are: "Any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, pig, or other cattle, or any poultry, or any dog or domestic animal, or bird." Con. Stat, Can. cap. 96, sec. 1; Dom. Act 32 & 33 Vict. cap. 27, sec. 1. The word "cattle" used in the recent English statute, 28 & 29 Vict. c. 60, s. 1, has been held to include horses and mares. *Wright* v. *Pearson*, L. R. 4 Q. B. 582. A bequest for founding and upholding an institution for studying and curing maladies of quadrupeds or birds useful to man is a good charitable legacy. *University of London* v. *Yarrow*, 23 Beav. 159; 2 Jur. N. S. 1125; affirmed on appeal; 1 De G. & J. 72; 3 Jur. N. S. 421.

(*n*) The power is not merely to "regulate," but to "restrain" the running at large of dogs. This may be read in connection with the next sub-section, which provides "for killing dogs" running at large contrary to the By-laws. It will be observed that this subsection immediately follows one which enables Corporations to pass By-laws for preventing cruelty to animals. The killing of dogs, under certain circumstances, though certainly cruelty to the dogs, is authorized and justified on the ground that public safety demands it. The validity of laws providing for the forfeiture or destruction of property without compensation to the owners, has more than once been doubted. See note *a* to sec. 456. But it is now settled that all rights of property are held subject to such reasonable control and regulation of the mode of keeping and use, as the Legislature may think necessary for the preventing of injuries to the rights of others, and the security of the public health and welfare. In the exercise of this power, the Legislature may not only provide that certain kinds of property, either absolutely or when held in such a manner or under such circumstances as to be injurious, dangerous or noxious, may be seized and confiscated upon legal process, after notice and hearing, but may also, when necessary to insure the public safety, authorize such property to be summarily destroyed by the Municipal authorities, without previous notice to the owner. *Per* Gray, J., in *Blair* v. *Forehand*, 100 Mass. 136; *S. C.* 1 Am. R. 94; and *per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 241-243. A familiar example given in each of the cases is that of pulling down buildings

of dogs, and for imposing a tax on the owners, possessors

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to prevent the spreading of conflagration, or the impending fall of the buildings themselves. *Mouse's Case*, 12 Co. 63, *Ib.* 13; *Maleverer* v. *Spink*, 1 Dyer, 36 b; *Governor* v. *Meredith*, 4 T. R. 794; 15 Vin. Abr. Title "Necessity," pl. 8; *Respublica* v. *Sparhawk*, 1 Dallas (Pa.) 357; *Taylor* v. *Plymouth*, 8 Met. (Mass.) 462, 465; *New York* v. *Lord*, 18 Wend. (N. Y.) 126; *Conwell* v. *Emrie*, 2 Ind. (Cart.) 35: see also *American Print Works* v. *Lawrence*, 3 Zabr. (N. J.) 590; *Commonwealth* v. *Alger*, 7 Cush. (Mass.) 85; *Salem* v. *Fisher* v. *McGirr*, 1 Gray (Mass.) 27; *Parsons* v. *Pentingell*, 11 Allen (Mass.) 512; *Eastern Railroad Co.*, 98 Mass. 443; *License Cases*, 5 How. (U.S.) 581, 589, 632. There is no kind of property over which the exercise of this power is more frequent or supposed to be more necessary than dogs. In the view of the common law, dogs of all sorts had no intrinsic value, and the owner was held to have so little property in them that the stealing of them was not larceny. *The Queen* v. *Robinson*, 8 Cox, C. C. 115; *Mitten* v. *Faudyre*, Pop. 161; *Millen* v. *Fawen*, Bendl. 171; *Mason* v. *Keeling*, 1 Ld. Rayd. 608; *Read* v. *Edwards*, 17 C. B. N. S. 245. But see *Harrington* v. *Milles*, 15 Am. 355, and notes. But the principal object of restricting dogs running at large is the consideration of the very imminent danger to the community of the horrible affliction of hydrophobia spreading to a great extent and with great rapidity, unless instant measures be taken to prevent it. *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 244. The law has long made a distinction between dogs, cats, and other domestic quadrupeds, growing out of the nature of the creatures and the purposes for which they are kept. Beasts which have been thoroughly tamed, and are used for burden or husbandry, or for food, such as horses, cattle and sheep, are as truly property of intrinsic value, and entitled to the same protection as any kind of goods. But dogs and cats, even in a state of domestication, never wholly lose their wild nature and destructive instincts, and are kept either for uses which depend on retaining and calling into action those very natures and instincts, or else for the mere whim and pleasure of the owner. *Per* Gray, J., in *Blair* v. *Forehand*, 1 Am. R. 96. Dogs have always been entitled to less regard and protection than more harmless and useful domestic animals. *The Queen* v. *Rymer*, L. R. 2 Q. B. Div. 136; *Laverone* v. *Mangianti*, 10 Am. 269; *Meibus* v. *Dodge*, 20 Am. 6; *Putnam* v. *Payne*, 13 Johns. (N.Y.) 312; *Brown* v. *Carpenter*, 26 Vt. 638; *Woolf* v. *Chalker*, 31 Conn. 121. In the case of a By-law against the running at large of dogs, the object of the By-law is not to prevent or punish trespasses upon property, but to protect the people of a city or town against danger to their lives—against threatened death in perhaps its most distressing form. *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 250, 251. The most effective mode for protecting people from such a danger is the annihilation of the cause of danger; and so, under a statute which merely authorized the Corporation to pass By-laws for "preventing and regulating" dogs running at large, it was held that the Corporation had power to pass a By-law for the killing of dogs running at large in violation of the provisions of the By-law. *Ib.* 241. By the statute under consideration, the Legislature have not left the power to inference, but conferred it in express language, "for killing

or harbourers of dogs; (*o*) 36 V. c. 48, s. 379 (10).

Killing dogs.

11. For killing dogs running at large contrary to the by-laws; (*p*) 36 V. c. 48, s. 379 (11).

Fences.

Fences.

12. For settling the height and description of lawful fences; and for regulating and settling the height, description and manner of maintaining, keeping up and laying down fences along highways or any part or parts thereof, and for making compensation for the increased expenses, if any, to persons required so to maintain, keep up or lay down such last mentioned fences or any part thereof; (*q*) 36 V. c. 48, s. 379 (12); 39 V. c. 34, s. 2.

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dogs, running at large, &c." Let it be observed that the power either to restrain, regulate or kill is only to be exercised as to "dogs running at large." Therefore, where an officer, under such a By-law, entered a dwelling house, took the dog from the dwelling house, and afterwards killed it, he was held liable to the owner. *Bishop* v. *Fahay*, 15 Gray (Mass.) 61; *Kerr* v. *Seaver*, 11 Allen (Mass.) 151. If the power were to kill "whenever and wherever found," the officer would have a right peaceably to enter for that purpose, without permission, upon the close of the owner or keeper of the dog, and there kill it. *Blair* v. *Forehand*, 1 Am. R. 94. As to when dogs can be said to be "running at large," see *Commonwealth* v. *Dow*, 10 Metc. (Mass.) 382. The Council of a Township has no power to appropriate the revenue arising from a tax imposed on the owners of dogs in one part of the Township to the improvements of public streets and to other purposes within the limits of such part. *In re Richmond* v. *Front of Leeds and Landsdown*, 8 U. C. Q. B. 567.

(*o*) Besides the power to restrain, regulate and, if necessary, kill dogs under the operation of By-laws, the additional power here conferred is to provide by By-law for imposing a tax on the owners, possessors or harbourers of dogs. It is generally observed that when Assessors pay visits in the discharge of their duties there are many dogs without owners. But in order that some person may be taxed for the possession of such questionable property, provision is made for the taxation of the possessors or harbourers thereof. "The imposing a tax is to be looked upon rather as a measure of revenue than as a mode intended to be pointed out fo indirectly restraining or prohibiting the keeping of dogs by imposing a tax on them." *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 246. See further Rev. Stat. Ont. c. 194, and *Williams* v. *Port Hope*, 27 U. C. C. P. 548.

(*p*) See note *n* to sub. 10 of this section.

(*q*) An owner or occupier of lands, though bound to take care that his cattle do not wander from his own land and stray upon the lands of another, is not by the common law under any obligation to put up

Division Fences.

13. For regulating the height, extent and description of lawful division fences; and for determining how the cost thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act; (*r*) but until such by-laws are made, the Acts

Division fences, and cost thereof.

Provision until by-laws made.

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or maintain a fence. *Hilton* v. *Anksson*, 27 L. T. N. S. 519 Ex.; see also *Wells* v. *Howell*, 19 Johns. (N. Y.) 385; *Stafford* v. *Ingersol*, 3 Hill (N.Y.) 38; *Laurence* v. *Jenkins*, L. R. 8 Q. B. 274; *Erskine* v. *Adeane*, L. R. 8 Ch. Ap. 756. Such an obligation can only be founded upon prescriptive statutory obligation, by-law, agreement or covenant. *Ib.* If the obligation to fence exist, it is in general absolute--the act of God or *vis major* only excepted. It is no defence therefore, in such a case that the defendant had no notice of the want of repair. *Laurence* v. *Jenkins*, L. R. 8 Q. B. 274. It is provided by Rev. Stat. Ont. cap. 198, that owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, or if there is no fence they shall so make, keep up and repair the same proportion which is to mark such boundary, sec. 2, and owners of unoccupied lands which adjoin occupied lands shall upon their being occupied be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing. *Ib.* If there be a duty to fence, the neglect of it deprives the person upon whom the duty devolves of the right to complain of injuries suffered by his animals, *Cincinnati H. & D. Railroad Co.* v. *Waterson*, 4 Ohio St. 424, or by the entry of animals on his land for want of a sufficient fence. *York* v. *Davis*, 11 N. H. 241; see also *Rust* v. *Low*, 6 Mass 90. Where the Legislature imposed a penalty of $100 upon railways for every month's delay in performing the duty of maintaining and keeping legal and sufficient fences, it was held that the neglect of the Corporation to perform the duty rendered them liable to reimburse any person suffering injury thereby. *Norris* v. *Androscoggin Railroad Co.*, 39 Maine 273. So it has been held that any one who voluntarily suffers his cow to go at large in the public streets of a city contrary to its By-laws, with no one to take charge of her, and thus to stray upon a railroad track at the time when the cars are passing, cannot recover against the company without proof of gross negligence on their part. *Bowman* v. *Troy and Boston Railroad Co.*, 37 Barb. (N. Y.) 516; see also *Bellefontaine and Indiana Railroad Co.* v. *Bailey*, 11 Ohio St. 333; *Louisville, &c., Railroad Co.* v. *Ballard*, 2 Met. (Ky.) 177.

(*r*) The powers here conferred are—

1. "For regulating" the height, extent and description of lawful division fences;

2. "For determining" how the cost thereof shall be apportioned;

3. "For directing" that any amount so apportioned shall be recovered in the same manner as penalties, not otherwise provided for, may be recovered under this Act.

Rev. Stat. cc. 198, 199.

respecting Line Fences and Ditching Water Courses shall continue applicable to the Municipality; (*s*) 36 V. c. 48, s. 379 (13).

Water Courses.

Water-courses.

14. For compelling the owners of lands through which any open drain or water course passes to erect and keep up water gates where fences cross such drain or water course, and for preventing persons obstructing any drain or water course; (*t*) 36 V. c. 48, s. 379 (14).

Weeds.

Prevention of growth of thistles and weeds.

15. For preventing the growth of Canada thistles and other weeds detrimental to husbandry, and compelling the destruction thereof; for the appointment of an inspector with power to enforce the provisions of such by-law; for regulating his duties, and determining the amount of remuneration, fees or charges he is to receive for the performance of such duties; (*u*) 37 V. c. 16, s. 15. *See also Rev. Stat.* c. 188.

Filth in Streets.

Preventing throwing of dirt, etc., in streets, &c.

16. For preventing persons from throwing any dirt, filth, carcases of animals, or rubbish, on any street, road, lane, or highway; (*v*) 36 V. c. 48, s. 379 (16).

(*s*) Rev. Stat. Ont. caps. 198, 199.

(*t*) It is the duty of a person who constructs a dam so to construct it, with waste gates or otherwise, as to permit the passage of the water, and to keep the waste gates in a dam free for the passage of water. *Schuylkill Navigation Co.* v. *McDonough*, 33 Pa. St. 73. If a dam be so improperly constructed as to cause ice to accumulate, and on the ice breaking up in the spring the fields adjoining the dam are injured, the proprietor is liable for special injuries caused by such accumulations of ice. *Bell* v. *McClintock*, 9 Watts. (Pa.) 119; see also *Cowles* v. *Kidder*, 24 N. H. 364; *sed qu.* see *Smith* v. *Agawam Canal Co.*, 2 Allen (Mass.) 355.

(*u*) If any owner, possessor or occupier of land knowingly suffer any Canada thistles to grow thereon, and the seed to ripen so as to cause or endanger the spread thereof, he is liable to prosecution. Rev. Stat. Ont. c. 188, s. 1. A person knowingly selling any grass or other seed among which there is any seed of the Canada thistle, is also liable to prosecution. *Ib.* sec. 9. Overseers of highways may, with the authority of the Municipal Councils of which they are officers, enter on lands for the purpose of destroying Canada thistles. *Ib.* sec. 3.

(*v*) The streets, roads and lanes of a City, Town or Village should,

Burning Stumps, Brush, &c.

17. For regulating the times during which stumps, wood, logs, trees, brush, straw, shavings or refuse, may be set on fire or burned in the open air, (*w*) and for prescribing precautions to be observed during such times, and for preventing such fires being kindled at other times; 36 V. c. 48, s. 379 (17).

Regulating the burning of stumps, trees, brush, etc.

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in the interest of public health, be kept free from dirt, filth, carcases of animals, and other rubbish. The allowance of such deposits on the streets would be the allowance of nuisances. The right of the public to the healthy and unrestricted use of the public highways should be of the first concern to Municipal bodies. See *People* v. *Cunningham*, 1 Denio (N.Y.) 524. It has been held to be an indictable offence to expose a person having a contagious disease, as the small-pox, on a public highway. *The King* v. *Vantandillo*, 4 M. & S. 73; *The King* v. *Burnett*, *Ib.* 272.

(*w*) The power here given is for regulating—

1. *The times* during which stumps, wood, logs, trees, brush, straw, shavings or refuse may be set on fire or burned in the open air;

2. And for prescribing *precautions* to be observed *during such times*;

3. And for preventing fires being kindled at *other* times.

The kindling of a fire, in a Municipality where such a By-law exists, at a time other than that prescribed by the By-law, or in disregard of the precautions made necessary by the By-law, would be strong if not conclusive evidence of negligence.

Where the owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though mischief should be thereby occasioned to his neighbour, he will not be liable to damages. But if he bring upon his land anything which would not naturally come upon it, and which in itself is dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal wilfulness or negligence, he will be liable to damages for any mischief thereby occasioned. *Fletcher* v. *Rylands*, L. R. 1 Ex. 265, 279; *S. C.* L. R. 3 H. L. 330; *Carstairs* v. *Taylor*, L. R. 6 Ex 217; *Smith* v. *Fletcher*, L. R. 7 Ex. 305; *Ross* v. *Fedden*, L. R. 7 Q. B. 661. But so far as fire is concerned, the law seems, for the present at all events, to stand upon a different footing. *Buchanan* v. *Young*, 23 U. C. C. P. 101; *Gillson* v. *North Grey Railway Co.*, 33 U. C. Q. B. 128; *S. C.* 35 U. C. Q. B. 475. It is not very long since this country was altogether a wilderness. Till the land is cleared it can produce nothing, and burning the wood is a necessary part of the operation of clearing. If it could be shewn that this business of clearing land could, by means which we can suppose to be within the reach of those employed in it, be done at a time or in a manner that would make it wholly independent of any accident beyond the control of the party, then, perhaps, the bare fact of not having taken those means might be held to constitute negligence. *Per* Robinson, C. J., in *Dean* v. *McCarty*, 2 U. C. Q. B. 448, 450; see also *Ryan* v. *New York Central Railroad Co.*, 35 N.

Exhibitions, Shows, &c.

Regulating public shows, and licensing same.

18. For preventing or regulating and licensing exhibitions of wax work, menageries, circus-riding, and other such like shows usually exhibited by showmen; and for requiring the payment of license fees for authorizing the same, not exceeding one hundred dollars for every such license; and for imposing fines on such persons infringing such by-laws; and for levying the same by distress and sale of the goods and chattels of such showman, or belonging to or used in such exhibition, whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one month; (*x*)

Fines for infraction.

Y. 210; *Calkins* v. *Barger*, 44 Barb. (N.Y.) 424; *Stuart* v. *Hawley*, 22 Ind. 619; *Fawn* v. *Reichart*, 8 Wisc. 255; *Clark* v. *Foot*, 8 Johns. (N.Y.) 421; *Hanlon* v. *Ingram*, 8 Iowa, 81; *Averritt* v. *Murrell*, 4 Jones (N. C.) 323; *Miller* v. *Martin*, 11 Mo. 508; *De France* v. *Spencer*, 2 Greene (Iowa) 462; *Bennett* v. *Scutt*, 18 Barb. (N.Y.) 347. By the common law an action lies against the party by whose negligence or that of his servants a fire arises on his premises and damages the property of another. *Filliter* v. *Phippard*, 11 Q. B. 347; See also *Barnard* v. *Poor*, 21 Pick. (Mass.) 378; *Maull* v. *Wilson*, 2 Harrington (Del.) 443. One who purposely sets fire to anything upon his own premises is bound to use ordinary care to avoid damage thereby to the property of another. *Scott* v. *Hale*, 16 Maine 326. The burden of proof in this, as in other cases of negligence appears to rest on the plaintiff. *Tourtellot* v. *Rosebrook*, 11 Met. (Mass.) 460; *Bachelder* v. *Heagan*, 18 Maine 32; *Calkins* v. *Barger*, 44 Barb. (N.Y.) 424; *Jordan* v. *Wyatt*, 4 Gratt. (Va.) 151; But see *Tuberril* v. *Stamp*, 1 Salk. 13; *Hanlon* v. *Ingram*, 3 Iowa 81.

(*x*) In the United States a distinction has been made in the use of the words "regulate" and "license," as used in reference to useful trades and employments, and as used in reference to amusements, exhibitions, &c. As to the former, there is no right to use the license as a mode of taxation with a view to revenue and perhaps to prohibition; but as regards the latter, more extensive powers may be exercised under the very same words. *Ash* v. *People*, 11 Mich. 347; *Freeholders of Essex* v. *Barber*, 2 Hals. (N. J.) 64; *Carroll* v. *Tuscaloosa*, 12 Ala. N. S. 173; *Greensborough* v. *Mullins*, 13 Ala. N. S. 34; *City Council* v. *Ahrens*, 4 Strob. (S.C.) 241; *State* v. *Roberts*, 11 Gill & Johns. (Md.) 506; *Portland O'Neill*, 1 Ire. (N.C.) 218; *Bennett* v. *Birmingham*, 31 Pa. St. 15; *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562; *Day* v. *Green*, 4 Cush. (Mass.) 433; *Dunham* v. *Rochester*, 5 Cow. (N.Y.) 462; *Laurenceburg* v. *West*, 16 Ind. 337; *Cheney* v. *Shelbyville*, 18 Ind. 84; *Bennett* v. *People*, 30 Ill. 389; *Savannah* v. *Charlton*, 36 Geo. 460; *East Louis* v. *Wehrung*, 46 Ill. 392; *Chilvers* v. *People*, 11 Mich. 43. The same words in different statutes may have different meanings—broad or narrow, according to the subject matter of legislation and general context. This subsection relates to exhibitions of wax work, menageries, circus-riding and

(*a*) It shall not be lawful for the Council of any Municipal Corporation, or the Commissioners of Police in any City, to grant licenses or license certificates to persons having exhibitions of any work or circus-riding, or other shows of a like character, or places of gambling, or to those engaged in traffic in fruits, goods, wares or merchandise of whatever description, for gain, on the days of the Exhibition of the Agricultural Association of Ontario, or of any Electoral District or Township Agricultural Society, either on the grounds of such Society, or within the distance of three hundred yards from such grounds; (*y*) 36 V. c. 48, s. 379 (18). **Licenses not to be granted for certain times and places.**

Graves.

19. For preventing the violation of cemeteries, graves, tombs, tombstones, or vaults where the dead are interred; (*z*) 36 V. c. 48, s. 379 (19). **Protecting graves.**

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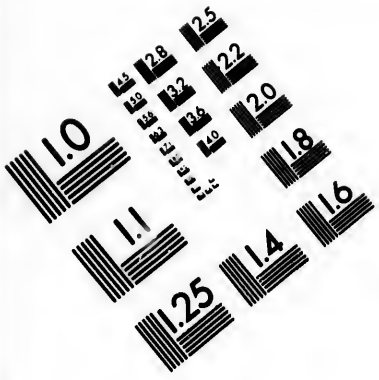
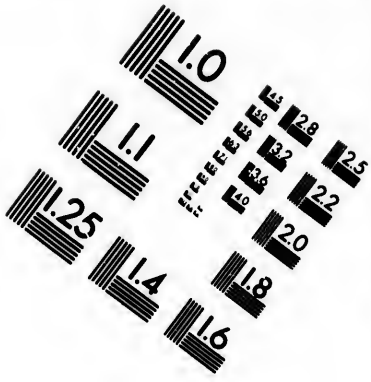
other such like shows usually exhibited by showmen. The power conferred is not merely to regulate and license them, but, if deemed necessary, to prevent them. If prevention be not deemed necessary, and regulation sufficient, the regulation may be by means of a license, but in no case is the license to exceed $100. It has been held that a statute authorizing a Municipality to pass laws for the good government of a City, does not authorize a By-law requiring the proprietor of a circus, theatre or other exhibition licensed by the Corporation, to pay a Police Officer $2 for each night's attendance upon such place of amusement for the purpose of enforcing order. *Waters* v. *Leech*, 3 Ark. 110. As to what is a place of entertainment, see *Taylor* v. *Orram*, 1 H. & C. 370; *Muir* v. *Keay*, L. R. 10 Q. B. 594.

(*y*) The general power conferred in the first part of the subsection is to prevent, or regulate and license. This intends a discretion to be exercised under all circumstances and in all places. But the latter part of the subsection takes away the discretionary power under the circumstances stated. In no case is it to be exercised "on the days of the exhibition of the Agricultural Association of Ontario or of any Electoral District or Township Agricultural Society, either on the grounds of such society or within the distance of 300 yards from such grounds.

(*z*) The proper interment of the dead is a matter that deeply concerns the health of the living, and is therefore a proper subject for Municipal control. *Bogart* v. *Indianapolis*, 13 Ind. 134; *New York* v. *Slack*, 3 Wheel. Cr. C. (N.Y.) 237; *Presbyterian Church* v. *New York*, 5 Cow. (N.Y.) 538; *Coates* v. *New York*, 7 Cow. (N.Y.) 585; *Commonwealth* v. *Fahey*, 5 Cush. (Mass.) 408; *New Orleans* v. *St. Louis Church*, 11 La. An. 244; *Commonwealth* v. *Goodrich*, 13 Allen (Mass.) 546; See also, *Charleston* v. *Baptist Church*, 4 Strob. (S.C.) 306-309; *Musgrove* v. *Catholic Church*, 10 La. An. 431; *Austin* v. *Murray*, 16 Pick. (Mass.) 121. It has been held in the United States that burials are not matters of ecclesiastical cognizance; that the right to





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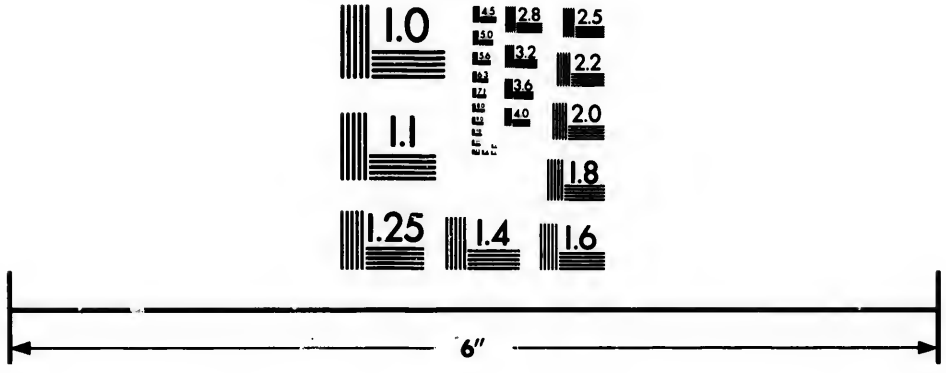

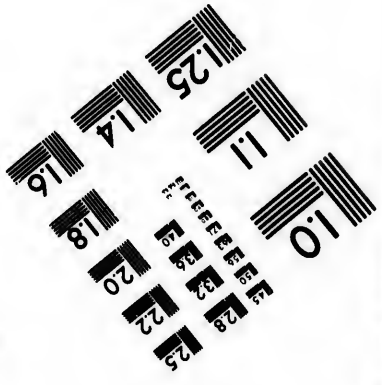

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Shade Trees.

Encouraging planting of certain trees, etc.

20. For allowing to any person who plants any fruit trees, or any trees, shrubs or saplings, suitable for affording shade on any highway within the Municipality, (*a*) in abatement of statute labour or out of the general fund, a sum of not less than twenty-five cents for every tree so planted; 36 V. c. 48, s. 379 (20). *See also Rev. Stat.* c. 187.

Injuries to Property and Notices.

Ornamental trees.

21. For preventing the injuring or destroying of trees or shrubs planted or preserved for shade or ornament; (*b*) and

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bury a corpse and preserve its remains is a legal right, belonging, in the absence of testamentary disposition, exclusively to the next of kin, and includes the right to select and change the place of sepulture at pleasure, and that if the place of burial be taken for public use, the next of kin may claim indemnity for the expense of removing and suitably interring the remains. *In re Beekman Street*, 4 Bradf. (N.Y.) 503-532; see also *Bogart* v. *Indianapolis*, 13 Ind. 143; *In re Brick Presbyterian Church*, 3 Edw. Ch. Rep. (N.Y.) 155. *Lowery* v. *Plitt*, 13 U. C. L. J. N. S. 112. It has been held that it is an indictable offence to take up a dead body even for the purpose of dissection. Common decency requires that such a practice should be prevented. The bare idea of it makes nature revolt. It is an offence against decency to take a person's dead body with intent to sell or dispose of it for gain or profit. It has been held that to sell the dead body of a capital convict for the purpose of dissection, where dissection was no part of the sentence, is misdemeanor, and indictable at common law. 1 Russell on Crimes, 4th ed. 629.

(*a*) The policy of the Municipal law is to encourage the planting of trees on public highways; and in furtherance of this policy, provision is here made for the passing of a By-law allowing a sum of not less than 25 cents for every tree planted on a highway, provided it be *suitable for affording shade*. If the trees are not suitable for shade, the power cannot be exercised. Shade trees planted by a land-owner between a carriage path and a sidewalk are not to be deemed a nuisance. *Graves* v. *Shattuck*, 35 N. H. 258.

(*b*) It was held in the United States—under a general power "to ordain such laws, not inconsistent with the Constitution and laws of the State, *as shall be needful to the good of the City*"—that the City had power to pass a By-law imposing a penalty upon any person who should *mutilate* or *destroy* any ornamental tree planted in the streets, lanes or other public places of the City. *State* v. *Merrill*, 37 Maine 329. Whatever doubt there might be as to the power under a statute so general as that quoted, there can be none under the subsection here annotated, which is "for *preventing* the *injuring* or *destroying*" of trees or shrubs planted or preserved for shade or ornament. In order to sustain a charge under such a By-law, it would not be necessary to show that the injury or destruction was either wanton or malicious. If any person unlawfully and maliciously

the defacing of private or other property by printed or other notices; (c) 36 V. c. 48, s. 379 (21).

22. For preventing the pulling down or defacing of sign-boards, (d) and of printed or written notices lawfully affixed; (e) 36 V. c. 48, s. 379 (22). Signs.

Gas and Water Companies.

23. For authorizing any corporate Gas or Water Company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, (f) subject to such regulations as the Council sees fit; 36 V. c. 48, s. 379 (23). Authorizing gas and water companies to lay down pipes, etc.

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cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood respectively growing in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling house, the offender, &c., is guilty of a misdemeanor. Con. Stat. Can. cap. 93, sec. 24; see further note *s* to sub. 16 of sec. 454.

(c) No one has a right to injure the property of another with a view to gain or otherwise. Posting up placards against house walls, &c., may be a defacement thereof, and so a legal injury. The object of this subsection is to authorize the passing of By-laws to prevent such injuries.

(d) The pulling down or defacement of signboards is an amusement to which young men in a frolic often resort, without any regard to the consequences. It would be well for all such to know that persons tearing down or defacing signs are liable to be proceeded against as vagrants. See 32 & 33 Vict. c. 28, s. 1.

(e) "*Lawfully* affixed." See note *c* supra.

(f) In general, the sanction of the Legislature, or of some Municipal authority having the power to confer it, is necessary to authorize the laying down of gas pipes under streets or public squares. *Ellis* v. *Sheffield Gas Co.*, 23 L. J. Q. B. 42; *The Queen* v. *Longton Gas Co.*, 2 E. & E. 651; see also *The Queen* v. *Charlesworth*, 16 Q. B. 1012; *The Queen* v. *Train*, 9 Cox C. C. 180; *Thompson* v. *Sunderland Gas Co.*, L. R. 2 Ex. Div. 429; *Boston* v. *Richardson*, 13 Allen (Mass.) 146, 160; *State* v. *Cincinnati Gas Co.*, 18 Ohio St. 262; *Milhau* v. *Sharp*, 15 Barb. (N. Y.) 193; *Smith* v. *Metropolitan Gas Co.*, 12 How. Pr. (N. Y.) 187; *People* v. *Bowen*, 30 Barb. (N. Y.) 24; *Norwich Gas Co.* v. *Norwich City Gas Co.*, 25 Conn. 19. The laying down of water pipes of course stands on the same footing. *Milhau* v. *Sharp*, 15 Barb. (N. Y.) 210; *Kelsey* v. *King*, 32 Barb. (N. Y.) 410; *Commissioners* v. *Hudson*, 2 Beas. (N. J.) 420. An agreement between a Highway Board and a Gas Company, that if the former would give the latter a license to open a certain public highway the latter would make good the expense of the road, and pay one shilling per yard for so much of the highway as opened, is a valid agreement. *Edgeware Highway Board* v. *Harrow Gas Co.*, L. R. 10 Q. B. 92. A County Council

Taking stock in gas and water companies.

Proviso.

Head of corporation to be a director in certain cases.

24. For acquiring stock in, or lending money to, any such Company; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed by the Company: provided the by-law is consented to by the electors, as hereinbefore provided. (*g*) In such case the head of any Corporation holding stock in any such Company to the amount of ten thousand dollars shall be *ex officio* a director of the Company in addition to the other Directors thereof, (*h*) and shall also be entitled to vote on such stock at any election of Directors. 36 V. c. 48, s. 379. (24).

Public Morals.

Sale of intoxicating drink to children, etc.

25. For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master or legal protector; (*i*) 36 V. c. 48, s. 379 (31).

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has no power, in the absence of express legislation authorizing it, to grant the exclusive right or monopoly, either as to gas or water, to any one company or person. *Ohio* v. *Cincinnati Gas Co.*, 18 Ohio St. 262; *Norwich Gas Co.* v. *Norwich City Gas Co.*, 25 Conn. 19; *People* v. *Bowen*, 30 Barb. (N. Y.) 24. A gas or water company is not, in the absence of express statute or contract, bound to furnish gas or water to all buildings on the lines of their main pipes, although compensation for so doing be tendered. *Patterson Gaslight Co.* v. *Brady*, 3 Dutch (N. J.) 245. In the absence of proof of negligence, such a company is not liable for the escape of gas or water. *Blyth* v. *Birmingham Water Co.*, 11 Ex. 781.

(*g*) The powers are

1. To acquire stock;

2. To lend money;

3. To guarantee the payment of money borrowed, or of debentures issued for money borrowed.

In any such case, the By-law is only valid when assented to by the electors.

(*h*) Although the Municipal Corporation may either acquire stock, lend money, or guarantee money borrowed by a gas or water company, it is only when it acquires stock to the amount of at least $10,000 that the head of the Corporation becomes an *ex-officio* director.

(*i*) The By-law may be passed to prevent the *sale* or *gift* of intoxicating drink to the classes mentioned, unless under the circumstances directed, that is, to a child, apprentice or servant, with the consent of the parent, master or legal protector, and not otherwise. It was held that a Municipal Corporation, in the absence of express legislation, had no power to pass such a By-law as here authorized. *In re Barclay and Darlington*, 12 U. C. Q. B. 86. But express provision was afterwards made on the subject. See *In re Ross and York and Peel*, 14 U. C. C. P. 171; *In re Brodie and The Corporation of the Town of Bowmanville*, 38 U. C. Q. B. 580; *In re Arkell and The Cor-*

26. For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places ; (*j*) 36 V. c. 48, s. 379 (32). Indecent placards, etc.

27. For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency ; (*k*) 36 V. c. 48, s. 379 (33). Vice, drunkenness, etc.

28. For suppressing disorderly houses and houses of ill-fame ; (*l*) 36 V. c. 48, s. 379 (34). Lewdness.

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poration of the Town of St. Thomas, Ib. 594. Though idiots and insane persons are not mentioned in the section, a By-law preventing sales to such persons would not be bad. So long as such a By-law is not repugnant to the laws of the Province or of the Dominion, there would appear to be no objection to it. *Ib.* See *In re Ross and York and Peel*, 14 U. C. C. P. 174.

(*j*) The things which may be prevented by By-law, under this sub-section are the following :

1. The posting of indecent placards, writings or pictures ;
2. The writing of indecent words ;
3. The making of indecent pictures or drawings ;

On walls or fences in streets or public places.

A thing may be said to be "indecent" when offensive to modesty or delicacy.

It is a misdemeanor to procure indecent prints with intent to publish them. *Dugdale* v. *The Queen*, 1 E. & B. 435. But to preserve and keep them in possession is no offence. *Ib.* The sale of an obscene print to a person in private—he having in the first instance requested that such prints should be shown to him, his object being to prosecute the seller—is a sufficient publication to sustain the charge. *The Queen* v. *Carlile*, 1 Cox C. C. 229 ; see further note *r* to sub. 33 of this section.

(*k*) Collecting crowds in the streets by using violent and indecent language to those passing in the street, thereby obstructing their free passage, is an indictable nuisance. *Barker* v. *Commonwealth*, 19 Pa St. 412. It is not an offence for a person to get drunk in his own premises. See *Regina* v. *Blakeley*, 6 U. C. P. R. 244 ; *Lester* v. *Torrens*, L. R. 2 Q. B. Div. 403 ; *Warden* v. *Tye*, L. R. 2 C. P. Div. 74 ; see further *In re Livingstone*, 6 U. C. P. R. 17.

(*l*) There is no power to license bawdy houses. *State* v. *Clarke*, 14 Am. 471. Power to make By-laws relative to nuisances has been held to confer authority to impose penalties on bawdy houses, and on persons owning houses used, with their knowledge, for such purposes. *McAllister* v. *Clark*, 33 Conn. 91 ; see also *Ely* v. *Supervisors*, 36 N. Y. 297 ; *Shafer* v. *Mumma*, 17 Md. 331. Here the power conferred is to make By-laws for "*suppressing* disorderly houses and houses of ill fame." This, by implication, confers the right to use means necessary to that end. *Childress* v. *Mayor &c.*, 3 Sneed (Tenn.) 347. Forbidding owners of houses from letting or renting for such

Exhibitions, etc.

29. For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys and other places of amusement; (*m*) 36 V. c. 48, s. 379 (35).

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a purpose is lawful. *Ib.* But though destruction of the house would be a means of suppressing it (see note *n* to sub. 10 of this section), it would seem that power to demolish is not to be inferred from the power to suppress. *Welch* v. *Stowell*, 2 Doug. (Mich.) 332. The *building* in which a particular trade is carried on, or the *house* which may be kept in a disorderly manner or used for unlawful purposes, is not *per se* a nuisance. It is the misuse or abuse of it that constitutes the nuisance. *Burditt* v. *Swenson*, 17 Texas 489; *Dargan* v. *Waddell*, 9 Ire. Law (N. Car.) 244. The property in the tenement is therefore protected against destruction. *Miller et al.* v. *Burch*, 32 Texas 208; *S. C.* 5 Am. 242; *Welch* v. *Stowell*, 2 Doug. (Mich.) 333; see also *Ely* v. *Supervisors*, 36 N. Y. 297. A house which is only a nuisance because occupied by one who carries on a business that is a nuisance cannot be destroyed. *Clark* v. *Syracuse*, 13 Barb. (N. Y.) 32. In prosecutions for keeping bawdy houses, evidence may be given as to the common reputation of the defendants. *State* v. *McDowell*, Dudley (S. C.) 346. Where defendants, as master and mistress, resided in a house to which men and women resorted for the purpose of prostitution, but no indecency or disorderly conduct was perceptible from the exterior of the house, it was held, notwithstanding, that defendants were rightly convicted of keeping a house of ill-fame. *The Queen* v. *Rice et al.*, L. R. 1 C. C. 21. A conviction, for that the defendant did on, &c., in the City of Toronto keep a common disorderly bawdy house on Queen Street, in the same City, a place of resort for both men and women of lewd character for the purposes of prostitution was held to be sufficient. *The Queen* v. *Munro*, 22 U. C. Q. B. 44. But a conviction under Dominion Act, 32 & 33 Vict. cap. 28, for that defendant was in the night-time of the 24th February, 1870, a common prostitute, wandering on the public streets of Ottawa, and not giving a satisfactory account of herself, contrary to the statute, was held bad for not shewing sufficiently that she was asked before, or at the time of being taken, to give an account of herself, and did not satisfactorily do so. *The Queen* v. *Levecque*, 30 U. C. Q. B. 509; see further *The Queen* v. *Smith*, 35 U. C. Q. B. 518.

(*m*) Under a power to a Municipal Corporation to make "By-laws relative to *nuisances* generally," it was held that a By-law might be passed prohibiting the keeping in any manner whatsoever of a bowling alley for gain or hire. *Tanner* v. *Albion*, 5 Hill (N. Y.) 121; *Updyke* v. *Campbell*, 4 E. D. Smith (N. Y.) 570. But this is contrary to *The People* v. *Sergeant*, 8 Cow. (N. Y.) 139. See also *Jackson* v. *People*, 9 Mich. 111; *Smith* v. *Madison*, 7 Ind. 86. It has been held that a ten pin alley is not *per se* a nuisance. *State* v. *Hull*, 32 N. J. 158. Where the power to the Corporation is to determine whether bowling alleys shall be allowed, and if so, under what restrictions, a By-law requiring them to be closed at a certain hour was held valid. *State* v. *Hay*, 29 Maine 457; see also, *State* v. *Freeman*, 38 N. H. 426. The power by this subsection conferred is not only to regulate, and license, but prevent exhibitions held or kept for hire or profit, bowling alleys, and other places of amusement. A skating rink with

30. For suppressing gambling houses, (*n*) and for seizing and destroying faro-banks, rouge et noir, roulette tables, and other devises for gambling found therein; (*o*) 36 c. V. 48, s. 379 (36). Gaming.

31. For preventing horse racing; (*p*) 36 V. c. 48. s. 379 (37). Racing.

32. For restraining and punishing vagrants, mendicants, and persons found drunk or disorderly in any street, highway or public place; (*q*) 36 V. c. 48, s. 379 (38). Vagrants.

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music is a place of amusement. *The Queen* v. *Tucker*, L. R. 2 Q. B. Div. 417.

(*n*) Power to *suppress* gambling houses does not, it is apprehended, authorize the Corporation to demolish the houses so used. All common gaming houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and entice numbers of persons to idleness, whose time might be otherwise employed for the good of the community. 1 Hawk. P. C. cap. 32, s. 4. See further *Mississippi Society of Arts* v. *Musgrove*, 7 Am. 723; *Moore* v. *The State*, 12 Am. 367; *Bosley* v. *Davies*, L. R. 1 Q. B. Div. 84; *Brodie and Bowmanville*, 3 U. C. Q. B. 580; *State* v. *Book*, 20 Am. 609.

(*o*) As to the power to *seize* and *destroy* private property, when necessary in the public interest, see note *l* to sub. 18 of section 454.

(*p*) The power is to *prevent* horse-racing. A former Municipal Act was to "prevent or regulate." Horse-racing is not under all circumstances illegal. Oliphant on Horses, 3 ed. 412. No person is, however, permitted by the law to run a horse at a race unless it is his own, nor to enter more than one horse for the same "plate," upon pain of forfeiting the horses. 13 Geo. II. cap. 19. sec. 1. No party can recover a wager on a horse race that is illegal within the statute. *Sheldon* v. *Law*, 3 U. C. Q. B. O. S. 85. The proprietor of a race-course is not responsible for the "purse," unless upon clear proof of an express understanding to that effect. *Gates* v. *Tinning*, 3 U. C. Q. B. 295. Nor has the winner a right to recover back his "entrance money," because the purse has not been paid over to him. *Ib.* See further, *Simms* v. *Denison*, 28 U. C. Q. B. 323.

(*q*) Notwithstanding there be provision by the general law against vagrants, 32 & 33 Vict. cap. 28, it is still in the power of a Municipal Corporation to make local laws to restrain them, provided the local law be not repugnant to the general law. *St Louis* v. *Bentz*, 11 Mo. 61; See also, *State* v. *Cowan*, 29 Mo. 330; *Byers* v. *Commonwealth*, 42 Pen. St. 89; *Shafer* v. *Mumma*, 17 Md. 331. The ancient statutes contain very severe regulations as to vagrants. 22 Hen. VIII. cap. 12; 27 Hen. VIII. cap. 25; 1 Edw. VI. cap. 3; 3 & 4 Edw. VI. cap. 16; 14 Eliz. cap. 5; 18 Eliz. cap. 3; 35 Eliz. cap. 7; 13 & 14 Car. II. cap. 12, sec. 23; 12 Anne st. II. cap. 23; 13 Geo. II. cap. 24; 17 Geo. II. c. 5. The last mentioned Act, (17 Geo. II. c. 5), divides vagrants into three classes: first, idle and disorderly persons;

Indecent exposure.

33. For preventing indecent public exposure of the person and other indecent exhibitions; (*r*) 36 V. c. 48, s. 379 (39).

Bathing.

34. For preventing or regulating the bathing or washing the person in any public water in or near the Municipality; (*s*) 36 V. c. 48, s. 379 (40).

Establishing Boundaries.

Regulating boundaries, of municipalities.

35. For procuring the necessary estimates, and making the proper application for ascertaining and establishing the boundary lines of the Municipality, according to law, in case the same has not been done; and for erecting and providing for the preservation of the durable monuments required to be erected for evidencing the same. (*t*) 36 V. c. 48, s. 379 (25).

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second, rogues and vagabonds; and, third, incorrigible rogues. See further, sec. 451 and notes thereto.

(*r*) The power is to prevent indecent *public* exposure of the person and *other* indecent exhibitions. In order to render a person liable to an indictment for indecently exposing his person in a public place, it is not necessary that the exposure should be made in a place open to the public. *The Queen* v. *Thallman*, 9 Cox C. C. 388; *S. C.* 9 L. T. N. S. 425. If the act is done where a great number of persons may be offended by it, and several see it, it is sufficient. *Ib.* If the indictment, however, charge the offence to have been committed *on* a highway, such an indictment will not be sustained by evidence that the offence was committed in a place *near* the highway, though in full view of it. *The Queen* v. *Farrell*, 9 Cox. C. C. 446. An indecent exposure in a place of public resort, if actually seen by only one person, no other person being in a position to see it, is not an indictable offence. *The Queen* v. *Webb*, 1 Denn. C. C. 338; *The Queen* v. *Watson*, 2 Cox. C. C. 376: *The Queen* v. *Farrell*, 9 Cox. C. C. 446. A party was indicted for an indecent exposure in an omnibus, several passengers being therein. *Held*, a public place. *The Queen* v. *Holmes*, 3 C. & K. 360. But a urinal, with boxes or divisions for the convenience of the public, though situated in an open market, was held not to be a public place within the meaning of the allegation. *The Queen* v. *Orchard*, 3 Cox, C. C. 248. Keeping a booth in a public place containing an indecent exhibition for hire, is an indictable offence. *Regina* v. *Saunders*, L. R. 1 Q. B. Div. 15.

(*s*) Whatever place becomes the abode of civilized men, there the laws of decency must be enforced. *The Queen* v. *Crunden*, 2 Camp. 89. Bathing in the sea on the beach near inhabited houses, from which the person may be distinctly seen, is an indictable offence, although the houses may have been recently erected, and till then it it may have been usual for men to bathe in great numbers at the place. *Ib.*

(*t*) See note *f* to sec. 14.

Placing landmarks and monuments or marking boundaries of concessions, lots, etc.

462. In case the Council of any Township, City, Town or incorporated Village adopts a resolution on the application of one-half of the resident landholders to be affected thereby, or upon its own motion, that it is expedient to place durable monuments at the front or rear of any Concession or range or part thereof in the Municipality, or at the front or rear angles of the lots therein, (*a*) the Council may apply to the Lieutenant-Governor, in the manner provided for in the thirty-eighth to the forty-fifth sections of *The Act respecting Land Surveyors and the Survey of Lands*, praying him to cause a survey of such concession or range, or such part thereof, to be made, and such monuments to be placed under the authority of the Commissioner of Crown Lands. (*b*)

Rev. Stat. c. 146, ss. 38-45.

Cost of survey.

2. The person or persons making the survey shall accordingly plant stones or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front and rear angles of every lot therein (as the case may be), and the limits of each lot so ascertained and marked shall be the true limits thereof; (*c*)

(*a*) In the absence of such an application and such a resolution as the statute requires to authorize an application to the Governor to cause the survey to be made, the survey would be held unauthorized. *Cooper* v. *Wellbanks*, 14 U. C. C. P. 364. Where it was shown that the application was made, not by one-half the resident land-holders to be affected by the survey, but by ten freeholders, over half of whom had no deeds for their lands, and that eleven or twelve freeholders who would be affected by the survey were not parties to the application, the survey was held to be unauthorized. *Ib.* See further. *The Queen* v. *McGregor*, 19 U. C. C. P. 69; *Boley* v. *McLean*, 41 U. C. Q. B. 260.

(*b*) The 38th section of Rev. Stat. Ont. ch. 146, recites that in several of the Townships in Ontario, some of the concession lines, or parts of the concession lines, were not run in the original survey performed under competent authority; and the surveys of some concession lines or parts of concession lines have been obliterated, and, owing to the want of such lines, the inhabitants of such concessions are subject to serious inconvenience, and for remedy provided that the County Council of the County in which any Township in Ontario is situate, may, on the application of one-half of the resident landholders in any concession, or without such application, make application to the Lieutenant-Governor, requesting him to cause any such line to be surveyed and marked by permanent stone boundaries, under the direction and order of the Commissioner of Crown Lands.

(*c*) If the survey proceed otherwise than as directed by the statute, the survey will be unauthorized. *Tanner* v. *Bissell*, 21 U. C. Q. B. 553; *Boley* v. *McLean*, 41 U. C. Q. B. 260.

and the costs of the survey shall be defrayed in the manner prescribed by the said statute. (*d*) 36 V. c. 48, s. 380.

Pounds, &c.

Cruelty to animals.

463. The Council of every Township, City, Town and incorporated Village, (*e*) may also pass by-laws (not inconsistent with the Statutes of Canada respecting cruelty to Animals,)—(*f*)

Providing pounds.

1. For providing sufficient yards and enclosures for the safe keeping of such animals as it may be the duty of the pound-keeper to impound ; (*g*)

(*d*) All expenses incurred in peforming any survey or placing any monument or boundary under the provision of Rev. Stat. Ont. ch. 146, must be paid by the County Treasurer to the person or persons employed in such survey, on the certificate and order of the Commissioner of Crown Lands. Sec. 42. The Council shall cause to be laid before them an estimate of the sum requisite to defray the expenses to be incurred, in order that the same may be levied on the proprietors of the land in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum required for any other purposes authorized by law may be levied. *Ib.* sec. 41. A By-law to levy the amount "from the patented and leased lands," is bad. *In re Scott and Peterborough*, 25 U. C. Q. B. 453 ; *In re Scott and Harvey*, 26 U. C. Q. B. 32 ; *In re Scott and Peterborough*, *Ib.* 36 ; *Peterborough* v. *Smith*, *Ib.* 40.

(*e*) *Counties* not included.

(*f*) See note *m* to sub. 9, of sec. 461.

(*g*) The Pound is the custody of the law. *Wooley* v. *Groton*, 2 Cush. (Mass.) 305. The pound-keeper is bound to take and keep whatever is brought to him, at the peril of the persons who bring it. If wrongfully taken, *they* (not he) are answerable. It would be terrible if the Pound-keeper were liable for refusing to take cattle in, and were also liable in another action for not letting them go. When once the cattle are impounded, he cannot let them go without a replevin brought against the distrainor, or without the consent of the party impounding. The replevin lies against him who takes, or him who commands the taking ; the Bailiff who seizes and the party who directs the seizure may both be sued. But the situation of a Pound-keeper is not that of a Bailiff or servant. He is a public officer, discharging a public duty, and this as much in the keeping as in the receiving. *Wardell* v. *Chisholm*, 9 U. C. C. P. 125 : see further, *Clarke* v. *Durham*, E. T. 3 Vict. R. & J. Dig., 2866 ; *Carey* v. *Tate*, 6 U. C. Q. B. O. S. 147 ; *Isley* v. *Stubbs*, 5 Mass. 280 ; *Smith* v. *Huntington*, 3 N. H. 76. Being a public officer, discharging a public duty, he is entitled to notice of action under Rev. Stat. Ont., cap. 73. *Denison* v. *Cunningham*, 35 U. C. Q. B. 383 ; *Davis* v. *Williams*, 13 U. C. C. P. 365. In the declaration, it must be averred that he acted

2. For restraining and regulating the running at large or trespassing of any animals, and providing for impounding them; and for causing them to be sold in case they are not claimed within a reasonable time, (*h*) or in case the damages, fines and expenses are not paid according to law; Animals running at large.

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maliciously and without reasonable or probable cause. *Ib.* The law would be different if the Pound-keeper voluntarily parts with the legal control of the animals impounded, or impounds them in any other place than that prescribed by law. *Bills* v. *Kinson*, 1 Fost. (N. H.) 448. Breach of a pound and liberating an animal therein confined was held to be no violation of a By-law prohibiting "any person from opposing or interruping any City officer in the execution of the ordinances of the City." *Mayor, &c.* v. *Omhurg*, 22 Geo. 67.

(*h*) The powers are:

1. For *restraining or regulating* the running at large or trespassing of any animals:

2. For *impounding* them;

3. For causing them to be *sold* in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law.

This sub-section applies in terms to *all* animals. See note *m* to sub. 9 of sec. 461. As to dogs, special provision is made for their destruction when running at large. See sec. 461, sub. 10, and notes thereto. The evils to be apprehended from cattle, swine, or poultry running at large are mere injuries to private property and to the neatness and good order of the City or Town. It would not be either reasonable or necessary to allow the destruction of valuable domestic animals in order to prevent the risk of such injuries. Impounding till the damage is paid, is the more natural remedy, which the common law has sanctioned from an early period for an injury to private property; and fine upon the owner seems to answer all the purposes of preventing the public nuisance. Nevertheless, the Legislature may by law sanction the more vigorous course of allowing a forfeiture and sale of the animal. *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 250. It is in the power of the Corporation to enforce the provisions of the By-law by the imposition of a fine on the owners of the animals running at large. See *Smith* v. *Riorden*, 5 U. C. Q. B. O. S. 647. But if the power had been restricted to the imposition of fines, that would not have given the power to impound, forfeit or sell. *Miles* v. *Chamberlain*, 17 Wis. 446; *Heise* v. *Town Council*, 6 Rich. (S. C.) 404; *Mobile* v. *Yuille*, 3 Ala. 137; *White* v. *Tallman*, 2 Dutch. (N. J.) 67. The power to impound and sell, should, before it can be legally exercised, be as it is in this section expressly given. *Cotter* v. *Doty*, 5 Ohio, 394; *Kennedy* v. *Sowden*, 1 McMull. (S.C.) 328; but see *Crosby* v. *Warren*, 1 Rich. (S.C.) 385; *McKee* v. *McKee*, 8 B. Mon. (Ky.) 433. The By-law should provide for notice, either actual or constructive, prior to the sale. *Donovan* v. *Vicksburg*, 29 Miss. (7 Cush.) 247; *Rosebaugh* v. *Saffin*, 10 Ohio, 32; *Cincinnatti* v. *Buckingham*, *Ib.* 257, 262; *Shaw* v. *Kennedy*, N. C. Term R. 158; *Gooselink* v. *Campbell*, 4 Iowa, 296; *Willis* v. *Legris*,

Appraising the damages.

3. For appraising the damages (*i*) to be paid by the owners of animals impounded for trespassing contrary to the laws of Ontario or of the Municipality;

45 Ill. 289; *Bullock* v. *Geombie*, *Ib.* 218; *Poppen* v. *Holmes*, 44 Ill. 360; *Hart* v. *Albany*, 9 Wend. (N.Y.) 571; *Phillips* v. *Allan*, 41 Penn. St. 681; *White* v. *Tallman*, 2 Dutch. (N. J.) 67. The powers of sale conferred by the By-law, whatever they may be, should be strictly followed by all concerned in the sale. *Clerk* v. *Lewis*, 35 Ill. 417; *Rounds* v. *Stetson*, 45 Maine 596; *Gilmore* v. *Holt*, 4 Pick. (Mass.) 258; *Rounds* v. *Mansfield*, 38 Maine 586. Thus, sale made only twenty minutes before the expiration of the time required by law was held illegal. *Smith* v. *Gates*, 21 Pick. (Mass.) 55. Abridgement for any period of the required notice, avoids the sale. *Clark* v. *Lewis*, 35 Ill. 417. Also held, that actual knowledge by the owner of the beasts of the impounding thereof, was not equivalent to the written notice required by the statute. *Coffin* v. *Field*, 7 Cush. (Mass.) 355. Unless there be a legal sale, the Poundkeeper may be held to have forfeited the protection of the statute. *Sargeant* v. *Allen*, 29 U. C. Q. B. 384. It has been held that a master is liable for the acts of his farm servant in impounding cattle in his absence, the servant acting within the scope of his authority. *Spafford* v. *Hubble*, E. T., 7 Will. IV., R. & J. Dig. 2866. In trespass against two defendants for seizing and taking cattle, one defendant justified as Pound-keeper; and because the cattle were in the close of A., wrongfully trespassing in said close, and eating grass and corn therein, A. took the said cattle and delivered them to the defendant as a Pound-keeper within his jurisdiction, and the defendant impounded and afterwards sold them according to law; and the other defendant justified the seizure and the sale by the Pound-keeper, as in the other plea, and that the defendant bought the cattle as the highest bidder; to both of which pleas there was a general demurrer. *Held*, that the plea by the Pound-keeper was bad, as it did not show that he received the cattle from a person *within his division*, or that the close *was so situate*, and that the plea of the purchaser was good, as he could not be held liable to the plaintiff in trespass. *Clarke* v. *Durham et al.*, E. T., 3 Vict. R. & J. Dig. 2866; *Rourke* v. *Mosey*, 36 U. C. Q. B. 546. In a plea of justification by a Pound-keeper for taking a pig, when the justification was that the pig, contrary to Township regulations, broke through a lawful fence, it was held necessary to allege that the fence was within that Township, and to show the close in which the pig was trespassing at the time. *Carey* v. *Tate*, 6 U. C. Q. B. O. S. 147. A By-law enacting that certain animals specified shall not run at large, does not impliedly allow others not named to do so, contrary to the common law. *Jack* v. *The Ontario, Simcoe and Huron R. W. Co.*, 14 U. C. Q. B. 328.

(*i*) An action of trespass will lie by the owner of a farm into which a neighbour's pigs may break, enter and do damage against the owner of the pigs, unless he can excuse the act for defect of fences or upon some other ground that ought to be specially pleaded. *Blacklock* v. *Millikan*, 3 U. C. C. P. 34. So trespass is maintainable against the owner of a bull which broke into the plaintiff's farm and

4. For determining the compensation to be allowed for services rendered, in carrying out the provisions of any Act, (*k*) with respect to animals impounded or distrained and detained in the possession of the distrainer. 36 V. c. 48, s. 381. *See also Rev. Stat. c.* 195. Compensation with respect to impounding animals.

Public Health.

464. The members of every Township, City, Town and incorporated Village Council shall be health officers within their respective Municipalities, under *The Act respecting the Public Health*, and under any Act passed after this Act takes effect for the like purpose ; (*l*) but any such Council may, be Members of council to be health officers Rev. Stat. c 190.

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there killed his mare, though the owner of the bull was not present at the time or aware of the fact. *Mason* v. *Morgan*, 24 U. C. Q. B. 328. If a horse, through the neglect of the owner in not keeping his fences properly repaired, stray out of the field in which it is feeding, into the field of an adjoining proprietor, and there get among his horses and kick one in such a way as to cause his death, such owner is liable in trespass for the injury which his horse has done. *Lee* v. *Riley*, 18 C. B. N. S. 722. So where defendant's horse injured plaintiff's mare by biting and kicking her through the fence separating the plaintiff's land from the defendant's. *Ellis* v. *Loftus Iron Company*, L. R. 10 C. P. 10. Whether at common law the owner of a dog is answerable in trespass for every unauthorized entry of the animal into the land of another, as in the case of pigs, an ox, or a horse, is doubtful. *Read* v. *Edwards*, 17 C. B. N. S. 245. An action on the case lies against one who keeps a mischievous animal of any kind in respect of any damage done by such animal, where it can be shown that the owner knew of the mischievous propensity of the animal. *Thomas* v. *Morgan*, 2 C. M. & R. 496 ; *Card* v. *Case*, 5 C. B. 622 ; *May* v. *Burdett*, 9 Q. B. 101. See further, *Applebee* v. *Percy*, L. R. 9 C. P. 647 ; *Ward* v. *Brown*, 16 Am. 561. If the owner, upon being told of the mischief done, offers to settle, this is some evidence of his knowledge that the animal was mischevious. *Thomas* v. *Morgan*, 2 C. M. & R. 496 ; *Mason* v. *Morgan*, 24 U. C. Q. B. 328. In New Hampshire, if animals are found "doing damage," they may be impounded, and appraisers are to ascertain "whether any damage was done." *Held*, that the statute contemplated *actual* and not merely nominal damages to justify impounding. *Osgood* v. *Green*, 33 N. H. 318.

(*k*) The compensation may be for services rendered with respect to animals impounded or distrained, and detained in the possession of the distrainer. See *Dargan* v. *Davies*, 2 L. R. 2 Q. B. Div. 118.

(*l*) This section is, in effect, the same as sec. 2 of the Public Health Act Rev. Stat. Ont. cap. 190. The preservation of the public health is a matter of paramount municipal importance. *Ex parte Shrader*, 33 Cal. 279 ; *Ashbrook* v. *Commonwealth*, 1 Bush. (Ky.) 139 ; *Harrison* v. *Baltimore*, 1 Gill. (Md.) 264 ; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 205. A City Council having power to pass By-laws "to preserve

May delegate powers.

by-law, delegate the powers of its members as such Health Officers to a committee of their own number, or to such persons, either including or not including one or more of themselves, as the Council thinks best. 36 V. c. 48, s. 382. (*m*)

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health," was held to have the power to procure a supply of water by boring an artesian well, or otherwise, on a public square, as they saw fit. *Livingston* v. *Pappin*, 31 Ala. 542; see also *Rome* v. *Cabot*, 28 Ga. 50; *Hale* v. *Houghton*, 8 Mich. 458; see further, sec. 366, sub. 1. But it has been held that a Municipal Corporation owning lands on a water course distant from the city, had no right—unless acquired by purchase or by the exercise of the right of eminent domain—to divert water to the injury of other riparian proprietors. *Stein* v. *Burden*, 24 Ala. 130.

(*m*) A By-law giving to a Board of Health "general supervision over the health of the city," and "all necessary power to carry the ordinance into effect," was held to include power to rent a building for a temporary hospital, to protect the city from an apprehended visitation of cholera, and to make the Corporation liable for the rent although it did not become necessary to make use of the building. *Aull* v. *Lexington*, 18 Mo. 401; *Barton* v. *New Orleans*, 16 La An. 317; *Belcher* v. *Farrar*, 8 Allen (Mass.) 325; *Commissioners* v. *Powe*, 6 Jones, Law. (N. Car.) 134; *Hazen* v. *Strong*, 2 Vt. 427; *Wilkinson* v. *Albany*, 8 Fost. (N. H.) 9. Such a Board would have power to make quarantine regulations. *Dubois* v. *Augusta*, Dudley (Geo.) 30; *St. Louis* v. *McCoy*, 18 Mo. 288; *St. Louis* v. *Boffinger*, 19 Mo. 13; *Metcalfe* v. *St. Louis*, 11 Mo. 103; *Mitchell* v. *Rockland*, 41 Maine, 363; *S. C.*, 45 Maine, 496. Health officers may enter and examine any premises. Rev. Stat. Ont. ch. 190, sec. 3, and may order the cleansing of the same, *Ib.* secs. 4, 5, and may destroy whatever, in their opinion, is necessary to destroy for the preservation of the public health, *Ib.* sec. 5, may, under certain circumstances, remove inhabitants from their dwelling houses. *Ib.* sec. 7, and remove persons infected with a dangerously contagious or infectious disease, *Ib.* sec. 6. The Lieutenant-Governor may, for purposes of health, under the Public Health Act, regulate the entry and departure of boats and vessels, *Ib.* sec. 8, and may by proclamation declare certain rigorous sections of the Act in force in any locality, to be mentioned in the proclamation, *Ib.* sec. 9, and may revoke or renew the proclamation, *Ib.* sec. 10. On the issue of the proclamation, the sections two to seven of the Act, unless declared to the contrary in the proclamation, are suspended, *Ib.* sec. 11, and five or more persons may be appointed a Central Board of Health, *Ib.* sec. 12. The revocation of the proclamation revokes the Board so appointed, *Ib.* secs. 13, 19. A Local Board of Health may also be appointed, *Ib.* secs. 14, 15, by the Municipal Corporation or Police Trustees, *Ib.* sec. 15, at a special meeting, *Ib.* sec. 16; on failure of which the Lieutenant-Governor may appoint the Local Board, *Ib.* sec. 17. Until such appointment the ordinary Health Officers of the Municipality are entitled to act, *Ib.* sec. 18. The Central Board is empowered to make regulations to prevent the spread of infection, *Ib.* secs. 20, 21, 24, and require the Local Board to execute them, *Ib.* sec. 22, and to remove inmates of infected houses, *Ib.* sec. 23, and

[*For powers of Cities, Townships, Towns and Villages as to Lock-up Houses, see sec.* 434 ; *and as to Tavern and Shop Licenses, see Rev. Stat. c.* 181, *ss.* 17, 21, 24 & 32.]

DIVISION IV.—POWERS OF COUNCILS OF COUNTIES, CITIES AND SEPARATED TOWNS.

Respecting Engineers, Inspectors, Gaol Surgeons, &c. Sec. 465 (1).
" *Auctioneers. Sec.* 465 (2).
" *Hawkers and Pedlars. Sec.* 465 (3).
" *Ferries. Sec.* 465 (4).
" *High Schools. Sec.* 465 (5, 6).
" *Support of Scholars at High Schools and University of Toronto. Sec.* 465 (7, 8).
" *Endowment of Fellowships. Sec.* 465 (9).
" *Public Fairs. Sec.* 465 (10).
" *Houses of Refuge. Sec.* 433.

465. The Council of any County, City and Town separated from the County for municipal purposes, (*n*) may pass by-laws for the following purposes : **By-laws may be made for—**

Engineers—Inspectors—Gaol Surgeons, etc.

1. For appointing, in addition to other officers, (*o*) one or more Engineers, and also one or more Inspectors of the **Appointing engineers, inspectors,**

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otherwise enforce the regulations, *Ib.* sec. 26. The expenses of the Central Board are to be defrayed by the Government, and of the Local Boards by the Municipalities, *Ib.* sec. 27, on orders of the Local Board, *Ib.* sec. 28. The proclamation, regulations, &c., are to be published in the Ontario Gazette, *Ib.* sec. 29, and the Gazette is made conclusive evidence of the proclamation, &c., *Ib.* sec. 30. Thereupon inconsistent By-laws of the Municipality are suspended, *Ib.* sec. 31. Wilful disobedience of regulations, &c., is made penal, *Ib.* secs. 32, 33. The penalties to be paid to the Treasurer of the Municipality, *Ib.* sec. 34, and offences may be prosecuted notwithstanding the repeal of the proclamation, *Ib.* sec. 35. No proceeding under the Act is to be vacated, quashed or set aside for want of form, or be removed or removable by *certiorari* or other process whatsoever, *Ib.* sec. 35.

(n) Incorporated Villages not included.

(o) The officers whose appointment is authorized are one or more—
1. Engineers :
2. Inspectors of the House of Industry, Surgeons of the Goal, and other institutions under the charge of the Municipality.

gaol surgeons, etc.

House of Industry; also one or more Surgeons of the Gaol and other institutions under the charge of the Municipality; and for the removal of such officers, 36 V. c. 48, s. 383 (1).

Auctioneers.

Auctioneers.

2. For licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction; (*p*) and for fixing the sum to be paid for every such license, and the time it shall be in force; (*q*) 36 V. c. 48, s. 383 (2).

Hawkers and Pedlars.

Licensing, etc., hawkers, pedlars, etc.

3. For licensing, regulating and governing hawkers or petty chapmen, and other persons carrying on petty trades, who have not become permanent residents in the County, City or Town, or who go from place to place or to other men's houses, on foot, or with any animal bearing or drawing any goods, wares or merchandise for sale, or in or with any boat, vessel or other craft, or otherwise carrying goods, wares or

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While it is believed that at common law Corporations have power to appoint such officers as the nature of their constitution requires, the implied power, if existing at all, should be sparingly exercised. See note *r* to sec. 235.

(*p*) Power to regulate the conduct of particular trades or callings involves the power to license, but this power must not be so exercised as to create a tax or a monopoly. See note *f* to sub. 5 of sec. 461. A person licensed by a City Corporation to carry on any particular trade or business, is in no sense the agent or servant of the Corporation, so as to render the latter responsible for his acts. *Fowle* v. *Alexandria*, 3 Peters (U. S.) 398; but see *Cole* v. *Nashville*, 4 Sneed. (Tenn.) 162. The granting or refusing of a license is substantially the exercise of a judicial function. *Duke* v. *Rome*, 20 Ga. 635; The powers here conferred are to license, regulate and govern—

1. Auctioneers;

2. *Other* persons selling or putting up for sale goods, &c., by public auction.

In order to a sale by auction, within Eng. Stat. 50 Geo, III. ch. 41, sec. 7, there must be an outcry, &c. See *Allen* v. *Sparkhall*, 1 B. & Al. 100. A City Council may prevent sales by auction on the public streets of the city. *White* v. *Kent*, 11 Ohio St. 550; see also *Shelton* v. *Mobile*, 30 Ala. 540.

(*q*) Apparently no limit is given to the amount that may be exacted for the payment of the license, but it must be reasonable. See note *w* to sub. 12, of sec. 454.

merchandise for sale, (*r*) and for fixing the sum to be paid for a license for exercising such calling within the County, City or a Town, and the time the license shall be in force; (*s*) and for providing the Clerk of the Municipality with licenses in this and the previous sub-section mentioned, for sale to parties applying for the same, under such regulations as

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(*r*) An enactment of this kind is constitutional. See *Speer* v. *The Commonwealth*, 14 Am. 164: *Morrill* v. *State*, 20 Am. 12. The license is personal and does not qualify a servant or agent in selling. *In re Ford* v. *McArthur*, 37 U. C. Q. B. 542. A single act of selling does not make a man a hawker, so as to require a license. *The King* v. *Little*, 1 Burr. 609; *The King* v. *Buckle*, 4 East. 346; *Johnson* v. *Hudson*, 11 East. 180. A licensed auctioneer, going from place to place and selling goods, was held to be a hawker. *The King* v. *Turner*, 4 B. & Al. 510. In order to constitute a person a hawker, it is not necessary that he should go to more towns than one and there sell goods. *Manson* v. *Hope*, 6 L. T. N. S. 326; *S. C.*, 2 B. & S. 498. A person not having goods with him, but merely going about to solicit orders for goods, to be supplied from and by his master, was held not to be a hawker. *The King* v. *McKnight*, 10 B. & C. 734; see also Eng. Stat. 24 & 25 Vict. ch. 21. A cabinetmaker residing at Leicester and having a shop there, who sent goods to a place called Ashby-de-la-Zouch in a cart, which he accompanied on foot part of the way, and then went to Ashby-de-la-Zouch by the mail, where he employed an auctioneer for the sale of the goods, was held to be a trading person travelling from town to town, within the statute 50 Geo. III. ch. 41, sec. 7. *Attorney-General* v. *Woolhouse*, 1 Y. & J. 493; see also *Attorney-General* v. *Tongue*, 12 Price 51. Twelve ladies, of whom respondent was one, having purchased materials and made them up into articles of wearing apparel, each in turn for one month carried these articles about, in a basket called a missionary basket, from house to house for sale. The ladies did not find the money to purchase the materials, but the money derived from the sales was applied towards the purchase, and the profits of the sale were devoted to a village school and religious purposes. *Held*, that respondent did not come within the definition of a pedlar, as used in section 3 of the Pedlars' Act of 1871. *Gregg* v. *Smith*, L. R. 8 Q. B. 302; see further, *Howard* v. *Lupton*, L. R. 10 Q. B. 598. It was held necessary to justify an arrest under our old Hawkers and Pedlars' Act, 58 Geo. III. ch. 5, for peddling without a license, that the person should be found trading at the time of the arrest. See *Oviatt* v. *Bell*, 1 U. C. Q. B. 18. It was also held necessary to the validity of a conviction for peddling goods without a license, that the description of goods should be specified in the conviction. *The King* v. *Selway*, 2 Chit. R. 522; *The King* v. *Smith*, 3 Burr. 1475. To entitle a party to exemption from penalties on the ground that the place where the hawker exposed his wares for sale was a public market, it must be shewn that it was a legally established market, and not merely a market *de facto*. *Benjamin* v. *Andrews*, 5 C. B. N. S. 299; see further, Burn's Justice, Title, "Hawkers and Pedlars."

(*s*) See note *q* to sub. 2 of this section.

may be prescribed in such by-law; (*t*) 36 V. c. 48, s. 383 (3).

Ferries.

Licensing, etc., with assent of Governor, ferries, etc. Rev. Stat. c. 112, s. 13.

4. For licensing and regulating ferries between any two places within the Municipality, under the provisions of *The Act respecting Ferries*, and establishing the rates of ferriage to be taken thereon; (*v*) but no such law as to ferries shall have effect until assented to by the Lieutenant-Governor in Council; (*w*)

Until By-law passed, Lieutenant-Governor to regulate.

(*a*) Until the Council passes a by-law regulating such ferries, and in the cases of ferries not between two places in the same Mnnicipality, the Lieutenant-Governor by Order in Council may from time to time regulate such ferries respectively, and establish the rates to be taken thereon, in accordance with the statutes in force relating to ferries; (*x*) 36 V. c. 48, s. 383 (4.)

Lands for High Schools.

Acquiring lands for High Schools, etc.

5. For obtaining in such part of the County, or of any City or Town separated within the County, as the wants of the people may most require, the real property requisite for erecting High School houses thereon, and for other High School purposes, and for preserving, improving and repairing such school houses, (*y*) and for disposing of such

(*t*) Money exacted for an illegal license may be recovered back in an action for money had and received. *Lincoln* v. *Worcester*, 8 Cush. (Mass.) 55.

(*v*) See sec. 280, and notes thereto.

(*w*) The powers conferred are for—

1. Licensing and regulating ferries between any two places within the Municipality.

2. Establishing the rates of ferriage to be taken thereon.

(*x*) The power of a Municipal Council is local. It can only be applied to the regulation of ferries within the Municipality. In the case of ferries not between two places in the same Municipality, the authority to regulate, &c., is vested in the Lieutenant-Governor in Council exclusively.

(*y*) In 1807, an appropriation was made by the Legislature for the support of a public school "in each and every district" of Upper Canada, to be kept in places named. 47 Geo. III. cap. 6. This Act was repealed in 1853 by an Act intituled "An Act to amend the law relating to Grammar Schools," 16 Vict. cap. 186, sec. 27. See now Rev. Stat. Ont., c. 203.

property when no longer required; (*z*) 36 V. c. 48, s. 383 (5).

Aiding High Schools.

Aiding High Schools.

6. For making provisions in aid of such High Schools as may be deemed expedient; (*a*) 36 V. c. 48, s. 383 (6).

Supporting Pupils at University and High Schools.

Supporting certain High School Pupils at University of Toronto and U. C. College, etc.

For making a permanent provision for defraying the expenses of the attendance at the University of Toronto, and at the Upper Canada College and Royal Grammer School in Toronto, of such of the pupils of the public High Schools of the County as are unable to incur the expense, but are desirous of, and in the opinion of the respective masters of such High Schools, possess competent attainments for competing for any scholarship, exhibition or other similar prize offered by such University or College; (*b*) 36 V. c. 48, s. 383 (7). *See also Rev. Stat.* c. 205, s. 32 (4).

Similar provision for attendance

8. For making similar provision for the attendance at any High School, for like purposes, of pupils of Public Schools of

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(*z*) See note *c* to sub. 1 of sec. 454.

(*a*) The Council of each County, City, Township, Town, or Incorporated Village was authorized by Con. Stat. U. C. ch. 63, sec. 16, from time to time to levy and collect, by assessment, such sum or sums of money as it may deem expedient to purchase the site or sites, or to rent, build, repair, furnish, warm, and keep in order a Grammar School House or Houses, for providing the salary of the teacher or teachers, and all other necessary expenses of such County Grammar School or Schools. The statute was held to be permissive not obligatory. *In re Trustees Weston Grammar School and Counties of York and Peel*, 13 U. C. C. P. 423. But now, see Rev. Stat. Ont. c. 203; *In re Trustees of Port Rowan High School*, 23 U. C. C. P. 11; *In re Board of Education of Perth and Corporation of the Town of Perth*, 39 U. C. Q. B. 34. The three Counties of Stormont, Dundas and Glengarry were formed into five High School Districts. Held that the aid granted by the Corporation to the High Schools to supplement the Government grant must be an equal special rate upon the assessable property of the United Counties not upon each High School District, for the sum apportioned to its High Schools. *Re Chamberlain and the United Counties of Stormont, Dundas and Glengarry*, 42 U. C. P. R. 279.

(*b*) The provision to be made may be a permanent one. But it must not be for attendance at any other institution than that of the University of Toronto and Upper Canada College and Royal Grammar School.

at High Schools.

the Municipality; (*c*) 36 V. c. 48, s. 383 (8). *See also Rev. Stat.* c. 205, s. 32 (5).

Endowing Fellowships.

Endowing fellowships in University of Toronto and U. C. College.

9. For endowing such fellowships, scholarships or exhibitions, and other similar prizes, in the University of Toronto, and in the Upper Canada College and Royal Grammar School at Toronto, for competition among the pupils of the Public High Schools in the County, as the Council deem expedient for the encouragement of learning amongst the youth thereof; (*d*) 36 V. c. 48, s. 383 (9). *See also Rev. Stat.* c. 205, s. 32 (6).

Public Fairs.

Authorizing the holding, etc., of public fairs, and regulating same.

10. For authorizing, on petition of at least fifty qualified electors of the Municipality, the holding of public fairs at one or more of the most public and convenient places (*e*) not separated from the Municipality for municipal purposes;

(*a.*) The purpose for which such fairs may be held shall be restricted to the sale, barter and exchange of cattle, horses, sheep, pigs and articles of agricultural production or requirement. (*f*)

(*b.*) The by-law to authorize the establishment of any such fair shall establish rules and regulations for the government of the same, and appoint a person whose duty it shall be to

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(*c*) None are entitled to receive the benefit of the provision unless those who are themselves "unable to incur the expense." See foregoing subsection.

(*d*) Fellowships, Scholarships, or Exhibitions endowed under this clause, are to be for competition among the pupils of the Public High Schools of the County.

(*e*) The place selected should not be *a public street. Wartman* v. *Philadelphia*, 33 Pa. St. 202-210; *St. John* v. *New York*, 3 Bosw. (N. Y.) 483; *State* v. *Mobile*, 5 Port. (Ala.) 279; *Commonwealth* v. *Rush*, 14 Pa. St. 186; *Commonwealth* v. *Bowman*, 3 Pa. St. 202-206.

(*f*) The grant of a fair does not of itself imply a right in the grantee to prevent persons from selling marketable articles in their private shops on market days. *Macclesfield* v. *Chapman*, 12 M. & W. 18. A person who, at such a fair, exposes goods for sale has a right to occupy the soil with baskets necessary and proper for containing the goods. *Townend* v. *Woodruff*, 5 Ex. 506.

have them carried out, (*g*) and shall also fix the fees to be paid him by persons attending the said fair. (*h*)

Public notice of by-law establishing same.

(*c*.) The Council authorizing the establishment of a public fair shall, immediately after the passing of a by-law for that purpose, give public notice of the same. (*i*) 36 V. c. 48, s. 383 (10).

[*For powers of Counties, Cities and Towns as to Houses of Refuge, see sec.* 436.]

DIVISION V.—POWERS OF COUNCILS OF CITIES, TOWNS AND INCORPORATED VILLAGES.

Respecting Water. Sec. 466 (1).
" *Markets Sec.* 466 (2-13).
" *Tainted Meat. Sec.* 466 (14).
" *Nuisances. Sec.* 466 (15-19).
" *Enclosure of Vacant Lots. Sec.* 466 (20.)
" *Driving upon Sidewalks: Sec.* 466 (21).
" *Importuning Travellers. Sec.* 466 (22).

(*g*) The regulation of fairs and markets in England by By-law has long been a subject of Municipal control. *Player* v. *Jenkins*,, 1 Sid. 284; *Pierce* v. *Bartrum*, Cowp. 270; *The King* v. *Cotterill*, 1 B. & Ad. 67. See also *Mosley* v. *Walker*, 7 B. & C. 40; *Macclesfield* v. *Pedley*, 4 B. & Ad. 397. So in the United States, *Cincinnati* v. *Buckingham*, 10 Ohio, 257; *Wartman* v. *Philadelphia*, 33 Pa. St. 202; *LeClaire* v. *Davenport*, 13 Iowa 210; *White* v. *Kent*, 11 Ohio St. 550; *Ash* v. *People*, 11 Mich. 347; *St. John* v. *New York*. 6 Duer. (N. Y.) 315; *St. Louis* v. *Jackson*, 25 Mo. 37; *St. Louis* v. *Weber*, 44 Mo. 547; *Cangot* v. *New Orleans*, 16 La. An. 21; *Nightingale's Case*, 11 Pick. (Mass.) 168; *Buffalo* v. *Webster*, 10 Wend. (N. Y.) 100; *Yates* v. *Milwaukee*, 12 Wis. 673; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Municipality* v. *Cutting*, 4 La. An. 335; *State* v. *Lieber*, 11 Iowa 407; *Dubuque* v. *Miller*, *Ib.* 583; *St. Paul* v. *Coulter*, 12. Minn. 41; *Atlanta* v. *White*, 33 Ga. 229; See further, note *d* to sub. 3 of sec. 466.

(*h*) The grant of a fair, merely with all the liberties and powers usually appertaining to such right does not give a right to take tolls. *Egremont* v. *Saul*, 6 A. & E. 924. A grant of a fair with an express grant of toll passes reasonable toll, though no toll be specified. *Stamford* v. *Pavlett*, 1 C. & J. 57. A toll of one penny for every pig is not necessarily an unreasonable toll. *Wright* v. *Bruister*, 4 B. & Ad. 116.

(*i*) The mode of giving public notice is not specified, but publication in some widely circulated newspaper in the locality would no doubt in this case be sufficient. See *Keckely* v. *Commissioners of Roads*, 4 McCord (S. Car.) 257.

Respecting Public Health. *Sec.* 466 (23).
" *Interments.* *Sec.* 466 (24, 25).
" *Gunpowder.* *Sec.* 466 (26).
" *Prevention of Fires.* *Sec.* 466 (27-40).
" *Removal of Snow, Ice, Dirt.* *Sec.* (466 41).
" *Obstruction of Roads and Streets.* *Sec.* 466 (42, 43).
" *Numbering Houses and Lots.* *Sec.* 466 (44, 45).
" *Naming Streets.* *Sec.* 466 (46).
" *Cellars.* *Sec.* 466. (47, 48).
" *Sewerage and Drainage.* *Sec.* 466 (49-52).
" *Transient Traders.* *Sec.* 466 (53).
" *User of Streets.* *Sec.* 466 (54).

By-laws may be made for—

466. The Council of every City, Town and incorporated Village (*a*) may pass by-laws for the following purposes:

Water.

Establishing, etc., public wells, reservoirs, etc.

1. For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of water, and for making reasonable charges for the use thereof, and for preventing the wasting and fouling of public water; (*b*) 36 V. c. 48, s. 384 (1).

(*a*) Counties and Townships are not included.

(*b*) A pure supply of water is an essential of health. See note *l* to sec. 464. Power to provide and regulate the supply of water is therefore a necessary Municipal power where public health is of public concern. *Ib.* The powers here conferred are:

1. For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of water;

2. For making reasonable charges for the use thereof;

3. For preventing the wasting and fouling of public water.

Running water is originally *publici juris*. *Williams* v. *Morland*, 2 B. & C. 910. All may reasonably use it who have a right of access to it. *Embrey* v. *Owen*, 6 Ex. 353. Water as it issues from a well or spring is not to be considered as produce of the soil. *Race* v. *Ward*, 4 E. & B. 702. A Corporation was empowered by statute to erect a reservoir near a river, and on completion to divert the waters of the river, discharging down the river seventy-five cubic feet of water per second for twelve hours of every working day. The Corporation began, but was prevented by the nature of the ground from completing the reservoir. They diverted the water, and discharged down the river more than its natural flow but less than the quantity required by the statute. Held, that riparian proprietors could at common law recover for any damage sustained

Markets, &c.

2. For establishing markets; (*c*) 36 V. c. 48, s. 384 (2). **Establishing markets.**

3. For regulating all markets established and to be established; (*d*) the places, however, already established as markets **Regulating markets.**

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by the diversion of the water, but could not recover for failure to comply with the statutory requirement. *Waller* v. *Manchester*, 6 H. & N. 667.

(*c*) Power to establish a market authorizes, as a necessary incident, the acquirement of land on which to erect market buildings. *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Caldwell* v. *Alton*, 33 Ill. 416; *People* v. *Lowber*, 28 Barb. (N.Y.) 65. So it is incident to the general power to decide on the cost, dimensions, etc. *Peterson* v. *New York*, N.Y. 449; *Smith* v. *Newbern*, 16 Am. 766; *Attorney-General* v. *Cambridge*, L. R. 6 E. & I. App. 303; but see also *Spaulding* v. *Lowell*, 23 Pick. (Mass.) 71, 80. The establishment of a market ought not to be in a public street. See note e to sub. 10 of sec. 465. Where the defendants leased to plaintiff the market fees of a wood market, established in one of the public streets of the city, covenanting against their own interference, &c. Held, that the market being fixed in a public highway, which is *prima facie* for purposes of public travel, the exercise of the rights incident to such market must be subordinate to the primary and principal purposes of the highway, and that plaintiff could not recover damages for interference by the user of the highwsy by the public. *Reynolds* v. *Toronto*, 15 U. C. C. P. 276. So long as the market is used, it is the duty of the Municipality to keep the same in a reasonable state of repair. *Savannah* v. *Cullens*, 38 Geo. 334; 2 Withrow 132. Where the lessee of market fees received fees as such, he cannot refuse to perform his contract with the Municipal Corporation on the ground that the latter had no power to erect the market. *The Board of Police of London* v. *Talbot*, 3 U. C. Q. B. 311.

(*d*) The regulation of fairs and markets has for a long time been the subject of Municipal control in England and the United States. See note *g* to sec. 465, sub. 10 (*b*). Regulation must of necessity include the appropriation of one or more parts of the market for one purpose, and other part or parts for other purposes; of providing, that free passage through the market be kept open for ready access to shops, stalls, or other places where different commodities are exposed for sale. *Per* Draper, C. J., in *Kelly* v. *Toronto*, 23 U. C. Q. B. 426. But the right, under the power to regulate, to restrict the sale of commodities to the public market is open to doubt. Some of the subsequent sub-sections expressly empower Municipal Councils to restrict the sale of commodities therein mentioned to the place established as a market place. From this it might be argued that, except as to the commodities mentioned, the power to restrict the sale to the market place does not exist. See *New Orleans* v. *Stafford*, 21 Am. 563. On the other hand, in some of the English statutes exemptions are made in favour of the sale in the owner's shop of certain commodities specified. From this it might be argued

Old markets continued.

in the Municipality, shall continue to be markets, and shall

that, except as to these, there was power to restrict sales to the market place. See *Howard* v. *Lupton*, L. R. 10 Q. B. 598. The general question is surrounded with difficulties. "The fixing of the place and times at which markets shall be held and kept open, and the prohibition to sell at other places and times, is among the most ordinary regulations of a City or Town Police, and would naturally be included in the general power to pass By-laws relative to the public markets. If the Corporation had not the power in question it is difficult to see what useful purpose could be effected or what object was intended by the grant of the power to pass laws relative to public markets. The mere regulation of the building and of the stalls of those who might choose to go there instead of elsewhere to sell their market provision would be an idle and useless power, and of no moment toward the good government of the village." *Per Car in Bush et al.* v. *Seabury*, 8 Johns. (N. Y.) 418; see also *Pierce* v. *Bartrum*, 1 Cowp. 269. The same doctrine is maintained in *Davenport* v. *Kelly*, 7 Iowa 102; *Buffalo* v. *Webster*, 10 Wend. (N. Y.) 160; *In re Nightingale*, 11 Pick. (Mass.) 168; *Raleigh* v. *Sorrell*, 1 Jones (N. Car.) 49; *Stokes* v. *New York*, 14 Wend. (N. Y.) 87; *LeClaire* v. *Davenport*, 13 Iowa 210. Such ordinances are sustained on the ground that they are not in restraint of trade, but in regulation of it. *Winsboro* v. *Smart*, 11 Rich. (S. Car.) Law, 551; see also *St. Louis* v. *Jackson*, 25 Mo. 37. But it has been held by equally good authority, that the power to regulate markets can only extend to the market limits, and that these limits cannot be made to extend throughout the city. *Peters* v. *The Board of Police of London*, 2 U. C. Q. B. 543; *Farquhar* v. *City of Toronto*, 10 U. C. C. P. 379; *Caldwell* v. *Alton*, 33 Ill. 416; see also *Dunham* v. *Rochester*, 5 Cow. (N.Y.) 462; *Shelton* v. *Mobile*, 30 Ala. 540; *St. Louis* v. *Webber*, 44 Mo. 547; *LeClaire* v. *Davenport*, 13 Iowa 210; *Davenport* v. *Kelly*, 7 Iowa 102; *Ash* v. *People*, 11 Mich. 347. So under an ordinance "to erect market houses, establish markets and market places, and provide for the government and regulation thereof," it was held that the Council had no power to fix upon one market place and prohibit all persons at all hours of the day from selling fresh meat elsewhere. *Bloomington* v. *Wahl*, 46 Ill. 489; *S. C.* 2 Withrow 150; see also *Bethune* v. *Hughes*, 28 Ga. 560; *St. Paul* v. *Laidler*, 2 Minn. 190; *St. Louis* v. *Webber*, 44 Mo. 547; *St. Paul* v. *Coulter*, 12 Minn. 41; *Rochester* v. *Pettinger*, 17 Wend. (N.Y.) 265. A By-law enacting "that no butcher or other person shall cut up or expose for sale any fresh meat in any part of the city, except in the shops and stalls in the public markets, or at such places as the Standing Committee on Public Markets may appoint," was held good by our Court of Queen's Bench. *In re Kelly and Toronto*, 23 U. C. Q. B. 425. This, in the same Court, was afterwards affirmed in *Fennell and Guelph*, 24 U. C. Q. B. 238, and treated as settled in that Court. *Snell and Belleville*, 30 U. C. Q. B. 91. The rule in the last case was in part discharged and in part made absolute; and although leave to appeal was given, inasmuch as the By-law was not quashed, no appeal could be had. C. S. U. C. c. 13, s. 28. The law of appeal has, in this particular, been since amended and extended. 34 Vict. cap. 11, (Rev. Stat. Ont., c. 38, s. 18 sub. (*c*). In England and Ireland most of the markets

retain all the privileges thereof until otherwise directed by

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are franchises, extending over the whole or greater part of the towns in which situate. *Cork* v. *Shinkwin*, Sm. & Bat. 395. And as the erection of a new market is *prima facie* injurious to an old one, there is, in the case of a market by prescription, the right to prevent the erection of a new market "within the common law distance of the old market." *In re Islington Market Bill*, 3 C. & F. 513. And in such cases there is the right, so long as there is room in the market for the sale of articles ordinarily sold there, to prevent sales elsewhere. *Prince* v. *Lewis*, 5 B. & C. 363; see further *Mosley* v. *Walker*, 7 B. & C. 40; *Mayor of Dorchester* v. *Ensor*, L. R. 4 Ex. 335; *McHole* v *Davis*, L. R. 1 Q. B. Div. 59. A right, by custom, to exclude persons from selling marketable articles in their shops on market days without the limits of the market, has, therefore, been held valid. *Macclesfield* v. *Pedley*, 4 B & Ad. 397. A sale, by sample, on a market day near to but without the limits of the market, has however, been held not to be a disturbance of the market, unless done designedly and with the intention to evade payment of toll. *Brecon* v. *Edwards*, 1 H. & C. 51. If the grantee of a market under letters patent from the Crown, suffers another to erect a market in his neighbourhood, and use it for the space of twenty-three years without interruption, he is, by such use, barred of his action for disturbance of the market. *Holcroft* v. *Heel*, 1 B. & P. 400. A market held in the same town with an old market, if held upon the same day, is a disturbance by intendment of law. *Dorchester* v. *Ensor*, L. R. 4 Ex. 335; but if held on a different day, is only evidence of disturbance. *Ib.* Some of the decisions under English market Acts may be here noticed. By a Market Act every person who shall sell or expose for sale at a any place within the limits of the Act (other than in the existing market place, or the market house or market places to be established under the Act, or in his own dwelling house, or in any shop attached to and being part of a dwelling house) any article in respect of which tolls are by the Act authorized to be taken, other than eggs, butter and fruit, was subjected to a penalty: Held, that a vessel moored to a wharf was not a shop within the meaning of the exemption. *Wiltshire* v. *Baker*, 11 C. B. N. S. 237. But to bring a case under the exemption of the Act, the shop need not be attached to any part of the dwelling house of the party himself. *Wiltshire* v. *Willett*, 11 C. B. N. S. 240; see further, *Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316; *S. C.* 10 B. & S. 309. In order to exempt from a penalty under this Act, a party must be shown to have sold the marketable articles in what is really his own private shop, and not in such a way as to constitute a different market from the legal one. *Pope* v. *Whalley*, 6 B. & S. 303; *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690; *Dowling* v. *Byrne*, L. R. 10 Ir. C. L. 135; *Dolan* v. *Kavanagh*, *Ib.* 166. A horse was held to be "an article" within the meaning of the statute. *Llandaff, &c., Market Co.* v. *Lynden*, 8 C. B. N. S. 515. A person who sold fruit and fish, which are marketable articles, from door to door, within the prescribed limits, was held not thereby to have incurred the penalty. *Caswell* v. *Cook*, 11 C. B. N. S. 637. A party who bought vegetables from a wholesale dealer in the market, who had previously paid fees thereon, and afterwards offered them for sale in the streets, was in a subsequent case held liable to fees. *Black* v.

competent authority; (*e*) and all market reservations or appropritions heretofore made in any such Municipality shall continue to be vested in the Corporation thereof; 36 V. c. 48, s. 384 (3).

Regulating vending in streets, etc.

4. For preventing or regulating the sale by retail in the public streets, or vacant lots adjacent thereto, (*f*) of any meat, vegetables, grain, hay, fruit, beverages, small-ware

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Sackett, 10 B. & S. 639. Upon the construction of a local Act establishing a market for corn, &c., in the city of Cork and its suburbs, it was held that fees were not leviable upon a sale made in the vendor's own house within the city of corn then being outside of the city and its suburbs. *Webber* v. *Adams*, 5 Ir. C. L. R. 146.

(*e*) Authority to establish and regulate markets is a continuing power. Its exercise at one period by establishing a market place and erecting a market house in a particular locality will not prevent the Municipal Council from removing such building or abandoning such locality for market purposes. *Gall* v. *Cincinatti*, 18 Ohio St. 563. Where according to the grant of a market it was to be held in a town, the grantee might from time to time remove the place for holding it according to the convenience of the inhabitants for the time being. *Dixon* v. *Robinson*, 3 Mod. 108; *Curwen* v. *Salkeld*, 3 East. 538; *The King* v. *Cotterill*, 1 B. & Al. 67; *Wortley* v. *The Nottingham Local Board*, 21 L. T. N. S. 582. And this applies, although the limits of the Town be afterwards extended and the market established within the extended limits. *Mayor, &c., of Ilorchester* v. *Ensor*, L. R. 4 Ex. 335. But this is subject to the rights of any persons owning property adjoining the site of the old market. *Ellis* v. *The Corporation of Bridgenorth*, 4 L. T. N. S. 112; 2 Johns. & H. 67; 15 C. B. N. S. 52.

(*f*) There cannot be much doubt as to the meaning of this subsection. Besides the word "regulate," used in the previous sub-section, it has the word "prevent." There is a great difference between restraint and regulation. *Green* v. *Mayor of Durham*, 1 Burr. 127, 131; *Andrews* v. *The State*, 8 Am. 8, 15. One can readily understand why there should be power to prevent the sale of the articles mentioned "in the public streets." See note c to sub. 2 of this section. One can also suggest a good reason why sales should not be in "vacant lots adjacent thereto." See *Nightingale Petitioner, &c.*, 11 Pick. (Mass.) 168; *Commonwealth* v. *Rice*, 9 Metc. (Mass.) 253; *Shelton* v. *Mobile*, 30 Ala. 540; *Wartman* v. *Philadelphia*, 33 Pa. St. 202. But the question still remains, whether there is power to prevent the sale of the articles named in ordinary shops in the Municipality. A By-law enacting "that no person should expose for sale any meat, fish, poultry, eggs, butter, cheese, grain, hay, straw, cordwood, shingles, lumber, flour, wool, meat, vegetables or fruit (except wild fruit), hides or skins, within the town, at any place but the public market, without having first paid the market fee thereon as therein provided, except all hides and skins from animals slaughtered by the licensed butchers of the Corporation holding stalls in the market," was held bad. *In re Fennell and Guelph*, 24 U. C. Q. B. 238.

and other articles offered for sale; (*g*) 36 V. c. 48, s. 384 (4).

5. For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed; (*h*) 36 V. c. 48, s. 384 (5). Regulating sales, etc.

6. For regulating the place and manner of selling (*i*) and weighing grain, meat, vegetables, fish, hay, straw, fodder, wood, lumber, shingles, farm produce of every description, smallware and all other articles exposed for sale, (*j*) and the fees to be paid therefor; (*k*) and also for preventing criers Sale of grain, butchers' meat, farm produce, small ware, etc.

(*g*) "And *other* articles offered for sale." This is so indefinite as to leave a doubt as to what is meant. Such a provision should be more certain in its terms. Probably the general words will be controlled by the particular words which precede them. See note *r* to sec. 452.

(*h*) "Preventing or regulating the buying and selling of *articles or animals* exposed for sale or marketed." It is in the first place, assumed that an "animal" is not "an article." Then the power is to *prevent* as well as regulate the buying and selling of articles *and* animals. It is difficult to say what the Legislature meant by the use of language so indefinite in a matter of such importance to every community. "The power to prevent or regulate the buying and selling of articles exposed for sale or marketed is more extensive than the Legislature could *probably* have intended to give, and would, if literally exercised, cover almost any enactment." *Per* Wilson, J., in *Snell and Belleville*, 30 U. C. Q. B. 91.

(*i*) This is the first subsection that provides for regulating "the *place* and manner." Power to regulate the place has, by the Court of Queen's Bench here, had been held to include the power to restrict sales to a place such as the market. See note *d* to sub. 3 of this section.

(*j*) And all other articles. See note *g supra*.

(*k*) A By-law prohibiting any person bringing produce, articles, commodities, or things to a city market from selling or offering the same for sale within the city limits on their way to market, or without having paid market toll, and before offering such things for sale in the market, was held bad. *Kinghorn and Kingston*, 26 U. C. Q. B. 130. "The statute gives no authority for the passing of a By-law of so wide and general a character as the one now in question, or containing such conditions as it does. The provisions of the statute are specific and limited, and the By-law should be restricted in its operation to the purposes and articles mentioned in the different subsections; and by doing so, the very proper object the Municipality had in view would have been effected. *Per* Morrison, J., *Ib.* 134. The same Court afterwards held that a By-law that "no person shall buy, sell or offer for sale any game, fish, poultry, eggs, butter, cheese, grain, vegetables or fruits exposed for sale or marketed within the town *until* the seller has paid the market fees required by

and vendors of smallware from practising their calling in the market, public streets and vacant lots adjacent thereto; (*l*) 36 V. c. 48, s. 384 (6).

Preventing forestalling, etc.

7. For preventing the forestalling, regrating or monopoly (*m*) of market grains, wood, meats, fish, fruits, roots, vegetables, poultry and dairy products, eggs and all articles required for family use, and such as are usually sold in the market; 36 V. c. 48, s. 384 (7).

Regulating hucksters, etc.

8. For preventing and regulating the purchase of such

By-law No. 161, or has obtained a ticket from the Collector of Tolls of the market of the town, as provided in the 27th section of By-law No. 161, and before the hour of nine o'clock in the forenoon during the months of June, July and August, and ten o'clock during the rest of the year," was good. *In re Snell and Belleville*, 30 U. C. Q. B. 81, 92. There had been some changes in the law between the two decisions, but whether sufficient to cause such a change in the decisions may be a question. A person brought sheep to a public house forty yards out of the limits of a market, left them there, went into the market in search of customers, whom he took to the public house, and there sold the sheep. *Held*, a fraud on the market, for which the seller was liable to an action by the lessee of the market. *Bridgland* v. *Shafter*, 5 M. & W. 375; see further, *Brecon* v. *Edwards*, 1 H. & C. 51; *Blakey* v. *Dinsdale*, 2 Cowp. 661.

(*l*) See note *f* to sub. 4 of this section.

(*m*) Engrossing or regrating is a common law offence. *The King* v. *Waddington*, 1 East. 143. It applies only with respect to the necessaries of life. *Pettamberdas* v. *Thackoorseydass*, 7 Moore, N. C. 239. Where several incorporated companies and individuals, engaged in the manufacture of salt, entered into an agreement whereby it was stipulated that the several parties agreed to combine and amalgamate under the name of "The Canadian Salt Association," for the purpose of successfully working the business of salt manufacture, and which provided that all parties to it should sell all salt manufactured by them through the trustees of the association and not otherwise, it was held that the agreement was a valid one, and not void as against the old common law offence of engrossing. *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant, 540. "I must conclude that long usage has brought about such a change in the common law since the decision in *The King* v. *Waddington*, that even if it could be said that the object of the parties to the agreement in question here was to enhance the price of salt, the contract would be neither illegal nor against public policy." Per Strong, V. C., *Ib.* 543. A By-law that "no person shall forestall, regrate or monopolize any market grains, meats, fish, fruits, roots, vegetables, poultry and dairy products within the Town," was held good, because it repeats "*the obsolete English provisions*" enacted in the section, and "*does nothing more.*" *In re Snell and Belleville*, 30 U. C. Q. B. 92; see further, *In re Fennell and Guelph*, 24 U. C. Q. B. 238.

things by hucksters, grocers, butchers or runners; (*n*) 36 V. c. 48, s. 384 (8).

9. For regulating the mode of measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, coal and other fuel; (*o*) 36 V. c. 48, s. 384 (9). **Measuring, etc., certain articles.**

(*n*) A By-law that no butcher, huckster or runner should, between certain hours of the day, buy or contract for any kind of fresh meat or provisions, such as are usually sold in the market, "on the roads, streets, &c., within the town, *or within one mile distant therefrom*," was held bad. *In re McLean and St. Catharines*, 27 U. C. Q. B. 603. "Such a By-law is quite inconsistent with the rights and jurisdiction of the neighbouring Municipality." *Per* Morrison, J., *Ib.* 604; also so held *In re Snell and Belleville*, 30 U. C. Q. B. 81. A By-law "that before 10 a. m. during May, June, July and August no huckster, butcher, dealer, trader, runner, agent or retailer, or any other person purchasing for export or to sell again, should buy, bargain for, engage, or offer to buy any article of household consumption, brought to the market, excepting pork, grain, flour, meal or wool," was, except as to *hucksters* and *runners*, held bad. *In re Fennell and Guelph*, 24 U. C. Q. B. 238. The foregoing were decisions under 29 & 20 Vict. cap. 51, s. 296, sub. 12. That section was afterwards amended by the addition of the word "butchers" (31 Vict. cap. 30, sec. 32, Ont.), and again by striking out the words "living within the Municipality, or within one mile from the outer limits thereof. 34 Vict. cap. 30, s. 2, Ont.

(*o*) A By-law to the effect that every person selling meat or articles of provision by retail, whether by weight, count or measure, should provide himself with scales, weights and measures, but that no spring balance, spring scale, spring steelyards, or spring weighing machine should be used for any market purpose, was held valid. *In re Snell and Belleville*, 30 U. C. Q. B. 81. By-laws requiring the weighing or measurement of goods before sale are a valid exercise of Municipal power, and are not illegal as in restraint of trade. *Raleigh* v. *Sorrell*, 1 Jones, (N.C.) 49; *Stokes* v. *New York*, 14 Wend. (N.Y.) 87; *Paige* v. *Fazackerly*, 36 Barb. (N. Y.) 392; *New York* v. *Nichols*, 4 Hill. (N.Y.) 209; *Yates* v. *Milwaukee*, 12 Wis. 673; *Tinkham* v. *Tapscott*, 17 N. Y. 147; *Chicago* v. *Quimby*, 38 Ill. 274; *Briggs* v. *A Light Boat*, 7 Allen (Mass.) 287; *Frazier* v. *Warfield*, 13 Md. 279. So the establishment of public weighing scales for hay. *Goss* v. *Corporation*, 4 Sneed (Tenn.) 62; *Yates* v. *Milwaukee*, 12 Wis. 673. Upon the conviction of a railway company under the English statute 5 & 6 Will. IV. ch. 63, sec. 28, for having in their possession a weighing machine which, upon examination thereof, duly made by the Inspector of Weights and Measures, was found to be incorrect; *Held*, that a machine which, from its construction, was liable to variation from atmospheric and other causes, and required to be adjusted before it was used, was not incorrect upon examination within the meaning of the statute, if examined by the Inspector before it had been adjusted. *London and North Western R. W. Co.* v. *Richards*, 2 B. & S. 326. But a weighing machine which has become out of order so as to weigh untruly, is an incorrect

Penalties for light weight, etc.

10. For imposing penalties for light weight or short count, or short measurement in any thing marketed; (*p*) 36 V. c. 48, s. 384 (10). *See ante* s. 454 (18).

Regulating vehicles used in in market vending.

11. For regulating all vehicles, vessels, and all other things in which anything is exposed for sale or marketed, and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid; (*q*) 36 V. c. 48, s. 384 (11).

Assize of bread, etc.

12. For regulating the assize of bread, and preventing the use of deleterious materials in making bread; and for providing for the seizure and forfeiture of bread made contrary to the by-law; (*r*) 36 V. c. 48, s. 384 (12). *See ante*, s. 454 (18).

Sale of meat distrained.

13. For selling, after six hours' notice, butchers' meat distrained for rent of market-stalls; (*s*) 36 V. c. 48, s. 384 (13).

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weighing machine within the meaning of that statute, although, by making an allowance for the error, the weight of the article could be ascertained truly by it. *Great Western R. W. Co.* v. *Bailie*, 5 B. & S. 928. Scales having shot placed within a ball, which shot may be removed at pleasure, renders the scale an improper instrument of adjustment within the meaning of that statute. *Carr* v. *Stringer*. L. R. 3 Q. B. 433. A spring balance unjust to the *seller* is not within the statute, which is for the protection of the public when purchasing. *Brooke* v. *Shadgate*, L. R. 8 Q. B. 352.

(*p*) See previous note.

(*q*) This does not authorize the imposition of tonnage dues on scows, crafts, rafts, railway cars, &c., coming into the Municipality merely because they contain firewood, though such firewood may have been brought into the Municipality for the purpose of being exposed or offered for sale or marketed for consumption within the Municipality. *In re Campbell and Kingston*, 14 U. C. C. P. 285. What the statute authorizes is the regulating the vehicles, vessels, &c., in which anything *is exposed for sale* or marketed, and for imposing a reasonable duty thereon. When the commodity is exposed for sale, the power to impose the duty, if it is really given, arises, and if it be intended to impose the duty on the vehicle or vessel, it must be on that in which the article is exposed for sale or marketed in any street or public place. The Legislature never contemplated that, under pretence of passing a By-law to regulate markets, any Municipal Corporation should have the power of levying a tax on the general commerce of the country merely because a particular Town or City happened to be the place where forwarders are in the habit of transhipping commodities from one description of craft to another, and where merchants frequently contract that certain articles in which they deal, shall be delivered, in view of this very practice of transhipment. *Ib.*

(*r*) See note *l* to sub. 18, of sec. 454.

(*s*) Trespass lies for setting tables on a market place for the sale of

Tainted Meat.

14. For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food; (*t*) 36 V. c. 48, s. 384 (14). Tainted provisions.

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goods without the permission of the owners. *Norwich* v. *Swann*, 2 W. Bl. 1116; see *Doe St. Julian, Shrewsbury*, v. *Cowley*, 1 C. & P. 123. Permission of the owners must therefore be first obtained. *Northampton* v. *Ward*, 2 Str. 1238. Stallage is the payment due to the owners of a market in respect of the exclusive occupation of a portion of the soil. *Yarmouth* v. *Groom*, 1 H. & C. 102; see also, *The Queen* v. *Casswell*, L. R. 7 Q. B. 328. The question what constitutes a stall is a question of fact for a jury. *Ib.* A Court of Equity will require the right of stallage to be decided at law before granting an injunction to restrain a Corporation from interfering with such rights of stallage where the right is not admitted by the Corporation. *Ellis* v. *Bridgnorth*, 2 Johns. & H. 67; *S. C.* 4 L. T. N. S. 112. An action at law will lie by the owners of a market for stallage. *Newport* v. *Saunders*, 3 B. & Ad. 411. This sub-section appears to authorize a distress for rent and a sale after six hours' notice. It is presumed that before any distress can be justified the relation of landlord and tenant must exist. *Woelpper* v. *Philadelphia*, 38 Pa. St. 203; *Dubuque* v. *Miller*, 11 Iowa, 503. The relation of landlord and tenant at a rent certain of a corporeal hereditament gives the right of distress at common law; but at common law there was no right to sell a distress which was looked upon as a mere pledge for payment of rent. The statute 2 W. & M. sess. 1, ch. 5, sec. 2, which provided that after the goods distrained have been appraised, the landlord "shall and may lawfully sell the goods and chattels so distrained, for the best price that can be gotten for the same," &c., at the same time provided that the sale should not be made until *after the expiration of five days* from the seizure. This restriction in the case of butchers' meat is, for obvious reasons, removed, and power given to sell "after six hours' notice." A By-law requiring a butcher, before getting a stall, to procure a license and pay a fee, is bad. *In re Snell and Belleville*, 30 U. C. Q. B. 81.

(*t*) Knowingly to expose for sale in a public market meat which is not fit for human food is indictable. *Regina* v. *Stevenson*, 3 F. & F. 106; so knowingly taking unfit meat to public market for sale. *The Queen* v. *Jarvis*, *Ib.*, 108; but in either event the knowledge of the unfitness of the food is essential to the creation of the offence. *Regina* v. *Crawley*, *Ib.*, 109; the offence is a nuisance at common law. *Shillito* v. *Thompson*, L. R. 1 Q. B. Div. 12; each single act of exposure of tainted meat is a distinct offence. *In re Hartley*, 31 L. J. M. C. 232. A salesman who sells in a public market meat which is afterwards found to be unfit for human food, but which he has no means of knowing or reason to suspect was other than good and wholesome meat, is not liable to an action upon an implied warranty or for money had and received. *Emmerton* v. *Mathews*, 7 H. & N. 586; but a person who sends animals destined for human food to a public market for sale, impliedly represents that they are, so far as he knows, not infected with any contageous disease dangerous to animal

Nuisances.

Abatement of nuisances.

15. For preventing and abating public nuisances; (*u*) 36

life. *Wards* v. *Hobbs*, L. R. 2 Q. B. Div. 331. A condition of sale that they are to be "taken with all faults," does not negative or qualify this representation. *Ib.* It has been held that the City authorities may, under their general powers to regulate markets, require oysters, which have a great tendency to putrefaction, to be sold at certain designated stands, and prevent their being sold elsewhere. *Municipality* v. *Cutting*, 4 La. An. 335; *Morano* v. *Mayor*, 2 La. An. 218. But if any meat, poultry, fish, or other articles of food become so far tainted as to be unwholesome, express power is given here for the passage of By-laws providing for their seizure and destruction. Such a power, though an extreme one, is perfectly legal. See note *n* to sub. 10 of sec. 461.

(*u*) The power is to *prevent* and *abate* public nuisances. The Act does not authorize the suppression of a nuisance so called which is not in itself unlawful, *i. e.*, the prevention of persons called runners or guides from exercising their calling in a Town. *Re Davis and Clifton*, 8 U. C. C. P. 236. The nuisances intended are of two kinds: public or common nuisances, which affect people generally, and private nuisances, which may be defined as anything done to the hurt of the lands, tenements or hereditaments of another. Russell on Crimes, 4th Ed. 435. That which affects only three or four persons is a private and not a public nuisance. *The King* v. *Lloyd*, 4 Esp. 200. The mere declaration by a City Council that a structure is a public nuisance does not make it so, unless it in fact have that character. *Per* Miller, J., in *Yates* v. *Milwaukee*, 10 Wall. (U. S.) 497; see also *Underwood* v. *Green*, 42 N. Y. 140; *Crosby* v. *Warren*, 1 Rich. Law (S. Car.) 385; *Roberts* v. *Ogle*, 30 Ill. 459; *Salem* v. *Railroad Co.*, 98 Mass. 431; *Dingley* v. *Boston*, 100 Mass. 544; *Lake View* v. *Letz*, 44 Ill. 81; *Vandyke* v. *Cincinnati*, 1 Disney 532; *Wreford* v. *People*, 14 Mich. 41; *State* v. *Jersey City*, 5 Dutch (N. J.) 170; *Welch* v. *Stowell*, 2 Doug. (Mich.) 332; *Kennedy* v. *Board of Health*, 2 Pa. St. 366; *Green* v. *Savannah*, 6 Ga. 1; *Clark* v. *Mayor*, 13 Barb. (N. Y.) 32; *Saltonstall* v. *Banker*, 8 Gray (Mass.) 195. The term "nuisance" is well understood, and means literally annoyance—anything that worketh hurt. *The King* v. *White*, 1 Burr. 333; *The King* v. *Davey*, 5 Esp. 217; *Burditt* v. *Swenson*, 17 Tex. 489. It is not necessary to constitute a nuisance to shew that the smell, &c., produced should be unwholesome. It is enough if it renders the enjoyment of life and property uncomfortable. *Per* Lord Mansfield, in *The King* v. *White et al.*, 1 Burr. 337; see also *The King* v. *Neill*, 2 C. & P. 485; *The State* v. *Rankin*, 16 Am. 737; *St. Helens Chemical Co.* v. *Corporation of St. Helens*, L. R. 1 Ex. Div. 196; *Campbell* v. *Seaman*, 20 Am. 567. "If there be smells offensive to the senses, that is enough, as the neighbourhood has a right to fresh and pure air." *Per* Abbott, C. J., *The King* v. *Neill*, 2 C. & P. 485. "The only question therefore, is, is the business (slaughter house), as carried on by the defendant, productive of smells to persons passing along the public highway." *Ib.* A By-law providing "that no person shall keep a slaughter house within the city without a special resolution of the Council" is bad,

V. c. 48, s. 384 (15).

tending to create a monopoly. *In re Nash and McCracken*, 33 U. C. Q. B. 181. So a By-law imposing a fine upon every person "who shall keep or suffer to be kept, any swine within the said borough from 1st February to 31st October inclusive, in any year. *Everett* v. *Grapes*, 3 L. T. N. S. 669. A resolution of Council or license from the Corporation is no defence to a prosecution for a public nuisance. *The King* v. *Cross*, 2 C. & P. 483. "This certificate is no defence; and even if it were, a license from all the Magistrates in the County to the defendant to slaughter horses in this very place, it would not entitle the defendant to continue the business there one hour after it became a public nuisance to the neighbourhood." *Per* Abbott, C. J., *Ib.* 484. "If the defendant's slaughtering house was so conducted as to be a public nuisance at common law, the Parish might at any time have caused it to be removed; and I am clearly of opinion that in this case it was so conducted as to be a nuisance at common law, and that the defendant would not have been and is not entitled to any compensation." *Per* Abbott, C. J., in *The King* v. *Watts*, 2 C. & P. 486, 488. It was in this case proved that smells proceeded from the slaughter house which were a great nuisance to persons passing along the public highway. *Ib.* If a certain noxious trade is already established in a place remote from habitation and public roads, and persons afterwards come and build houses within reach of its noxious effects, or if a public road be made so near to it that the carrying on of the trade become a nuisance to the persons using the road, in those cases the party would be entitled to continue his trade, because his trade was legal before the erection of the houses in the one case, and the making of the road in the other. *Per* Abbott, C. J., in *The King* v. *Cross*, 2 C. & P. 484. But if the man so situated increase the nuisance by the manner or extent to which he carries on the trade, he is liable to indictment. *The King* v. *Watts*, M. & M. 281; *The King* v. *Neville*, 1 Peake 92. In countries, however, where great works are carried on, which are the means of developing national wealth persons must not stand on extreme rights. *Bamford* v. *Turnley*, 3 B. & S. 62-66; *Tipping* v. *St. Helen's Smelting Co.*, 4 B. & S. 608; *S. C.* 11 H. L. C. 642; *Gaunt* v. *Fynney*, L. R. 8 Ch. Ap. 8; *Harrison* v. *Good*, L. R. 11 Eq. 338; *Salvin* v. *North Branchepeth Canal Co.*, L. R. 9 Chy. 705; *Ball* v. *Ray*, L. R. 8 Chy. 467; *Broder* v. *Saillard*, L. R. 2 Ch. Div. 692; *Adams* v. *Michael*, 17 Am. 516. The power to abate a public nuisance is a portion of police authority necessarily vested in the Corporations of all public towns. *Per* Buchanan, J., in *Kennedy* v. *Phelps*, 10 La. An. 227; see also *Gregory* v. *Railroad Co.*, 40 N. Y. 273. But a private individual cannot justify damaging the property of another on the ground that it is a public nuisance unless it do him a special and particular injury. *Dimes* v. *Petley*, 15 Q. B. 276. *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96; *The Mayor, &c., of Scarborough* v. *Rural Sanitary Authority of Scarborough*, L. R. 1 Ex. Div. 344; *State* v. *Parrott*, 17 Am. 5. A distinction must be drawn between a house which is a nuisance *per se*, and one that is only a nuisance by reason of its use or abuse. In the latter case there is no legal right to destroy the property. See note *l* to sub. 28 of sec. 461. In several parts of England public slaughter

Privy vaults. 16. For preventing or regulating the construction of privy vaults; (*v*) 36 V. c. 48, s. 384 (16).

houses are established, under a provision that "no person shall slaughter any cattle or dress any carcass for sale as food for man, in any place within the limits other than a slaughter house." It was held that the enactment only applied to the slaughtering of beasts intended by the person slaughtering the same for sale for human food. *Elias* v. *Nightingale*, 8 E. & B. 698; see further, *Anthony* v. *The Brecon Markets Company*, L. R. 2 Ex. 167; reversed, L. R. 7 Ex. 399. An indictment will lie for a public nuisance; but not for a private nuisance. *The King* v. *Atkins*, 3 Burr. 1706. That which is not of public concern is a mere civil injury. *The King* v. *Storr*, 3 Burr. 1698; *The King* v. *Johnson*, 1 Wils. 325. The non-repair of a private road, even by a public body, is not indictable. *The King* v. *Richards*, 8 T. R. 634; *The King* v. *Trafford*, 1 B. & Ad. 874. The writ *quod permittat* lay at common law to prostrate a public nuisance. *Palmer* v. *Poultney*, 2 Salk. 458; and after judgment on an indictment for a nuisance, a writ of prostration may still be issued. *The King* v. *Newdigate*, Comb. 10; *Houghton's Case*, Sir T. Boyd, 215; Vin. Abr. "Nuisance," A. *Ib.* "Chemin;" Fitz. Nat. Brev. 124; *The Queen* v. *Haynes*, 7 Ir. L. R. 2. An action on the case will lie for the continuance of a nuisance after recovery for its erection. *Rosewell* v. *Prior*, 1 Salk. 460. Though an indictment for a nuisance is in form a criminal, it is in substance a civil proceeding remedial in its object. *The King* v. *Sadler*, 4 C. & P. 218; *Holmes* v. *Wilson*, 10 A. & E. 503; *In re Douglass*, 3 Q. B. 825; *Thompson* v. *Gibson*, 7 M. & W. 456; *The Queen* v. *Chorley*, 12 Q. B. 515; *The King* v. *Russell*, 3 E. & B. 942; *The Queen* v. *Loughton*, 3 Smith, 575; *The Queen* v. *Lincomb*, 2 Chit. 214. Upon an indictment for a continuing nuisance—such as a wall across a highway—the proper judgment is, that it be abated. *The King* v. *Stead*, 8 T. R. 142; *The King* v. *Yorkshire*, 7 T. R. 467; and when the Court is satisfied before judgment that a nuisance has been abated, the judgment need not be pronounced. *The King* v. *Inckedon*, 13 East. 164; *The Queen* v. *Paget*, 3 F. & F. 29. The practice followed is to respite judgment until it be seen whether or not the nuisance is abated, and if not to inflict a heavy fine to compel the abatement. *Ib.* There may be an indictment for the continuance of a nuisance. *The Queen* v. *Maybury*, 4 F. & F. 90, and in such a case the former judgment is conclusive that the *locus in quo* was a highway, and that the erection upon it was a nuisance. *Ib.* This being so, upon proof of the continuance of the nuisance, the jury must find the defendant guilty. *Ib.* See further, *Regina* v. *Jackson*, 40 U. C. Q. B. 290. The defendant is not liable to costs where the indictment is removed into Court by the prosecutors. *Ib.* In such a case, however, the Court after imposing a fine, ordered that one third of the fine should go to the prosecutors, and suggested that the government might, on application, order the remaining two-thirds to be paid to them, the whole fine being less than the amount of costs incurred. *Ib.* Where the defendant removes the indictment and so becomes liable to pay costs in the event of conviction, the Court, upon being satisfied that the nuisance had been abated, may impose a nominal fine only. *Regina* v. *Cooper*, 40 U. C. Q. B. 294.

(*v*) See sub-s. 49 of this section and notes thereto.

17. For preventing or regulating the erection or continuance of slaughter houses, gas works, tanneries, distilleries or other manufactories or trades which may prove to be nuisances; (*w*) 36 V. c. 48, s. 384 (17). Slaughter houses, etc.

18. For preventing the ringing of bells, blowing of horns, shouting and other unusual noises, in streets and public places; (*x*) 36 V. c. 48, s. 384 (18). Preventing noises.

(*w*) There is no doubt that certain manufactories or trades may be public nuisances. The difficulty is to define them. Much depends upon location, use, and other surrounding circumstances. *Aldrich* v. *Howard*, 7 Rh. Is. 87; *Burditt* v. *Swenson*, 17 Tex. 489; *Dargon* v. *Waddell*, 9 Ire. Law (N. Car.) 244; *Kirkman* v. *Handy*, 11 Hump. (Tenn.) 406; *Coker* v. *Birge*, 10 Ga. 336; *Tipping* v. *St. Helens Smelting Co.*, 4 B. & S. 608. Slaughter houses, see *The King* v. *Watts*, 2 C. & P. 486; *Elias* v. *Nightingale*, 8 E. & B. 698; *Anthony* v. *Brecon Markets Co.*, L. R. 2 Ex. 167; *S. C.* L. R. 7 Ex. 399; *Dubois* v. *Budlong* 10 Bosw. (N. Y.) 700; gas works, *Cleveland* v. *Gas Light Co.*, 20 N. J. Eq. 201; tanneries and distillieries are here instanced. To these may be added, in populous places a pig-sty, *Commissioners* v. *Van Sickle*, Bright (Pa.) 69; brick-making, *Wanstead* v. *Hill*, 13 C. B. N. S. 479; *Bamford* v. *Turnley* 3 B.& S. 62; a planing mill, *Rhodes* v. *Dunbar*, 57 Pa. St. 274; powder house, *Cheatham* v. *Shearn*, 1 Swan. (Tenn.) 213; *Durnesnil* v. *Dupont*, 18 B. Mon. (Ky.) 800; a dangerous building, *Nolin* v. *Major*, 4 Yerg. (Tenn.) 163: *Harvey* v. *Dewoody*, 18 Ark. 252; spirit of sulphur or oil of vitriol works, *The King* v. *White*, 1 Burr. 333. The power conferred by this section is to pass By-laws for "preventing" or "reglating" the erection or continuance of such nuisances. A By-law declaring that "no person shall keep a slaughter house within the city without the special resolution of the Council," was held to be void, because it permitted favouritism by the Council, and might be used in restraint of trade or used to grant a monopoly. *In re Nash and McCracken*, 33 U. C. Q. B. 181; but see *Inhabitants of Watertown* v. *Mayo*, 12 Am. 694; see further, *Hughes* v. *Trew*, 36 L. T. N. S. 585.

(*x*) Ringing of bells, blowing of horns, and other *unusual* noises, are here treated as nuisances. They may or may not be nuisances, according to circumstances. It is in the power, however, of the Corporation at any time to treat all such, when in streets and public places, as nuisances, and prevent them. It is difficult to describe, though easy to imagine, such "an unusual noise" as would be a nuisance. Some examples may, however, be given. The noise of a tinsmith in carrying on his trade, if in a neighbourhood where there is a number of offices, and of sufficient magnitude to prevent the occupants from following their lawful business, will, if it affect a considerable number of inhabitants, be deemed a public nuisance. *The King* v. *Lloyd*, 4 Esp. 200. Knocking at a door or ringing a door-bell at night, where the noise is so great as to disturb not only the owner of the house and his family, but his neighbours may be "wilful and wanton" within the meaning of Eng. Stat. 10 & 11 Vict. cap. 89, s. 28, although the man who was guilty of it had been instructed to deliver papers at the house. *Clarke* v. *Hoggins*, 11

Firing of guns, etc.

19. For preventing or regulating the firing of guns or other fire-arms; and the firing or setting off of fire balls, squibs, crackers or fire-works, and for preventing charivaries and other like disturbances of the peace; (*y*) 36 V. c. 48, s. 384 (19).

Vacant Lots.

Vacant lots.

20. For causing vacant lots to be properly enclosed; (*z*) 36 V. c. 48, s. 384 (20).

Driving upon Sidewalks.

Driving, etc.,

21. For preventing the leading, riding or driving of horses

C. B. N. S. 544. A circus, the performances in which were to be carried on for eight weeks near the plaintiff's house, and the performances, which took place every evening, lasted from about half-past seven till half-past ten o'clock. The noise of the music and shouting in the circus could be distintly heard all over the house, and was so loud that it could be heard above the conversation in the dining-room, though the windows and shutters were closed. This was held to be a nuisance. *Inchbald* v. *Robinson*, L R. 4 Ch. App. 388. If a man builds a rolling mill close to inhabited cottages, so that the vibration produced by the hammers cracks the walls of the cottages, and the noise of the mill causes them to become and remain uninhabitated, the rolling mill will be a nuisance. *Scott* v. *Frith*, 4 F. & F. 349; *S. C.* 10 L. T. N. S. 240.

(*y*) A shooting ground near a public highway, where persons come to shoot with rifles at pigeons, targets, &c., may be a nuisance. *The King* v. *Moore*, 3 B. & Ad. 184. So, by means of powder, working stone quarries near the public streets and dwelling houses. *The Queen* v. *Mutters*, 10 Cox 6. Fog signals were held to be within the term fire-works, as used in Eng. Stat. 23 & 24 Vict. cap. 139. *Bliss* v. *Lilley*, 3 B. & S. 128. A schoolmaster who permitted an infant pupil under his care to make use of fire-works, was held responsible in an action for the mischief which ensued. *The King* v. *Ford*, 1 Stark. 421. A. made fire-works and kept them for sale in a house situate on a public street. In his absence, by negligence or accident, a fire took place among the materials of the fire-works, which set light to a rocket and caused it to fly across the street and set fire to a house, in which was a person who was burned to death: Held, that the keeping the fire-works was too remotely the cause of the death to render A. amenable in a charge of manslaughter. *The Queen* v. *Bennett*, 4 Jur. N. S. 1088; *S. C.* Bell C. C. 1. A defendant sued for fire-works cannot, under a plea of never indebted, object that the sale of fire-works is illegal. *Fenwick* v. *Laycock*, 1 Q. B. 414.

(*z*) "Vacant lots of *land*" are here intended, though not so expressed, and which in Cities and Towns are often made receptacles of nuisances. Hence the power to direct them "to be properly enclosed."

or cattle upon sidewalks or other places not proper therefor; (*a*) 36 V. c. 48, s. 384 (21). upon sidewalks.

Importuning Travellers.

22. For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding house, or for regulating persons so employed; (*b*) 36 V. c. 48, s. 384 (22). Importuning travellers.

Public Health.

23. For providing for the health of the Municipality, and against the spreading of contagious or infectious diseases; (*c*) 36 V. c. 48, s. 384 (23). *See also, Rev. Stat.* c. 190. Public health.

(*a*) A sidewalk is that portion of a highway which pedestrians have a lawful right to use. *Bacon* v. *Boston*, 3 Cush. (Mass.) 174; *Bloomington* v. *Bay*, 42 Ill. 503; *Wallace* v. *New York*, 2 Hill (N.Y.) 440; *Hall* v. *Manchester*, 40 N. H. 110; *Raymond* v. *Lowell*, 6 Cush. (Mass.) 524; *Hart* v. *Brooklyn*, 36 Barb. (N. Y.) 226. The right of the public so to use sidewalks makes it the duty of the Municipal authorities to see that horses or cattle should not be led, ridden or driven on the sidewalks. See *Commonwealth* v. *Curtis*, 9 Allen (Mass.) 266. Indeed, an awning over a sidewalk may be removed by the authority of the Corporation. *Pedrick* v. *Bailey*, 12 Gray (Mass.) 161; see generally, *Noyes* v. *Ward*, 19 Con. 250-270; *Clarke* v. *McCarthy*, 1 Cal. 453.

(*b*) Persons, commonly called runners, are often employed to solicit people to travel in or employ a particular vessel or vehicle, or to go to a particular hotel, tavern or boarding-house. They are not at all times the best behaved of men; and in their eagerness to serve their masters, if not restrained, become a nuisance to the travelling public. Power is here conferred either to prevent or regulate them importuning travellers "in streets or public places." See note *r* to sub. 33 of sec. 461.

(*c*) It is indictable to bring a glandered horse into a public place to the danger of infecting the people there. *Reyina* v. *Henson*, 1 Dears. C. C. 24. So it is indictable needlessly to expose in a public street a child afflicted with small pox. *The King* v. *Vantandillo*, 4 Mau. & S. 73; *The King* v. *Burnett*, *Ib.* 272. But a person sick, even with a contagious disease, at his own house or at an hotel, is not a nuisance. *Boone* v. *Utica*, 2 Barb. (N.Y.) 104. A medical man who sends a patient suffering from an infectious disease to a fever hospital directing him to walk in the middle of the road, and not to talk to anybody, is not liable to prosecution. *The Tunbridge Wells Local Board* v. *Bisshopp*, L. R. 2 C. P. Div. 187. Where the health officer of a city requested the plaintiff, a passer-by, to assist in the removal of a coffin which he did, not knowing that the coffin contained the body of a person who had died of small-pox, and the passer-by in consequence caught the disease and communicated it to his children,

Interments.

Interments.

24. For regulating the interment of the dead, (*d*) and for preventing the same taking place within the Municipality ; (*dd*) 36 V. c. 48, s. 384 (24).

Bills of mortality.

25. For directing the keeping and returning of bills of mortality ; and for imposing penalties on persons guilty of default ; (*e*) 36 V. c. 48, s. 384 (25).

Gunpowder.

Gunpowder, care of.

26. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials ; (*f*) for regulating and providing for the support, by fees, of magazines for storing gunpowder belonging to private parties ; for

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who died thereby. Plaintiff was held to be without remedy against the Municipality. *Ogg* v. *The City of Lansing*, 14 Am. 499.

(*d*) While a dead body is not property in the strict sense of the term, but a *quasi* property over which the relatives of the deceased have rights which the Courts will protect. *Pierce* v. *Proprietors of Swan Point Cemetery*, 14 Am. 667. The reasonable and necessary expenses of the burial of a deceased person will be allowed to the executor in the settlement of his accounts. *Patterson* v. *Patterson*, 17 Am. 384. After the proper interment of a body the control of it to some extent rests with the next of kin who is living. *Lowry et al.* v. *Plitt et al.* 13 U. C. L. J. N. S. 112. See note *z* to sub. 19 of sec. 461.

(*dd*) See *Lord Cowley* v. *Byas*, L. R. 5 Ch. Div. 944.

(*e*) "Bills of mortality" is the common phrase to denote statistics of the dead. The duty to keep such statistics and to make returns therefrom may, it is presumed, be imposed on any one in charge of a public cemetery of any kind within the Municipality. The duty may, under this sub-section, be enforced by the ordinary mode of fine or penalty. The fine or penalty must be reasonable. See sub. 14 to sec. 454.

(*f*) The powers here conferred are—

1. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials ;

2. For regulating and providing for the support, by fees, of magazines for storing gunpowder belonging to private parties ;

3. For compelling persons to store therein ;

4. For acquiring land, as well within as without the Municipality, for the purpose of erecting powder magazines ; and

5. For selling and conveying such land when no longer required.

The manufacturing and keeping large quantities of gunpowder in towns or closely inhabited places is an indictable offence at common law. *The King* v. *Williams*, 1 Russ. 321 ; *The King* v. *Taylor*, 2

compelling persons to store therein; for acquiring land, as well within as without the Municipality, for the purpose of erecting powder magazines, and for selling and conveying such land when no longer required therefor; 36 V. c. 48, s. 384 (26).

Preventing Fires.

27. For appointing fire wardens, fire engineers and firemen, and promoting, establishing, and regulating fire companies, hook-and-ladder companies, and property-saving companies; (*g*) 36 V. c. 48, s. 384 (27). Fire companies, etc.

Str. 1167; see also *Crowder* v. *Tinkler*, 19 Ves. 617. In England it is now regulated by statute 23 & 24 Vict. cap. 139, amended by 24 & 25 Vict. cap. 130, and 25 & 26 Vict. cap. 98. So that keeping and storing of large quantities of wood, naptha and rectified spirits in a warehouse in the city of London. *The Queen* v. *Lister*, Dears. & B. 209; *S. C.* 26. L. J. Mag. Cas. 196. The English statute 25 & 26 Vict. cap 66, is extended to nitro-glycerine and all other substances for the time being declared by an Order in Council to be specially dangerous. In the United States it has been held that a City Corporation may lawfully pass a By-law requiring all gunpowder brought into the city to be conveyed to the public magazine of the city, except when to be retailed, and then to be kept in limited quantities and in secure canisters. *Williams* v. *Augusta*, 4 Ga. 509. Two Justices in England, under 12 Geo. III. cap. 61, ss. 11, 18, were empowered to adjudge a forfeiture of gunpowder conveyed in the city contrary to its provisions. Where several packages of gunpowder, amounting in the whole to 300 lbs. weight, were sent by different persons to a warehouse in London belonging to a carrier and licensed carman, as a temporary halting place in their transit, it was held that there was no unlawful having or keeping of gunpowder within the meaning of the statute. *Biggs* v. *Mitchell*, 2 B. & S. 523. A conviction, under the statute, awarding a forfeiture of gunpowder, must show that the person to whom it is adjudged is the person who seized. *The King* v. *Smith*, 5 M. & S. 133. A person who manufactures and keeps fog-signals—being tin cases filled with gunpowder and fitted with nipples and percussion caps—upon the premises within distances specified by English statute 23 & 24 Vict. cap. 139, s. 6, and for which premises he had not a license under sec. 11, was held liable to a penalty. *Bliss* v. *Lilley*, 3 B. & S. 128; see generally, *Webley* v. *Woolley*, L. R. 7 Q. B. 61; *Eliott* v. *Majendie*, *Ib.*, 429; see further, *Brown* v. *Maryland*, 12 Wheat. (U.S.) 419, 443.

(*g*) The prevention of damage to buildings by fire is an object which affects the interests of all the inhabitants, and relieves them from a common burden and a common danger, and is therefore within the scope of Municipal authority. *Allen* v. *Taunton*, 19 Pick. (Mass.) 485; *Torrey* v. *Millbury*, 21 Pick. (Mass.) 64; *Hardy* v. *Waltham*, 3 Metc. (Mass.) 163; *Huneman* v. *Fire District*, 37 Vt. 40; *Wadleigh* v. *Gilman*, 12 Me. 403; *Vanderbilt* v. *Adams*, 7 Cowen (N. Y.) 349, 352. Where such is the case, the Municipal Council is authorized

Medals and rewards to persons distinguishing themselves at fires. Aid to widows.

28. For providing medals or rewards for persons who distinguish themselves at fires; and for granting pecuniary aid, or otherwise assisting the widows and orphans of persons who are killed by accident at such fires; (*h*) 36 V. c. 48, s. 384 (28).

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to appoint and pay Fire Wardens, Fire Engineers, Firemen, Fire Companies, Hook and Ladder Companies and Property-saving Companies. *Van Sickles* v. *Burlington*, 27 Vt. (1 Wms.) 70; *Robinson* v. *St. Louis*, 28 Mo. 488; *Miller* v. *Savannah Fire Co.*, 26 Ga. 678. The necessary powers are here in express terms conferred on Municipal Corporations. These powers are in their nature legislative and governmental; the extent and manner of their exercise, within the sphere prescibed by the statute, are necessarily to be determined by the judgment and discretion of the proper Municipal authorities; and for any defect in the execution of such powers the Corporation is not to be held liable to individuals. The power of the Municipal Council over the subject is that of a delegated *quasi* sovereignty, which excludes responsibility to individuals for the neglect or nonfeasance of an officer or agent charged with the performance of duties. *Wheeler* v. *Cincinnati*, 19 Ohio St. 19; *S. C.* 2 Am. 368. In the absence of express statute, Corporations are not liable to actions occasioned by reason of negligence in using or keeping in repair engines owned by them. *Hafford* v. *New Bedford*, 16 Gray (Mass.) 297; *Eastman* v. *Meredith*, 36 N. H. 284; *Bigelow* v *Randolph*, 14 Gray (Mass.) 541; *Oliver* v. *Worcester*, 102 Mass. 489, 499; *Fisher* v. *Boston*, 104 Mass. 87; 6 Am. 196; *Jewett* v. *New Haven*, 9 Am. 382; *Torbush* v. *City of Norwich*, *Ib.* 395; *Heller* v. *Sedalia*, 14 Am. 444; *Hayes* v. *Oshkosh*, *Ib.* 760. The Fire Wardens, Fire Engineers, and other similar officers, are not the servants and agents of the City so much as they are public officers, for whose acts, in their official capacity, the City is not responsible, except when expressly so provided by statute. *Taylor* v. *Plymouth*, 8 Metc. (Mass.) 462. It is different where the Corporation is charged by law with the performance of a duty purely ministerial in its character. *Scott* v. *Manchester*, 1 H. & N. 59; *Brinkmeyer* v. *Evansville*, 29 Ind. 187; *Western College of Medicine* v. *Cleveland*, 12 Ohio St. 375; see further, note *d* to sub. 47 of this section; or an act is done by the City for its own corporate advantage or immediate emolument. *Oliver* v. *Worcester*, 102 Mass. 489; or perhaps where the neglect is a duty cast upon a gas company or a water company, or other trading company of a *quasi* public character, to the prejudice or loss of one of the public. *Atkinson* v. *Newcastle and Gateshead Water Works Co.*, L. R. 6 Ex. 404; reversed, 36 L. T. N. S. 761. A Railway Company was held liable for running a locomotive over a hose and destroying it, whereby a building was lost which otherwise might have been saved from destruction by fire. *Metallic Compression Casting Co.* v. *Fitchburg R. W. Co.*, 12 Am. 689.

(*h*) The prevention of the spread of fire is often attended with great personal risk and consequent loss of life. No ordinary remuneration is therefore deemed a sufficient incentive at all times for the efficient discharge of the dangerous duty. The providing of medals or other rewards for those who distinguish themselves at fires, and

29. For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops, and combustible places; (*i*) 36 V. c. 48, s. 384 (29). Fire in stables, etc.

30. For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire; (*j*) 36 V. c. 48, s. 384 (30). Dangerous manufactories.

31. For preventing, and for removing or regulating the construction of any chimney, flue, fire-place, stove, oven, boiler, or other apparatus or thing which may be dangerous in causing or promoting fire; (*k*) 36 V. c. 48, s. 384 (31). Chimneys, stoves, etc.

32. For regulating the construction of chimneys as to dimensions and otherwise, and for enforcing the proper cleaning of the same; (*l*) 36 V. c. 48, s. 384 (32). Size and cleaning of chimneys, etc.

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the granting of pecuniary aid to the widows and orphans of those who lose their lives while in the discharge of such a duty, and owing thereto, is a laudable purpose, for which full power is here given. See *The Queen* v. *Combe*, 13 Q. B. 179; *Ex Parte Loader*, 13 Jur. 122; *The Queen* v. *Combe*, 3 New Sess. Cases, 394.

(*i*) Prevention is better than cure. On this principal Municipal Councils are authorized to prevent or regulate the use of fire or lights in stables, cabinet-makers' shops, carpenters' shops, "combustible places." See note *r* to sec. 452.

(*j*) Security for life and property are the two great objects of Municipal control. Manufactories or trades injurious to health may be restrained. See 466, sub. 15, 17. Similar power is here conferred as to "manufactories or trades dangerous in causing or promoting fire." These may be either prevented or regulated. Indeed, there is power in case of emergency, to destroy houses to prevent the spread of fire. See sub. 39 of this section. These laws, though to some extent infringing man's natural rights, are yet for the public good. In *Goddard* v. *Jacksonville*, 15 Ill. 589, Scales, J., said, "We have a natural right to labour or to rest; yet we are forbidden to become idlers, vagrants or vagabonds. We have a natural right to kill and destroy our animals; yet cruelty to them is forbidden. We have a natural right to give away our property or destroy it; yet we may not gamble it off. So in relation to storing gunpowder in Cities, exhibiting fire works, &c. The acts are innocent in themselves; but their dangerous tendency to the community in the particular place requires the right of the owner to become subordinate to the public good.

(*k*) The importance of having chimneys, flues, fire-places, stoves, ovens, &c., safely constructed, in thickly-populated places, so as to prevent fire and its spread, cannot be over-estimated. Hence the Legislature, in this sub-section, not only provides, as in previous sub-sections, for the "preventing" or "regulating," but for "*removing*." See note *n* to sub. 10 of sec. 461.

(*l*) A By-law providing that no persons other than Chimney Inspec-

Ashes. 33. For regulating the mode of removal and safe keeping of ashes ; (*m*) 36 V. c. 48, s. 384 (33).

Party walls. 34. For regulating and enforcing the erection of party walls ; (*n*) 36 V. c. 48, s. 384 (34).

Scuttles, ladders, etc., to houses. 35. For compelling the owners and occupants of houses to have scuttles in the roof thereof, with approaches ; or stairs

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tors appointed by the City Council, should sweep or cause to be swept, for hire or gain any chimney or flue, was held to be bad. *Regina* v. *Johnson*, 38 U. C. Q. B. 549.

(*m*) Many fires are said to be "accidental" which are the result of neglect to keep ashes in fire-proof utensils ; and yet regulations for the safe keeping of ashes are seldom made, and when made, rarely enforced. Ashes may, under certain English statutes, be removed as refuse or rubbish. See *Filbey* v. *Combe*, 2 M. & W. 677 ; *Low* v. *Dodd*, 1 Ex. 845 ; *Lynden* v. *Stanbridge*, 2 H. & N. 45. See further, *The Queen* v. *Wood*, 5 E. & B. 49 ; *Guardians of Holborn Union* v. *Vestry of St. Leonard, Shoreditch*, L. R. 2 Q. B. Div. 145 ; *Gay* v. *Cadby*, L. R. 2 C. P. Div. 391.

(*n*) Regulations as to party-walls must be strictly followed. If a person, under colour of such regulations, do injury to his neighbour, he is liable to be sued. *Pratt* v. *Hillman*, 4 B. & C. 269 ; see also *The Queen* v. *Ponsford*, 1 D. & L. 116. No man has a right to presume that his neighbour will hereafter build a house adjoining to his, and erect half of his outside wall on his neighbour's ground in consequence of such presumption. *Barlow* v. *Norman*, 2 W. Bl. 959 ; An external wall cannot be said to be a party-wall. *Sims* v. *Estate Company*, 14 L. T. N. S. 55. A party-wall is a thing which belongs to two persons as part owners, or divides two buildings one from another. *Weston* v. *Arnold*, L. R. 8 Ch. Ap. 1084. The English Statute 14 Geo. III. ch. 78, was held not to make party-walls common property. *Matts* v. *Hawkins*, 5 Taunt. 20. If one proprietor added to the height of such a party-wall, and the other pulled down the addition, the first might maintain trespass for pulling down so much of it as stood on the half of the wall which was erected on his own soil. *Ib.* The property in a wall, though erected at joint expense, follows the property of the land whereon it stands. *Ib.* Power to pass ordinances "to authorize the erection of party-walls, &c., and to regulate them," has been held to include the power to authorize their erection upon the application of either owner, and without the consent of the other. *Hunt* v. *Ambruster*, 17 N. J. Eq. 208. It has been held that the owner who pulls down a party-wall, under the authority of the Metropolitan Building Act, 18 & 19 Vict. cap. 122, is not bound to protect, by boarding or otherwise, the rooms of the adjacent owner left exposed to the weather. *Thompson* v. *Hill*, L. R. 5 C. P. 564. See further as to party walls *Scott* v. *Legg*, L. R. 2 Ex. Div. 39 ; *Rindge* v. *Baker*, 15 Am. 475. As to the meaning of the word "owner" in such an Act, see *Wheeler* v. *Gray*, 4 C. B. N. S. 584 ; *S. C.* 6 C. B. N. S. 606 ; and *Tubb* v. *Good*, L. R. 5 Q. B. 443.

or ladders leading to the roof; (*o*) 36 V. c. 48, s. 384 (35).

Guarding buildings against fire.

36. For causing buildings and yards to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident; (*p*) 36 V. c. 48, s. 384 (36).

Fire buckets.

37. For requiring the inhabitants to provide so many fire buckets, in such manner and time as may be prescribed; (*q*) and for regulating the examination of them, and the use of them at fires; 36 V. c. 48, s. 384 (37).

Inspection of premises.

38. For authorizing appointed officers to enter at all reasonable times upon any property subject to the regulations of the Council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same; (*r*) 36 V. c. 48, s. 384 (38).

(*o*) The prevention of fire is the first thing of importance; access to it, in the event of fire, is next in importance. The previous subsections are of the first class; this, of the second. It enables Municipal Councils to pass regulations *compelling* owners and occupants of houses to have scuttles in the roof, or stairs or ladders, leading to the roof.

(*p*) The previous subsections deal with details. Many things under their operation may be required to prevent fire. In many respects special provision is made for guards, against fire. But in order that the power may be as extensive as necessary, a general power is here conferred for causing buildings and yards to be put "in other respects" into a safe condition against fire, and not only against fire, but "*other* dangerous risk or accident." See note *r* to sec. 452.

(*q*) The powers here conferred are—

1. For requiring the inhabitants to provide fire buckets;

2. For regulating the examination of fire buckets;

3. And the use of them at fires.

No explanation is given as to what is "a fire bucket." Bucket is the term applied to a vessel commonly used to draw water out of a well.

(*r*) This is an important subsection. It does not follow that because people are required to do certain things, even for their own safety, that they will do as required. Negligent people have existed at all times, and will continue to exist as long as time itself. Supervision is necessary. The power, therefore, conferred by this subsection is for authorizing appointed officers to enter, at all *reasonable times*, upon *any* property, subject to the regulations of the Council, "In order to ascertain whether such regulations are obeyed." But the more important part follows—that which enables the officer "to enforce or *carry into effect the same*." The enforcement might be by prosecution and fine; but the words "carry into effect the same"

Preventing spreading of fire.

39. For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire; (*s*) 36 V. c. 43, s. 384 (39).

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appear to indicate a specific performance of the duty by the officer. If the regulation be that certain things shall not be, the officer may be held to have power to remove them; but if it be that certain things shall be, he is not likely to supply them without some provision for compensating him. No property should, it is apprehended, be demolished or destroyed without an opportunity of some kind to the party concerned of being heard. See *Cooper* v. *The Board of Works, &c.*, 14 C. B. N. S. 180; see also *The Queen* v. *Sparrow*, 16 C. B. N. S. 209; *Bauman* v. *Vestry of St. Pancras*, L. R. 2 Q. B. 528; *Smith* v. *Simpson*, L. R. 6 C. P. 87.

(*s*) Rights of private property may be made subordinate to public necessity. The right to destroy buildings in order to prevent the spread of a conflagration is one that has been exercised from the earliest times. See note *n* to sub-sec. 10 of sec. 461. In such a case, in the absence of an express statutory liability, the owner of property so destroyed is without remedy. *Dewey* v. *White*, M. & M. 56; *White* v. *Charleston*, 2 Hill (S. Car.) 571; *People* v. *Winnehammer*, 12 How. P. R. Rep. Court App. 260; *Russell* v. *New York*, 2 Denio. (N. Y.) 461–474; *Taylor* v. *Plymouth*, 8 Metc. (Mass.) 462; *Hafford* v. *New Bedford*, 16 Gray (Mass.) 297; *Macdonald* v. *Redwing*, 13 Minn. 38; *Surocco* v. *Geary*, 3 Cal. 69; *Western College* v. *Cleveland*, 12 Ohio St. 375; *Coffin* v. *Nantucket*, 5 Cush. (Mass.) 269; *Ruggles* v. *Nantucket*, 11 Cush. (Mass.) 433; *McDonald* v. *Redwing*, 2 Withrow 549; *S. C.*, 13 Minn. 38; *Field* v. *City of Des Moines*, 18 Am. 46. If there be a remedy given by the statute or at common law, existing because of excess, the fact that the owner was warned does not affect his right of recovery. *New York* v. *Pentz*, 24 Wend. (N. Y.) 668; see also *Pentz* v. *Ætna Insurance Co.*, 9 Paige (N. Y.) 568; *City Fire Ins. Co.* v. *Corlies*, 21 Wend. (N. Y.) 367. The opinions of bystanders, as to whether in their judgment the building, if allowed to stand, would have taken fire, held not be admissible evidence. *New York* v. *Pentz*, 24 Wend. (N. Y.) 668. As one whose property has been destroyed, by the order of the public authorities, for the public benefit, has a strong natural equity for compensation, a statute making the Corporation liable should be liberally expounded, though not strained to cover cases not fairly embraced within them. *Per* Nelson, C. J., in *New York* v. *Lord*, 17 Wend (N. Y.) 285, affirmed 18 Wend. (N. Y.) 126; see also *New York* v. *Pentz*, 24 Wend. (N. Y.) 668; *Stone* v. *Mayor, &c.*, 25 Wend. (N. Y.) 157. Such a statute ought not to be construed to apply to a building pulled down after it is so far burnt that it is impossible to save it. *Taylor* v. *Plymouth*, 8 Metc. (Mass.) 462. If the statute give a right to compensation and prescribe no specific remedy, an action will lie. *Russell* v. *New York*, 2 Denio. (N. Y.) 461. This subsection, providing for pulling down or demolishing "adjacent houses *or other erections*," apparently does not extend to personal property. See *Stone* v. *New York*, 20 Wend. (N. Y.) 139; *S. C.* 25 Wend. (N. Y.) 157; *New York* v. *Lord*, 17 Wend. (N. Y.) 285; *S. C.*, 18 Wend. (N. Y.) 126.

40. For regulating the conduct, and enforcing the assistance of the inhabitants present at fires, and for the preservation of property at fires; (*t*). 36 V. c. 48, s. 384 (40). Enforcing assistance at fires.

Removal of Snow, Ice, Dirt.

41. For compelling persons to remove all snow and ice from the roofs of the premises owned or occupied by them; and to remove and clear away all snow, ice and dirt, and other obstructions, from the sidewalks, streets and alleys adjoining such premises; and also to provide for the cleaning of sidewalks and streets adjoining vacant property, the property of non-residents, and all other persons who, for twenty-four hours, neglect to clean the same; (*u*) and to remove and Removal of snow, etc. Cleaning of sidewalks, streets, etc.

(*t*) The prevention of the spread of fires and the preservation of property at fires are two very proper subjects for Municipal control. Power to enforce assistance of those present at fires comes under the first head, and the latter part of the subsection under the second head. The property intended, it is believed, is personal property; in cities as much of it is lost by theft as by fire, and often as much by recklessness as by theft and fire combined.

(*u*) The powers here conferred are for *compelling* persons—

1. To remove all snow and ice from the *roofs* of the premises owned or occupied by them;

2. To remove and clear away all snow, ice and dirt, and other obstructions from the *sidewalks*, streets and alleys adjoining their premises;

3. For the cleaning of sidewalks and streets adjoining vacant property, the property of non-residents and all other persons.

4. To remove and clear away all snow and ice, &c., from such sidewalks and streets, at the expense of the owner, or occupant in case of his default.

5. In case of non-payment, to charge such expenses or special assessment against such premises.

An Act authorizing a local board of health to provide for the removal of "dirt, ashes, rubbish, filth, dung, and soil," was held not to authorize the passing of a by-law for the removal of snow. *The Queen* v. *Wood*, 5 E. & B. 49.

It has been held in this Province that, in the absence of any public regulation, people are not compelled to keep the roofs of their houses clear of snow, or to detain the snow on the roofs, so that it cannot slide from thence into the street. *Lazarus* v. *Toronto*, 19 U. C. Q. B. 1. The contrary has been held in the United States. *Shipley* v. *Fifty Associates*, 101 Mass. 251; *S. C.* 3 Am. 346. In the United States it has been also held that persons suffering snow and ice to accumulate upon an awning placed by them over a sidewalk, if the awning be insufficient to hold the snow and ice, and it in consequence give way and injure a passer-by, are liable to damages. *Milford* v. *Holbrook*, 9 Allen (Mass.) 17. It would seem that, *prima*

clear away all snow and ice, and other obstructions, from such sidewalks and streets, at the expense of the owner or occupant in case of his default; (*v*) and in case of non-payment

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facie, the occupants of the building, and not the owners, out of occupation, are the proper persons to be sued in such an action. *Kirby* v. *Boylston Market Association*, 14 Gray (Mass.) 249. But if the roof be under the control of the landlord, and not of the tenant, the former would be liable. *Shipley* v. *Fifty Associates*, 101 Mass. 251; *S. C.* 3 Am. 346. A structure such as a cornice of a building projecting over a street in a city in such a manner as to be dangerous to passers-by, is a nuisance which the corporate authorities may abate, and if they fail do so after notice of its dangerous character the city will be liable to any one injured thereby. *Grove* v. *Fort Wayne*, 15 Am. 262. See further *Mullen* v. *St. John*, *Ib.* 530. It would also seem that the accumulation of snow and ice on a sidewalk, in the absence, at all events, of a public regulation on the subject, would not render the adjoining proprietor liable to an action for an accident arising therefrom. See *Shepherd* v. *The Midland Railway Co.*, 25 L. T. N. S. 879; *Sharp* v. *Powell*, L. R. 7 C. P. 253. The City of Boston, under the power "to make needful and salutary By-laws," passed a By-law requiring the tenant or occupant, or, in case there shall be no tenant, the owners of buildings bordering on certain streets, to clear snow from the sidewalks adjoining their respective buildings, &c. It was held valid. *Goddart, Petitioner, &c.*, 16 Pick. (Mass.) 504; *Union Railroad Co.* v. *Cambridge*, 11 Allen (Mass.) 287; *Kirby* v. *Boylston Market Association*, 14 Gray (Mass.) 252. Such a By-law is regarded by the Court "as a police regulation, requiring a duty to be performed, highly salutary and advantageous to the citizens of a populous and closely built city, imposed upon them because they are so situated as that they can most promptly and conveniently perform it; and it is laid not upon a few, but upon a numerous class, and equally upon all who are within the description composing the class, and who commonly derive a peculiar benefit from the duty required." *Goddart, Petitioner, &c.*, 16 Pick. (Mass.) 509, *per* Shaw, C. J. Even when such a By-law is passed and its provisions neglected, it would seem that no action will lie by a person aggrieved against the persons whose duty it is, under the By-law, to remove the snow and ice. *Kirby* v. *Boylston Market Association*, 14 Gray (Mass.) 169; *Bateman* v. *Marriott*, 9 Md. 160. The remedy, at all events, so far as the sidewalk is concerned, if there be one, would appear to be against the Municipal Corporation, for alleged non-repair, and not against the individual proprietor. *Flynn* v. *Canton Co.*, 17 Am. 603.

(*v*) It was held, in the Court of Common Pleas, that an action would not lie against the City of Toronto for a slight accumulation of ice on one of the sidewalks of the principal street of the City, resulting in an injury to the plaintiff, although the adjoining proprietor omitted to remove it within the time provided by By-law, and although the city authorities had neglected to appoint any officer whose duty it was to enforce the provisions of the By-law requiring the removal of snow and ice. *Ringland* v. *Toronto*, 23 U. C. C. P. 92. Galt, J., nonsuited the plaintiff at the trial, and

to charge such expenses as a special assessment against such premises, to be recovered in like manner as other municipal rates; (*w*) 36 V. c. 48, s. 384 (41).

Obstruction of Roads and Streets.

42. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, (*x*) Preventing obstruction

Gwynne, J. (the Chief Justice being absent), delivered the judgment of the Court, which appeared to indicate that no action would lie against a Municipal Corporation for alleged non-repair, unless the alleged non-repair be such as to amount to an indictable nuisance. But this view of the statute has recently been dissented from by Harrison, C.J., in *Burns* v. *Toronto*, 42 U. C. Q. B. 560. See further, sec. 491, and notes thereto.

(*w*) This charging must, it is apprehended, be done by the City Clerk when making up the Collector's Roll. The intention is to make the cost of the removal of snow and ice from sidewalks, &c., a charge against the premises in front of which snow or ice, being negligently allowed to accumulate, is removed by the City authorities.

(*x*) The primary object of the street is for the free passage of the public, and anything which, *without necessity*, impedes that free passage is a nuisance. *The King* v. *Russell*, 6 East 430; *In re Cline* v. *Cornwall*, 21 Grant 142. The right of any one man lawfully to use the street is subject to the right of any other man to make a corresponding use. Thus the carriage and delivery of goods, &c., is the legitimate use of a street, and may result in the temporary obstruction of public transit. "No man has a right to throw wood or stones into the street at pleasure. But, inasmuch as fuel is necessary, a man may throw wood into the street for the purpose of having it carried into his house, and it may lie there a reasonable time. So, because building is necessary, stones, bricks, lime, sand and other materials may be placed on the street, provided it is done in the most convenient manner." *Commonwealth* v. *Passmore*, 1 Serg. & R. (Pa.) 217; approved in *People* v. *Cunningham*, 1 Denio. (N. Y.) 524; *Clark* v. *Fry*, 8 Ohio 358-374; *St. John* v. *New York*, 3 Bosw. (N. Y.) 483; *Wood* v. *Mears*, 12 Ind. 515; *O'Linda* v. *Lothrop*, 21 Pick. (Mass.) 292. "A cart or waggon may be unloaded at a gateway, but this must be done with promptness. So as to the repairing of a house: the public must submit to the inconvenience occasioned necessarily in repairing the house; but if this inconvenience is prolonged for an unreasonable time, the public have a right to complain." *Per* Lord Ellenborough, in *The King* v. *Jones*, 3 Camp. 231; see also *Thorpe* v. *Brumfitt*, L. R. 8 Ch. Ap. 650. A man has no right to eke out the inconvenience of his own premises by taking the public highway into his timber yard *Ib.*; or stone yard. *Cushing* v. *Adams*, 18 Pick. (Mass.) 110; *Commonwealth* v. *King*, 13 Metc. (Mass.) 115. A highway is not to be used as a stable-yard. *The King* v. *Cross*, 3 Camp. 224; see also *Ridley* v. *Lamb*, 10 U. C. Q. B. 354; see further *Mott* v. *Schoolbred*, L. R. 20 Eq. 22, or as a place for the deposit of a cart and machin-

and fouling of streets, etc.

of any road, street, square, alley, lane, bridge or other communication; 36 V. c. 48, s. 384 (42.)

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ery for the purpose of taking photographic likenesses. *The Queen* v. *Davis*, 24 U. C. C. P. 575. Or a projecting show board. *Read* v. *Perrett*, L. R. 1 Ex. Div. 349; see further, *Original Hartlepool Collieries Co.* v. *Gibb*, L. R. 5 Ch. Div. 713. A stage coach may set down or take up passengers in the street, this being necessary for public convenience, but it must be done in a reasonable time. *Rex* v. *Cross*, 2 Camp. 224. So long as the alleged obstruction is for the public convenience there can be no reasonable ground of complaint. *The King* v. *Russell*, 6 B. & C. 566; but see *The King* v. *Ward*, 4 A. & E. 384. A railway company has no right to turn a highway into a yard for cars. *Vars* v. *Grand Trunk Railway Co.*, 23 U. C. C. P. 114. A man has no right to occupy one side of a street before his warehouses, in loading and unloading his waggons, for several hours at a time, both day and night, so that no carriage can pass on that side of the street, although there be room for two carriages to pass on the opposite side of the street. *The King* v. *Russell*, 6 East. 427. If a man does anything or permits anything on his premises in view of the public, and crowds of persons are thereby attracted by it, to the inconvenience of the public, that thing he cannot be allowed to do. Mr. Very, the well known confectioner in Regent Street, London, had a daughter who attended to his shop, and who was considered so beautiful that a crowd of 300 or 400 persons used daily to assemble and stand at his shop windows for the purpose of looking at her. "The inconvenience was so great, both to Mr. Very and to his neighbours, that he was obliged to send his daughter out of town." 6 C. & P. 646, note. A bookseller in Fleet Street took out the frames, of his first-floor windows, and put into one of the windows an effigy of a bishop, under which was written "Spiritual broker"; in the second window a figure of a man in ordinary dress, and under him the words "Temporal broker." He afterwards added a third figure—that of the Devil, "the arm of the figure of the bishop being tucked into that of the Devil." These figures attracted such crowds to gaze at them that the bookseller was convicted of obstructing the highway. *The King* v. *Carlile*, 6 C. & P. 636. Attracting and keeping crowds of people an unreasonable time by reason of speeches may be subject to prosecution. *Rex* v. *Sarmon*, 1 Burr 516; *Barker* v. *Commonwealth*, 19 Pa. St. 412. A person who had mills which were partly on a road allowance and partly on a public river, by the waters of which the mills were worked, was held not to have such a rightful interest as to entitle him to complain of an obstruction to the river. *Giles* v. *Campbell*, 19 Grant 226. A Municipal Corporation has no power to order the construction of weigh scales on one of the principal streets in the Municipality, *Cline* v. *Cornwall*, 21 Grant 129, or to authorize a cab stand to be so stationed on a public street as to be a nuisance to adjoining proprietors. *In re Davies and the Village of Clifton*, U. C. Q. B., *Coram* Morrison, J., June, 1877.

The acts of several persons in obstructing a highway may together constitute a nuisance which the Court of Chancery will restrain, though the damage occasioned by the acts of any one, if taken alone,

43. For directing the removal of door-steps, porches, railings or other erections, or obstructions projecting into or over any road or other public communication, (*y*) at the expense of the proprietor or occupant of the property connected with which such projections are found. 36 V. c. 48, s. 384 (43). Removal of door-steps, etc.

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would be inappreciable. *Thorpe* v. *Brumfitt* L. R. 8 Ch. Ap. 650; *Cline* v. *Cornwall*, 21 Grant 129.

A City Council, having "exclusive power over streets," has the right by By-law to determine to what extent and under what circumstances they may be encumbered with building materials. *Woods* v. *Mears*, 12 Ind. 515; but see *Ball* v. *Armstrong*, 10 Ind. 181. Such a By-law will protect parties acting under it when such actions are not grounded on negligence of the defendants. *Ib.* The Corporation may, however, require a bond of indemnity before granting such a privilege. *McCarthy* v. *Chicago*, 53 Ill. 38. The conditions attached to the permission must be strictly observed. *Lowell* v. *Simpson*, 10 Allen (Mass.) 88.

(*y*) Owners or occupiers of houses abutting on streets have a right to make a reasonable use of the street. Warehouses with doors and windows and opening upon the street, and shutters projecting on the same when open, in the absence of a statute or By-law to the contrary, held not unreasonable. *Underwood* v. *Carney*, 1 Cush. (Mass.) 285; *Gerrard* v. *Cooke*, 2 B. & P. N. R. 100; *O'Linda* v. *Lothrop*, 21 Pick. (Mass.) 292. So openings communicating with underground apartments, so long as not dangerous. *Bacon* v. *Boston*, 3 Cush. (Mass.) 174. *Lowell* v. *Spaulding*, 4 Cush. (Mass.) 277. The powers here conferred are, to pass By-laws for "directing the removal of door-steps, porches, railings or other erections or obstructions" projecting into or over any road, &c. See *Le Neve* v. *Mile End Old Town*, 8 E. & B. 1054. Strictly speaking, no one has a right to project his building or any part of it beyond the line of road. But this does not mean a strict mathematical line. *Tear* v. *Freebody*, 4 C. B. N. S. 228; see also *St. George's Vestry* v. *Sparrow*, 16 C. B. N. S. 209. An obstruction beyond a substantially regular line must, if insisted upon by the Municipal authorities, be removed. *Bauman* v. *St. Pancras*, L. R. 2 Q. B. 528; *Ecclesiastical Commissioners* v. *Clerkenwell*, 4 L. T. N. S. 599; *S. C.* 3 De G. F. & J. 688; *The Queen* v. *Jay*, 8 E. & B. 469. Where a man, under contract to build according to a specified plan and according to the Metropolitan Building Acts, commenced building according to the plan, which was in some particulars in contravention of the Building Acts, and upon being cautioned by the Board stopped building and refused to proceed; held, that he was bound to rebuild in conformity with the plan, modified so as to meet the requirements of the Acts. *Cubitt* v. *Smith*, 11 L. T. N. S. 298. By-laws were made by the Local Board of Sunderland, under the English Public Health Act, 1848, s. 115, and the Local Government Act, s. 34, by one of which (No. 12) all party walls except in houses of one storey, were required, under a penalty of 40s., to be nine inches at least in thickness, and by another of which (No. 42) it was provided "That in case any offence under any of the foregoing By-laws shall continue, the person offending shall be

Numbering Houses and Lots.

Numbering houses, etc.

44. For numbering the houses and lots along the streets of the Municipality, and for affixing the numbers to the houses, buildings, or other erections along the streets, (*a*) and for charging the owner or occupant of each house or lot with the expense incident to the numbering of the same. 36 V. c. 48, s. 384 (44).

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liable to a further penalty not exceeding 40s. for each day during which such offence shall continue after written notice of the offence has been given by the Local Board to the offender." A person having been convicted and fined for an offence against the By-law No. 12, in building a party-wall four and a half inches in thickness instead of nine inches, was convicted upon an information charging him, under By-law No. 42, with *continuing* the offence, and again fined. Held, that suffering the party-wall to remain unaltered was not a continuing offence within By-law No. 42, or if it was, that the By-law was unreasonable—the appropriate remedy being the removal of the structure by the Board, as authorized by sec. 34 of the Local Government Act, 1858. *Marshall* v. *Smith*, L. R. 8 C. P. 416; see further, *Hall* v. *Nixon*, L. R. 10 Q. B. 152, in which *Brown* v. *Holyhead*, 1 H. & C. 601; *Young* v. *Edwards*, 33 L. J. M. C. 227; and *Hattersley* v. *Burr*, 4 H. & C. 523, are discussed; see also *Cheetham* v. *The Mayor, &c., of Manchester*, L. R. 10 C. P. 249. By sec. 75 of the Metropolitan Local Management Amendment Act, the erection, without the consent of the Metropolitan Board of Works, of any building, &c., in any street, &c., beyond the general line of buildings, is prohibited; and it is enacted that for any infringement of that provision, the Vestry or Board may summon the offender before a Justice who may order the demolition of the building, and make an order as to costs; and that on default of the owner, the Vestry or Board may enter and demolish it. And sec. 107 enacts that "no person shall be liable for the payment of any *penalty* or forfeiture under the recited Acts, or that Act, for any offence made cognizable before a Justice, unless the complaint respecting such offence have been made before such Justice within six months next after the commission or discovery of such offence." Held, that the limitation clause applied only to the case of pecuniary penalties or forfeitures, and not to offences under sec. 75. *Vestry of Bermondsey* v. *Johnson*, L. R. 8 C. P. 441; see further, *Commercial Bank* v. *Cotton*, 17 U. C. C. P. 214; *S. C.*, in appeal, *Ib.* 447.

(*a*) The powers are to pass By-laws for—

1. Numbering the houses and lots along the streets of the Municipality;

2. Affixing the numbers to the houses, &c.; and for

3. Charging the owner or occupant of each house, &c., with the expense.

Some provision of this kind in large cities is not only convenient but necessary. The intention of such a statute is to give control to one public body, in order to insure the avoidance of the inconveni-

45. For keeping (and every such Council is hereby required to make and keep) (*b*) a record of the streets, and numbers of the houses and lots numbered thereon respectively, and entering thereon, and every such Council is hereby required to enter thereon a division of the streets with boundaries and distances for public inspection. 36 V. c. 48, s. 384 (45). **Record of streets, numbers, etc.**

Naming Streets.

46. For surveying, settling, and marking the boundary lines of all streets, roads, and other public communications, and for giving names thereto, (*c*) and affixing such names at the corners thereof, on either public or private property; but no by-law for altering the name of any street, square, road, lane, or other public communication, shall have any force or effect unless and until the by-law has been registered in the Registry office of the County or other Registration Division; and the Registrar shall be entitled to a fee of one dollar, for every by-law so registered, and for the necessary entries and certificates in connection therewith; 36 V. c. 48, s. 384 (46); 40 V. c. 7, *Sched. A.* (180). **For marking the boundaries of and naming streets, etc.**

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ence of having several houses in the same street or place of the same number. Two statutes on the subject were at one time existing in London, giving similar powers to two public bodies, which powers could not, consistently with the object of the Legislature, co-exist; and so it was held that the earlier was repealed by the later statute. *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 161.

(*b*) Most of the preceding sub-sections are discretionary. It is in the power of the Council to refrain from exercising the powers conferred in the discretionary sections, but the provisions of this sub-section are obligatory. Every Council is "hereby required" to make and keep a record of the streets and numbers, &c., for public inspection. There are cases where even the word "may" should, looking at the context, be construed as imperative. See *The King* v. *Barlow*, 2 Salk. 609; *Crake* v. *Powell*, 2 E. & B. 210; *McDougall* v. *Paterson*, 11 C. B. 755; *The Queen* v. *Tithe Commissioners*, 14 Q. B. 459. The object of this sub-section is to avoid the inconvenience either of having several streets in the same Municipality of the same name, or several houses in the same street of the same number. See *per* Willes, J., in *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 167.

(*c*) The powers are—

1. For surveying, settling and marking the boundary lines of all streets, &c., see note *y* to sub. 43 of this section;

2. For giving names thereto, see note *b supra*; and

3. Affixing such names at the corners thereof, "on either public or *private* property."

Levels of Cellars—Plans.

Ascertaining levels of cellars, etc.

47. For ascertaining and compelling owners, tenants and occupants, to furnish the Councils with the levels of the cellars heretofore dug or constructed, or which may hereafter be dug or constructed along the streets of the Municipality, (*d*)

The general rule is, that there can be no interference with private property without the making of due compensation see sec. 456 and notes thereto; but the interference here sanctioned is of so trivial a character, that the permission is given without any provision as to compensation.

(*d*) It has been held that authority to a Municipal Corporation "to repair and keep in order its streets," enabled the Corporation, without special power, to construct drains and sewers. *Fisher* v. *Harrisburgh* 2 Grant, (Pa.) 291; *Cone* v. *Hartford*, 28 Conn. 363; see also *Borough* v. *Shortz*, 61 Pa. St. 399; *Stroud* v. *Philadelphia*, *Ib.* 255; *State* v. *Jersey City*, 1 Vrom. (N. J.) 148; *State* v. *Jersey City*, 3 Dutch. (N.J.) 493; *State* v. *Jersey City*, 5 Dutch. (N.J.) 441. So it has been decided in Massachussets, that authority "to make needful and salutary By-laws," or authority "to make regulations for the public health," in the absence of more specific power, would enable a City Corporation to construct a common sewer, and subject the owners of land abutting, and who use the sewer, to contribution for expenditure, *Boston* v. *Shaw*, 1 Metc. (Mass.) 130; and it was held that the assessment in respect thereto was valid, although the greater part of one lot assessed was lower than the bottom of the sewer, as it might and probably would be graded so as to receive as much benefit as other lots. *Downer* v. *Boston*, 7 Cush. (Mass.) 277; see also *Wright* v. *Boston*, 9 Cush. (Mass.) 233; *People* v. *Brooklyn*, 6 Barb. (N.Y.) 209; *Patton* v. *Springfield*, 99 Mass. 627. But in order that there may be uniformity, power is by this sub-section given to pass By-laws for ascertaining and compelling owners, tenants and occupants to furnish the Councils with the level of the cellars heretofore dug or constructed, or which may hereafter be dug or constructed along the streets of the Municipality. A Municipal Corporation is not liable to a civil action for neglecting to pass a By-law and provide for some plan for draining the Municipality or some part thereof. *Mills* v. *Brooklyn*, 32 N. Y. 489; *Wilson* v. *New York*, 1 Denio. (N. Y.) 595; *Child* v. *Boston*, 4 Allen (Mass.) 41; *City Council* v. *Gilmer*, 33 Ala. 116; *Carr* v. *Northern Liberties*, 35 Pa. St. 324; nor for any want of efficiency in the plan adopted. *Child* v. *Boston*, 4 Allen (Mass.) 41; *Mitls* v. *Brooklyn*, 32 N. Y. 489; *Barry* v. *Lowell*, 8 Allen (Mass.) 127; *Flagg* v. *Worcester*, 13 Gray (Mass.) 601; *Dermont* v. *Detroit*, 4 Mich. 135; *Carr* v. *Northern Liberties*, 35 Pa. St. 324; see further note *g* to sub. 27 of sec. 466. A Corporation may be said to act judicially in selecting and adopting the plan on which a public work shall be constructed; yet as soon as it begins to carry out that plan, it acts ministerially, and is bound to see that the work is done in a reasonably safe and skilful manner. *Rochester White Lead Company* v. *Rochester*, 3 Comst. (N. Y.) 463; *Barton* v. *Syracuse*, 36 N. Y. 54; *Lacour* v. *New York*, 3 Duer. (N.Y.) 406; *Lloyd* v. *New York*, 1 Seld. (N. Y.) 369; *Jones* v. *New Haven*, 34 Conn. 1; *Parker* v.

such levels to be with reference to a line fixed by the by-laws; 36 V. c. 48, s. 384 (47).

Lowell, 11 Gray (Mass.) 353; *Wilson* v. *New York*, 1 Denio (N. Y.) 595; *Logansport* v. *Wright*, 25 Ind. 512; *Martin* v. *Brooklyn*, 1 Hill. (N.Y.) 545; *Mellen* v. *Western Railroad Co.*, 4 Gray (Mass.) 301; *Mills* v. *Brooklyn*, 32 N. Y. 489; *Child* v. *Boston*, 4 Allen (Mass.) 41; *Wheler* v. *Worcester*, 10 Allen (Mass.) 591; *Eastman* v. *Meierith*, 36 N. H. 284; *Mears* v. *Wilmington*, 9 Ire. (N. Car.) 73; *Delmonico* v. *New York*. 1 Sandf. (N. Y.) 222; *Munn* v. *Pittsburgh*, 40 Pa. St. 364; *Memphis* v. *Lasser*, 9 Humph. (Tenn.) 757; *Detroit* v. *Corey*, 9 Mich. 165; *Grant* v. *Brooklyn*, 41 Barb. (N. Y.) 381; see also *Halliday* v. *St. Leonard's, Shoreditch*, 11 C. B. N. S. 192; *Parsons* v. *Bethnal Green*, 17 L. T. N. S. 211. A Municipal Corporation would act judiciously in insisting on having drains made under the direction of their officers and by their own workmen and contractors, instead of the private proprietors, for it would not do to allow all persons to break into a main sewer and make drains at their discretion. Besides the inconvenience, the health of the community would suffer from such a course, for the nuisance occasioned by defective drainage may often give rise to a wide-spread evil, injuring many more than the persons on whose premises the cause of the nuisance exists. It seems a necessary policy, therefore, for such a Corporation to keep the matter in their own hands. But then, if the Corporation does for such good purposes prevent proprietors from making the drains they require, and oblige them to have them done by the Corporation engineer and contractors, it is manifestly just and necessary that the Corporation should see that the work is done as it ought to be. *Per* Robinson, C. J., in *Reeves* v. *Toronto*, 21 U. C. Q. B. 160. Where a drain was so unskilfully constructed by the Corporation contractors as not to carry off the water, but to carry filth from the main sewer into plaintiff's cellar, which for months he had endured, it was held that he was entitled to sue the Corporation for the recovery of substantial damages, though no By-law for the making of the drain was proved. *Ib.*; see further *VanPelt* v. *The City of Davenport*, 20 Am. 622. So where the drain, though properly constructed, was not kept cleaned, whereby it became choked up and the overflow ran into the plaintiff's premises. *Meek* v. *Whitechapel Board of Works*, 2 F. & F. 144; see further *Scroggie* v. *Guelph*, 36 U. C. Q. B. 534. So if, in the construction of a drain by Corporation contractors, quantities of earth be thrown up and permitted to continue, so that in times of rain mud and water are driven on a person's premises, he is entitled to sue the Corporation for damages. *Farrell* v. *London*, 12 U. C. Q. B. 343; see also *Jones* v. *Bird*, 5 B. & Al. 837; *Drew* v. *New River Co.*, 6 C. & P. 754; *Grocers' Company* v. *Donne*, 3 Bing. N. C. 34; *Coe* v. *Wise*, 7 B. & S. 831; but see *Ward* v. *Lee*, 7 E. & B. 426; *Clothier* v. *Webster*, 12 C. B. N. S. 790. Without positive legislation, a grave doubt may be expressed as to the absolute right of the conservators of a highway to flood a man's land and destroy his property, even if no other method of drainage be attainable. *Per* Hagarty, J., in *Perdue and Chinguacousy*, 25 U. C. Q. B. 61, 65, 66: "I cannot conceive what right they (a Township Municipal Council) can have to drain all the surface waters of that Township, or of any particular area, up against

Compelling the furnishing of ground or block plan of buildings to be erected.

48 For compelling to be deposited with an officer, to be named in the by-law, before commencing the erection of any building, a ground or block plan of such building, with the levels of the cellars and basements thereof, (*e*) with refer-

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the land of another, and to drown it in part, or altogether to the destruction of his farm, although they may have done their work in the most skilful and scientific manner, and although it may have been absolutely necessary to drain in this manner for the making of a good road." *Per* Wilson, J., in *Rowe* v. *Rochester*, 29 U. C. Q. B. 590-595. "I concur with my brother Wilson's judgment, and I do so with great hesitation, but I cannot see my way to a more satisfactory conclusion." *Per* Morrison, J., *Ib.* 598. A Municipal Corporation can acquire the right to turn a stream of water upon the lands of another, to the injury thereof, only by an exercise of the power of eminent domain. *Pettigrew* v. *Evansville*, 23 Wis. 223; 3 Am. 50; see also *Smith* v. *Washington*, 20 How. (U. S.) 135; *Hildreth* v. *Lowell*, 11 Gray (Mass.) 345; *Stainton* v. *Metropolitan Board of Works*, 23 Beav. 225; 3 Jur. N. S. 257; *Cator* v. *Lewisham*, 5 B. & S. 115; *Aurora* v. *Reed*, 11 Am. 1; *Ruskin* v. *St. Joseph*, *Ib.* 463; *Darby* v. *Crowland*, 38 U. C. Q. B. 338; *Coghlan* v. *City of Ottawa*, 1 App. R. 54.

(*e*) It is under sec. 76 of the Metropolis Local Management Act, 18 & 19 Vict. cap. 120, the duty of every person, before beginning to lay or dig the foundation of any new house or building, &c., to give seven days' notice in writing to the Vestry, &c. The same section provides that every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with the Act, and as the Vestry, &c., shall order; also that every such drain shall be made in such direction, manner and form, and of such materials and workmanship, and with such branches thereto, and as the Vestry, &c., shall order; and that if the house, building or drain, &c., be begun, erected, made or provided in any respect contrary to the order of the Vestry, &c., it shall be lawful for the Vestry, &c., to cause such house or building to be demolished, &c. It was held that there was no power to demolish without first giving the party guilty of the omission an opportunity to be heard. *Cooper* v. *Board of Works for Wandsworth District*, 14 C. B. N. S. 180. No man shall be condemned in person or property without an opportunity of being heard in his defence. See *The King* v. *Cambridge*, 1 Str. 557; *The King* v. *Benn*, 6 T. R. 198; *Harper* v. *Carr*, 7 T. R. 270; *Capel* v. *Child*, 2 C. & J. 558; *Hammond* v. *Bendyshe*, 13 Q. B. 869; *Painter* v. *Liverpool Oil Gas Co.*, 3 A. & E. 433; *Re Hammersmith Case*, 4 Ex. 87. Such condemnation would be contrary to the principles of natural justice. *Bullen* v. *Moodie*, 13 U. C. C. P. 126; affirmed *Ponton* v. *Bullen*, 2 E. & A. 379; *Switzer* v. *Brown*, 20 U. C. C. P. 193; *The Queen* v. *Cheshire Line's Committee*, L. R. 8 Q. B. 344; see also 3 F. & F. 548, *et seq.*, note. "The objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even GOD himself did not pass sentence upon Adam before he was called upon to make his defence.

ence to a line fixed by the by-laws; (*f*) 36 V. c. 48, s. 384 (48).

Sewerage and Drainage.

49. For regulating the construction of cellars, sinks, water-closets, privies and privy vaults, and the manner of draining the same; (*g*) 36 V. c. 48, s. 384 (49). Cellars, sinks, etc.

'Adam, (says GOD) where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat?' And the same question was put to Eve also." *Per* Fortescue, J., in *The King* v. *Cambridge*, 1 Str. 566, cited by Byles, J., in *Cooper* v. *Board of Works for Wandsworth District*, 14 C. B. N. S. 195; *Rutherford's Case*, 13 Am. 655; *Lovering* v. *Dawson*, L. R. 10 C. P. 711. The 18 & 19 Vict. cap. 120, was held not to apply to a case of the mere removal of a building. *Major* v. *Park Lane Co.*, L. R. 2 Eq. 453.

(*f*) Where the Vestry directed drainage pipes to be "stoneware pipes of the best quality," the use of Aylesford pipes was held not to be a sufficient compliance. *Austin* v. *St. Mary, Lambeth*, 4 Jur. N. S. 274; *S. C.* 27 L. J. Ch. 677.

(*g*) It was held, under 18 & 19 Vict. cap. 120, that the Metropolitan District Board of Works had no power to lay down any general or arbitrary rule, requiring *all* owners or occupiers of houses situate within its district to convert privies into water-closets. *Tinkler* v. *Wandsworth District Board of Works*, 2 De G. & J. 261; *S. C.* 4 Jur. N. S. 293. "The question is not whether they have power to cause or order privies within their district to be put in a proper and decent state, if not in that state, but it is whether they have the right or power to force on the plaintiff the mechanical contrivance of water-closets, with their requisite apparatus, for which he is to find water supply as best he may, instead of the privies which, sufficient as privies if kept in a condition proper for such conveniences, are upon his land for the purposes of his cottages there. The claim of the defendants in that respect appears to me manifestly groundless." *Per* Knight Bruce, L. J., *Ib.* 294. But an order may be made for the conversion of an insufficient privy into a water-closet. *St. Lukes* v. *Lewis*, 1 B. & S. 864. The Court of Chancery will not interfere by injunction to prevent a Municipal Corporation exercising *bona fide* the powers conferred upon it by the Legislature—for example, in this case, the erection of a urinal. *Biddulph* v. *St. George's, Hanover Square*, 9 Jur. N. S. 434; reversed, *Ib.* 953. The cleansing of cellars, sinks, water-closets, privies, privy vaults, &c., is *prima facie* the duty of the occupant. *Russell* v. *Shenton*, 3 Q. B. 449. If the privy be in such a condition at the time of the letting as to be a nuisance, both owner and tenant are liable to be prosecuted; but if it become in such a condition after the letting, the tenant or occupant only is responsible. *The Queen* v. *Osler*, 32 U. C. Q. B. 324. An agent merely to receive rent is not liable to be prosecuted in respect of any such nuisance. *Ib.*: see further, *Peck* v. *Waterloo and Seaforth Local Board of Health*, 9 L. T. N. S. 338. If the owner

Filling in hollow places, drains, etc.

50 For compelling or regulating the filling up, draining, clearing, altering, relaying or repairing of any grounds, yards, vacant lots, cellars, private drains, sinks, cesspools and privies; (*h*) and for assessing the owners or occupiers of such grounds or yards, or of the real estate on which the cellars, private drains, sinks, cesspools and privies are situate, with the cost thereof, if done by the Council on their default; (*i*) 36 V. c. 48, s. 384 (50).

Sewerage and drainage.

51. For making any other regulations for sewerage (*j*)

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of land on which there is a house, construct on the other part of the land a sewer, and let the house, and aterwards, by reason of the original faulty construction of it and the continued use of it by the owner in the faulty state, the house is injured, the owner is liable to the lessee for keeping and continuing the sewer so constructed. *Alston* v. *Grant*, 3 E. & B. 128.

(*h*) A clause of a By-law requiring that "all grounds, yards, vacant lots, *or other properties*, abutting on any street, should be drained," was held valid. *In re McCutchon and Toronto*, 22 U. C. Q. B. 613. The sixth section of a By-law requiring all grounds, &c., not already drained, abutting on any street with a common sewer, to be drained into the same within fourteen days from the advertising of the By-law for one week—the seventh section imposing a penalty on any one of not less than one dollar nor more than ten dollars for each month he should omit to do so—and the eighth providing for enforcing payment by distress, or imprisonment not exceeding thirty-one days, were quashed as illegal. *Ib.* A subsequent By-law added to the eighth section above mentioned a proviso, that any person thereby required to construct a drain who should not do so, but be willing to pay the same rent as if he were using the sewer, should be exempt from penalties, was also quashed. *Ib.*

(*i*) The statute refers as well to sewers, &c., constructed, as to be constructed. *In re McCutchon and Toronto*, 22 U. C. Q. B. 613, and though authorizing the passing of a By-law to compel drainage, couples it with a power to assess the cost thereof, if done by the Council, on the owner or occupier, in default; thus pointing out how "the compelling" is to be carried out. *Ib.* 619. The charge, moreover, if the work be done by the Corporation, is a personal charge, and not a charge on the land. *Moore* v. *Hynes*, 22 U. C. Q. B. 107; and so not to be enforced by the same means as ordinary assessments. *In re McCutchon and Toronto*, 22 U. C. Q. B. 613; see further *Bank of Montreal* v. *Fox*, 6 U. C. P. R. 217; *Squire* v. *Oliver*, 24 Grant 441.

(*j*) "Sewerage" or "drainage." Sewer, in its general sense, may mean the whole apparatus, and in its specific sense, a drain or part of that apparatus. *Per* Lord Campbell, in *Poplar Board of Works* v. *Knight*, 1 E. B. & E. 408-429. A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river into which it flows, was held not to be a sewer within the meaning of the English

or drainage that may be deemed necessary for sanitary purposes; (*k*) 36 V. c. 48, s. 384 (51).

52. For charging all persons who own or occupy property which is drained into a common sewer, or which by any by-law of the Council is required to be drained into such sewer, (*l*) with a reasonable rent for the use of the same; and for regulating the time or times and manner in which the same is to be paid; 36 V. c. 48, s. 384 (52). Charging rent for sewers.

Public Health Act, 1848, 11 & 12 Vic. cap. 63. *The Queen* v. *Godmanchester*, L. R. 1 Q. B. 328. In order to make a Municipal Corporation liable for damage arising from a defective sewer, evidence must not only be given of negligence on the part of the Corporation in the management of the sewer, but it must be shown that they constructed the sewer, or are in some other manner responsible for its maintenance. *Bateman* v. *Hamilton*, 33 U. C. Q. B. 244. If it be shewn that the Corporation constructed the sewer, were negligently ignorant of its condition, and in consequence of its defective condition plaintiff's premises were flooded, plaintiff has an action for damages. *Scroggie et al.* v. *Guelph*, 36 U. C. Q. B. 534; *Gilman* v. *Lavonia*, 20 Am. 175. Power to construct a sewer "into, through or under land" is not to be restricted to the construction of sewers under land. *Roderick* v. *Aston Local Board*, L. R. 5 Ch. Div. 328.

(*k*) See note *d* to sub. 47 of this section.

(*l*) The power is to charge not only all persons who own or occupy property which *is* drained into a common sewer, but "*which*, by any law of the Council, *is required to be drained* into such sewer," whether drained or not. In England it has been held that all persons whose property derives any advantage from the works of Commissioners of Sewers, may be assessed in respect of that property. *Soady* v. *Wilson*, 3 A. & E. 248. Where a district within one Commission of Sewers was divided into separate levels, each drained by a separate line of sewers and deriving no benefit from the sewers in the others, each level was required to be separately rated. *The Queen* v. *Tower Hamlets Commissioners*, 9 B. & C. 517. And it was held that the party sued might shew, notwithstanding the decision of the Commissioners, that he derived no benefit from the sewer as a defence to the action. *Stafford* v. *Hamston*, 2 B. & B. 691. It was also held, that under the English Acts it was not alone sufficient to justify an assessment to the sewer rate that the property should derive some benefit from the drainage; but it was also necessary that there should be an occupier of the property assessed. *Neave* v. *Weather*, 3 Q. B. 984; *Tracey* v. *Taylor*, *Ib.* 966. A tenement in the King's Dockyard, deriving a benefit from public sewers, and occupied by an officer of the Government paying no rent, was held subject to sewerage rate. *Netherton* v. *Ward*, 3 B. & Al. 21. The power is to charge "a reasonable rent for the use of" the sewer. An amercement on a Township generally, and a distress on one of the parties liable, by Commissioners of Sewers, was held good. *Ramsay* v. *Nornabell*, 11 A. & E. 383. But it was held that no distress could be levied for any such purpose within the precincts

Licensing Transient Traders.

Regulating transient traders.

53. For licensing, regulating and governing transient traders and other persons who occupy premises in the City or Town, or incorporated Village, for temporary periods, (*m*) and whose names have not been duly entered on the assessment roll in respect of income or personal property for the then current year; 36 V. c. 48, s. 384 (53).

User of Streets.

Regulating traffic in

54. For regulating the conveyance of traffic in the public streets, (*n*) and the width of the tires and wheels of all vehicles

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of a royal palace, occupied as the residence of the sovereign. *Attorney-General* v. *Donaldson*, 10 M. & W. 117. The owner or occupier of property drained, or required to be drained, by a sewerage By-law, may legally be allowed to commute by paying a fixed sum in gross, in discharge of the annual rental. *In re McCutcheon* v. *Toronto*, 22 U. C. Q. B. 613. The charge is a personal one. *Sawyer* v. *Vestry of Paddington*, L. R. 6 Q. B. 164; *Vestry of St. Giles, Camberwell* v. *Weller*, *Ib.* 168 n; *Sheffield* v. *The Board of Works*, L. R. 1 Ex, Div. 395; *Board of Works* v. *Goodwin*, *Ib.* 400; see further note *i* to subsec. 50 of this section.

(*m*) Taxes are usually imposed annually. Persons liable are generally assessed in the commencement of the year; the taxes are afterwards imposed, and not collected till the fall of the year. Traders who live in the Municipality throughout the year cannot well escape taxation; but those who come into the Municipality after the Assessment Roll is completed, or leave it before the Collectors' Roll is completed and in the hands of the Collectors, would escape if there were no such provision as the one here annotated. Power is given by by-law to *license*, *regulate* and *govern* such traders. The power to license includes the power to charge a reasonable fee for the license, and to prevent the doing of business till such fee be paid. See secs. 465 sub. 3 and notes thereto, as to hawkers, pedlars, &c.

(*n*) The powers here conferred are for regulating—

1. The conveyance of traffic in the public streets;

2. And the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, &c.

It would seem that the Municipal Council may pass By-laws regulating the rate of speed allowable in the public streets, the route over which omnibuses may pass, and the time of day for which particular streets may be used for particular purposes. *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562; *Commonwealth* v. *Robertson*, 5 Cush. (Mass.) 438; *Vanderbilt* v. *Adams*, 7 Cowen (N. Y.) 349-352; *Washington* v. *Nasville*, 1 Swan. (Tenn.) 177. So to pass By-laws regulating the removal of buildings, and the temporary use of the streets for that purpose. *Day* v. *Green*, 4 Cush. (Mass.) 433-437. So to prevent the unnecessary obstruction of streets and crossings by railway

used for the conveyance of articles of burden, goods, wares or merchandize. 36 V. c. 48, s. 384 (54). streets, wheels, etc.

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cars, *Davis* v. *New York*, 14 N. Y. 506; also to prohibit the use of steam, and regulate the speed of such cars. *Donnaher* v. *State*, 8 Sm. & Mar. (Miss.) 649; *Railroad Co.* v. *Buffalo*, 5 Hill (N. Y.) 209; *Heutz* v. *Long Island Railroad Co.*, 13 Barb. (N. Y.) 646, unless there be something in the special charter of the company or general law of the land to the contrary. *State* v. *Jersey City*, 5 Dutch. (N. J.) 170. In England legislative sanction is necessary to enable a company to occupy the streets for a horse or street railway. *The Queen* v. *Train*, 9 Cox. 180; *Galbreath* v. *Armour*, 4 Bell App. C. 374; see also *The Queen* v. *Gas Co.*, 2 E. & E. 651; *The Queen* v. *Charlesworth*, 16 Q. B. 1012. So in the United States. *Boston* v. *Richardson*, 13 Allen (Mass.) 146; *City Railroad Co.* v. *Memphis*, 4 Coldw. (Tenn.) 406. The Legislature may authorize Municipal Councils to give or withhold an absolute assent to such a use of their streets, or provide for use upon certain conditions. *Railroad Co.* v. *Baltimore*, 21 Md. 93; *Railroad Co.* v. *Leavenworth*, 1 Dillon (C. C.) 393; *Moses* v. *Railroad Co.*, 21 Ill. 516-522; *Frankford Passenger Railroad Co.* v. *Philadelphia*, 58 Pa. St. 119; *Clinton* v. *Railroad Co.*, 24 Iowa 455; *People* v. *Kerr*, 27 N. Y. 188; *Hinchman* v. *Patterson Horse Railroad Co.*, 17 N. J. Eq. (2 C. E. Green) 75; *Philadelphia* v. *Railroad Co.*, 3 Grant (Pa.) 403; *Commonwealth* v. *Central Passenger Railroad Co.*, 52 Pa. St. 506; *Railroad Co.* v. *O'Daily*, 12 Ind. 551; *Railroad Co.* v. *Applegate*, 8 Dana (Ky.) 289; *City Railroad Co.* v. *Louisville*, 4 Bush (Ky.) 478; *People* v. *Railroad Co.*, 45 Barb. (N. Y.) 73; *Railroad Co.* v. *Adams*, 3 Head (Tenn.) 596; *Sixth Avenue Railroad Co.* v. *Kerr*, 45 Barb. (N. Y.) 138; *McFarland* v. *Railroad Co.*, 2 Beasl. (N. J.) 314; *Brooklyn Railroad Co.* v. *Railroad Co.*, 32 Barb. (N. Y.) 358; *Railroad Co.* v. *New York*, 1 Hilton (N. Y.) 562; *Mercer* v. *Railroad Co.*, 36 Pa. St. 99; *City Railroad Co.* v. *Memphis*, 4 Coldw. (Tenn.) 406; *City Railroad Co.* v. *City Railroad Co.*, 20 N. J. Eq. 61. But direct authority to a Company to carry passengers over the streets of a City does not exempt the Company from a certain amount of Municipal control in the conduct of its business. *Frankford Passenger Co.* v. *Philadelphia*, 58 Pa. St. 119; *State* v. *Herod*, 29 Iowa 123; *City Railroad Co.* v. *Louisville*, 4 Bush (Ky.) 478. County Councils are now expressly empowered to provide by By-law for the making of a double track during the season of sleighing. Rev. Stat. Ont., c. 185, s. 2. The double track must be so made that teams shall be able to pass without being obliged to turn out when meeting each other. Sec. 3. The right hand track is that in which a team is required to to travel. Sec. 4. Special provision is made for keeping open the double tracks. Secs. 5, 6, 7. Any person travelling in the wrong or left hand track, and refusing or neglecting to leave the same when met by a person travelling thereon as of right, is subject to a penalty. Sec. 8. The word "team," as used in the Act, is declared to mean "a vehicle, drawn by one horse or other animal, or a greater number of horses or other animals, as the case may be." Sec. 1; see further note *x* to sub. 42 of this section.

DIVISION VI.—POWERS OF COUNCILS OF CITIES AND TOWNS.

Respecting Intelligence Officers. *Sec.* 467 (1-5).
" *Wooden Buildings.* *Sec.* 467 (6).
" *Police.* *Sec.* 467 (7).
" *Industrial Farms—Exhibitions.* *Sec.* 467 (8-10).
" *Almshouses—Charities.* *Sec.* 467 (11).
" *Corporation Surveyor.* *Sec.* 467 (12).
" *Gas and Water.* *Secs.* 467 (13-16), 468-471.

By-laws for—

467. The Council of every City and Town (*a*) may pass by-laws—

Intelligence Offices.

Licensing intelligence offices.

1. For licensing suitable persons to keep Intelligence Offices, for registering the names and residence of, and giving information to, or procuring servants for, employers in want of domestics or labourers, and for registering the names and residences of, and giving information to, or procuring employment for, domestics, servants and other labourers desiring employment, (*b*) and for fixing the fees to be received by the keepers of such offices; 36 V. c. 48, s. 385 (1).

Regulation of.

2. For the regulation of such Intelligence Offices; (*c*) 36 V. c. 48, s. 385 (2).

Duration of license.

3. For limiting the duration of or revoking any such license; (*d*) 36 V. c. 48, s. 385 (3).

Prohibition without license.

4. For prohibiting the opening or keeping of any such

(*a*) Not applicable to *Counties*, *Townships* or *Incorporated Villages*.

(*b*) The powers are to pass By-laws—

1. For licensing suitable persons to keep Intelligence Offices;

2. For fixing the fees to be received by the keepers of such offices.

The fee is not to exceed ten dollars for one year. See note *f* to sub-sec. 5 of this section. An Intelligence Office, within the meaning of this section, is an office for giving information either to domestics or labourers in want of employment, or to persons desirous of employing domestics or labourers.

(*c*) The former subsection is for the licensing of suitable persons to keep Intelligence Offices; This for the regulation of the offices.

(*d*) The license will, it is presumed be an annual one, granted upon conditions as to conforming to regulations, and revocable at any time for breach of the conditions.

Intelligence Office within the Municipality without license; (*e*) 36 V. c. 48, s. 385 (4).

5. For fixing the fee to be paid for such license, not exceeding ten dollars for one year; (*f*) 36 V. c. 48, s. 385 (5). **Fees for.**

Wooden Buildings.

6. For regulating the erection of buildings, and preventing the erection of wooden buildings, or addition thereto, and wooden fences in specified parts of the City or town; and also for prohibiting the erection or placing of buildings, other than with main walls of brick, iron or stone, and roofing of incombustible material, (*g*) within defined areas of the **Regulating erection of wooden buildings and fences.**

(*e*) The power to license would, if there were no express legislation on the subject, involve the power of preventing persons exercising the calling without a license. But the Legislature has not left the matter to inference, as the power is here for prohibiting the opening or keeping of such an office without a license.

(*f*) If there were no limitation as to the amount of the fee, it would still have to be a reasonable one. See sub. 18 of sec. 461. Ten dollars is the maximum according to this section. The Municipal Council may fix the amount at that or any less sum. *Ib.*

(*g*) The powers here conferred are for—

1. *Regulating* the erection of buildings in specified parts of the City or Town;

2. *Preventing* the erection of *wooden* buildings or additions thereto, and wooden fences, in specified parts of the City or Town;

3. *Prohibiting* the erection or placing of buildings *other* than with main walls of brick, iron or stone, and roofing of incombustible material, within defined areas of the City or Town;

4. *Authorizing* the *pulling down* or *removal*, at the expense of the owner thereof, of *any* building or erection which may be constructed or placed in contravention of any By-law.

Where a Municipal Corporation was authorized to make By-laws regulating the erection of buildings, a By-law requiring the issue of building licenses and the payment of a license fee was held valid. *Welch* v. *Holdkiss*, 12 Am. 383.

The Court always interfere at the instance of the Attorney-General to restrain the continuance and compel the abatement of a public nuisance. But the act prohibited by a By-law against the erection of wooden buildings within prescribed limits, would not appear to be such a nuisance as to be properly restrained by injunction. *Waupan* v. *Moore*, 17 Am. 446; *Village of St. John* v. *McFarlan*, 20 Am. 671.

The "specified parts of the City or Town" mentioned in the first part of the subsection, and "defined areas of the City or Town"

Construction of buildings within fire limits.

City or Town, and for authorizing the pulling down or removal, at the expense of the owner thereof, of any building or erection which may be constructed or placed in contravention of any by-law; 36 V. c. 48, s. 385 (6).

Police.

Police.

7. For establishing, regulating and maintaing a police;

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mentioned in the latter part thereof, mean substantially one and the same thing, viz., the ascertainment of a certain area having certain limits within which prohibited buildings are not to be erected, and other buildings to be regulated—in other words, the establishment of fire limits. The right of a Municipal Council, in the absence of express power, to pass such By-laws is not very clear. See *Mayor, &c.* v. *Thorne*, 7 Paige (N. Y.) 261; *City Council* v. *Elford*, 1 McMullen (S.C.) 234; *Brady* v. *Insurance Co.*, 11 Mich. 425; *Douglas* v. *Commonwealth*, 2 Rawle (Pa.) 262; *Vanderbilt* v. *Adams*, 7 Cowen (N.Y.) 349; *Respublica* v. *Duquet* 2 Yeates (Pa.) 493. Where a Municipal Corporation, under power to prevent the erection of *wooden* buildings, passed a By-law restraining the erection of lath-and-plaster buildings within certain limits, the By-law as to the excess was held void. *Attorney-General* v. *Campbell*, 19 Grant 299. The *power*, since the last-mentioned decision, has, it will be observed upon reading the subsection, been extended to the prohibition of buildings "*other* than those having main walls of brick, iron or stone, and roofing of incombustible material." The removal of a wooden building to the prohibited district would be an "erection" or "placing," within the meaning of such a By-law. *Wadleigh* v. *Gilman*, 12 Me. 403; see further, *Shiel* v. *Sutherland*, 6 H. & N. 796; *Hobbs* v. *Dance*, L. R. 9 C. P. 30. Ordinary repairs would not, however, be either an "erection" or "placing." *Brady* v. *Insurance Co.*, 11 Mich. 425, 469; *Booth* v. *State*, 4 Conn. 65; *Brown* v. *Hunn*, 27 Conn. 332; *Tuttle* v. *State*, 4 Conn. 68; *Stewart* v. *Commonwealth*, 10 Watts (Pa.) 307. The power to pull down or remove a building erected or placed in contravention of the By-law, though a necessary, is a strong power, see note *n* to sub. 10 of sec. 461, and should only be exercised in cases clearly of contravention, and after notice to the person offending, so as to give him an opportunity to show cause before the destruction of his property. See note *e* to sub. 48 of sec. 466. It would seem that a person specially injured by the contravention of such a By-law would have an action against the wrong-doer. *Aldrich* v. *Howard*, 7 Rh. Is. 199, but not against the Municipality. *Forsyth* v. *The Mayor, &c., of Atlanta*, 12 Am. 576. Suffering the prohibited building to remain after fine would appear not to be a continuing offence, so as to subject the offender to second fine. The remedy in such a case would appear rather to be the demolition of the building. See note *y* to sub. 43 of sec. 466. Where in such a case there is power to demolish the building a Court of Equity will not in general be disposed to interfere with the exercise of the power. See *Auckland* v. *Westminster Local Board*, L. R. 7 Ch. 597; *Kerr* v. *Corporation of Preston*, L. R. 6 Ch. Div. 463.

but subject to the other provisions of this Act; (*h*) 36 V. c. 48, s. 385 (7).

Industrial Farm—Exhibition.

8. For acquring any estate in landed property within or without the City or Town for an Industrial Farm, or for a public park, garden or walk, or a place for Exhibitions, (*i*) and for the disposal thereof when no longer required for the purpose; (*k*) and for accepting and taking charge of landed propety, within or without the City or Town, dedicated for a public park, garden or walk for the use of the inhabitants of the City or Town; 36 V. c. 48, s. 385 (8). *See also* sec. 556. Industrial farm, parks, etc.

9. For the erection thereon of buildings and fences for the purposes of the farm, park, garden, walk or place for Exhibitions as the Council deems necessary; (*l*) 36 V. c. 48, s. 385 (9). Buildings thereon.

10. For the management of the farm, park, garden, walk Managing the same.

(*h*) See sec. 419 and notes thereto.

(*i*) The power to acquire land outside the limits of the Municipality for any purpose, is not one ordinarily conferred on Municipal Corporations. See note *u* to sec. 18. The purposes here mentioned are:

1. For an industrial farm;

2. For a public park, garden or walk;

3. Or for a place for exhibitions.

The acquirement of land for such purposes is one intended for the benefit of the public health and public welfare. See *In re Central Park Extension*, 16 Abb. Pr. (N. Y.) 56; *Park Commissioners* v. *Williams*, 51 Ill. 57; *Owners, &c.* v. *Albany*, 15 Wend. (N.Y.) 374. Land may be so acquired for public parks, gardens or walks by purchase or by dedication. The words on a plan, "Garden Square," held not necessarily to imply a dedication. *Pella* v. *Scholte*, 24 Iowa 283. So of the words "The Park." *Perrin* v. *Railway Co.*, 36 N. Y. 120; *Price* v. *Thompson*, 38 Mo. 363. "Spencer Square." *Logansport* v. *Dunn*, 8 Ind. 178. "Colosseum." *Livandais* v. *Municipality*, 16 La. 512; *Xiques* v. *Bujac*, 7 La. An. 499; *Cox* v. *Griffin*, 18 Ga. 728. The words "Depot of O. & P. Railroad" do not show a dedication to the public. *Todd* v. *Railroad Co.*, 19 Ohio St. 514.

(*k*) See note *c* to sub. 1 of sec. 454.

(*l*) There is no limit as to the cost or character of the buildings and fences, &c. Such "as the Council deems necessary" may be erected.

or place for Exhibitions and Buildings; (*m*) 36 V. c. 48, s. 385 (10).

Almshouses—Charities.

Almshouses, etc.

11. For establishing and regulating within the City or Town, or on the Industrial Farm or ground held for public exhibitions, one or more Almshouses or Houses of Refuge for the relief of the destitute, (*n*) and also for aiding charitable institutions within the City or Town; (*o*) 36 V. c. 48, s. 385 (11). *See sec.* 454 (7), *and as to Workhouses, sec.* 438.

Corporation Surveyor.

Corporation surveyor.

12. For appointing any Provincial Land Surveyor to be the Corporation Surveyor; (*p*) 36 V. c. 48, s. 385 (12).

Gas and Water.

Lighting with gas.

13. For lighting the Municipality, (*q*) and this purpose performing any work, and placing any fixtures that are necessary on private property; 36 V. c. 48, s. 385 (13).

(*m*) The management of the farm, park, garden, walk, &c., must of course be subordinate to the use intended. The regulations for management must not be contrary thereto but in furtherance thereof.

(*n*) "Destitute." The poor taken notice of by the English law, which is a complete system, are—

1. Poor by impotency: as the aged or decrepit, fatherless or motherless, poor under sickness, and persons who are idiots, lunatics, lame, blind, &c.:

2. Poor by casualty: such as able-bodied persons decayed or ruined by unavoidable misfortunes, or otherwise out of employment, and unable to procure employment;

3. Poor by prodigality and debauchery; also those called thriftless poor, as idle, slothful persons. See further, note *q* to sub. 7 of sec. 454.

(*o*) A Municipal Corporation has no power, in the absence of express Legislative authority, to grant money in aid of any local object *outside* the limits of the Municipality. See note *s* to sec. 18

(*p*) Municipal Corporations have an implied power to appoint all such officers as are necessary for corporate purposes. See note *r* to sec. 235.

(*q*) Municipal Councils are empowered to authorize any corporate gas or water company to lay down pipes or conduits for the conveyance of gas or water under streets or public squares. Sec. 461 sub. 23. This power is subordinate to the right of the public to use the

14. For laying down gas or water pipes in any street, and opening streets for the purpose; and for taking up or repairing such pipes, and for using every power and privilege given to any Gas or Water Company incorporated in the Municipality as if the same were specially given by this Act, subject, however, to the provisions herein contained as to the erection of gas or water-works and levying rates therefor; (*r*) 36 V. c. 48, s. 385 (14). Laying down gas and water pipes.

15. For providing for the appointment of three Commissioners for entering into contracts for the construction of gas and water works; (*s*) for superintending the construction of the same; for managing the works when completed; and for providing for the election of the said Commissioners by the electors from time to time, and at such periods and for such terms as the Council may may appoint by the by-law authorizing the election; (*t*) 36 V. c. 48, s. 385 (16). Commissioners for erection of gas or water works.

16. For constructing gas and water works, and for levying an annual special rate to defray the yearly interest of the expenditure therefor, and to form an equal yearly sinking fund for the payment of the principal within a time not exceeding Construction of gas and water works.

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streets and public squares for public purposes, and subject to as little inconvenience to the public as compatible with the exercise of the authority. See note (*f*) to sec. 461, sub. 23. The object of this subsection is to enable the Corporations of Cities and Towns, if so disposed, themselves to erect the necessary works to light the Municipality, instead of contracting with a private company. The next subsection makes similar provision for the supply of water. The work is to be done by Commissioners. See sub. 15. It is presumed that any interference with private property for either purpose would be subject to the right of the owner to claim compensation. See sec. 456, and notes thereto.

(*r*) See preceding note.

(*s*) This is the subject of an an Act of the Dominion Legislature. 36 Viet. cap. 48.

(*t*) The powers are for—

1. *Providing* for the appointment of three Commissioners for entering into contracts for the construction of gas or water works;

2. *Superintending* the construction of the same;

3. *Managing* the works when completed;

4. Providing for the election of the Commissioners by the electors from time to time, &c.

thirty years, nor less than five years. (*a*) 36 V. c. 48, s. 385 (17).

468. No by-law under the last sub-section of the preceeding section shall be passed—(*b*)

Estimate to be published and notice of taking poll on by-law.

First:—Until estimates of the intended expenditure have been published for one month, and notice of the time appointed for taking a poll of the electors on the proposed by-law has been published for two months, and a copy of the proposed by-law at length as the same may be ultimately passed, and a notice of the day appointed for finally considering the same in Council, have been published for three months, in some newspaper in the Municipality; or if no newspaper is published therein, then in some newspaper in the County in which the Municipality is situate; (*c*)

Poll to be held and majority must be in favour.

Nor, secondly:—Until at a poll held in the same manner and at the same places, and continued for the same time as at elections for Councillors, a majority of the electors, voting at the poll, vote in favour of the by-law;

By-law to be passed within three months.

Nor, thirdly:—Unless the by-law is passed within three months after holding said poll. (*d*) 36 V. c. 48, s. 386.

If by-law rejected.

469. If the proposed by-law is rejected at such poll, no other by-law for the same purpose shall be submitted to

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(*a*) The By-law is made subject to a vote of the people. Secs. 468, 469.

(*b*) The requisites, under this section, to the validity of the By-law, appear to be the following:

1. Publication of estimates of the intended expenditure, for one month;

2. Publication of the notice of the time appointed for taking a poll, for two months;

3. Publication of a copy of the proposed By-law as the same may be ultimately passed, *and* a notice of the day appointed for finally considering the same, for three months;

4. Ratification of the By-law by a majority of the electors;

5. Passage of the By-law within three months after holding the poll.

Failing these or any of them, the By-law may be held invalid. See note *g* to sec. 286.

(*c*) See notes *i* and *j* to sec. 286.

(*d*) See note *a* to sec. 177.

the electors during the current year. (*e*) 36 V. c. 48, s. 387.

Provisions where there is a gas or water company incorporated for the municipality.

470. In case there is any Gas or Water Company incorporated for the Municipality, the Council shall not levy any gas or water rate until (*f*) such Council has by by-law fixed a price to offer for the works or stock of the Company; nor until after thirty days have elapsed after notice of such price has been communicated to the Company without the Company's having accepted the same, or having, under the provisions of this Act as to arbitrators, named and given notice of an arbitrator to determine the price, nor until the price accepted or awarded has been paid, or has been secured to the satisfaction of the Company. 36 V. c. 48, s. 388.

Proviso as to provisions in special Acts.

471. The foregoing clauses or any of them shall not be construed to apply to or affect the provisions contained in any special Act obtained or to be obtained by any Company or Municipal Corporation. (*g*) 36 V. c. 48, s. 389.

DIVISION VII.—POWERS OF COUNCILS OF TOWNS AND INCORPORATED VILLAGES.

By-laws may be made for—

472. The Council of every Town and Incorporated Village may pass by-laws: (*p*)

(*e*) The object of this section is to protect the ratepayers being harrassed and the Municipality put to needless expense by the useless subdivision of By-laws for approval of the electors. The "current year" intended is the current Municipal year which begins on 1st January and ends on 31st December, and corresponds with the calendar year. If the By-law be rejected at any time in one year it cannot be again submitted until the year following.

(*f*) The course of proceeding indicated appears to be the following:

1. If there be a Gas or Water Company incorporated in the Municipality, the Council of the Municipality, before levying a gas or water rate, is by By-law to fix a price to be offered for the works or stock of the Company;

2. The Company, within thirty days after communication of a notice of a price, is either to accept the same or to proceed to arbitration;

3. If the sum be either accepted, or a different sum awarded, the Municipalities before levying the rate, is required to pay or secure that sum.

(*g*) A general enactment does not usually derogate from or interfere with the provisions of a special Act of Parliament. See note c to sec. 1.

(*p*) Commissioners of Police in Cities have similar powers to those

Licensing Vehicles, &c.

Regulating and licensing livery stables, cabs, &c.

1. For regulating and licensing the owners of livery stables, and of horses, cabs, carriages, omnibuses and other vehicles for hire; (*q*) for establishing the rates of fares to be taken by the owners or drivers, (*r*) and for enforcing payment thereof. (*s*) 36 V. c. 48, s. 391.

DIVISION VIII.—EXCLUSIVE POWERS OF COUNCILS OF COUNTIES.

Respecting Protection of Booms. Sec. 473.
" *Board of Audit—Criminal Justice Accounts. Secs.* 474, 475.
" *Livery Stables, &c. Sec.* 476.
" *Horse Thieves. Sec.* 477.
" *Improvements by single Counties of a Union. Secs.* 478-482.

By-laws may be made for—

473. The Council of every County (*t*) may make by-laws:

Protecting Booms.

Protecting booms.

1. For protecting and regulating booms on any stream or river for the safe keeping of timber, saw-logs and staves within the Municipality. (*u*) 46 V. c. 48, s. 392.

Board of Audit—Criminal Justice, &c.

County Boards of Audit.

474. Every County Council shall apoint at its first meeting in each year two persons, not more than one of whom shall belong to such Council, to be members of the Board of Audit, (*a*) for auditing and approving accounts and demands

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here conferred upon Councils of Towns and Incorporated Villages. See sec. 415.

(*q*) See note *g* to sec. 415.

(*r*) See note *h* to sec. 415.

(*s*) See note *i* to sec. 415.

(*t*) Restricted to *Counties*.

(*u*) The right to float timber, saw-logs and staves over rivers and other streams, is an ordinary right of navigation, and is recognized by statute. See *Little* v. *Ince et al.*, 3 U. C. C. P. 528. Such timber is usually for the time kept in booms, and the protection and regulation of booms becomes therefore a matter of municipal concern.

(*a*) It would be very inconvenient for the Council to pay the accounts mentioned in this section to the several officers before audit

preferred against the County, the approving and auditing whereof previous to the nineteenth day of December, one thousand eight hundred and sixty-eight, belonged to the General Quarter Sessions. 36 V. c. 48, s. 393.

Payment of members of Board.

475. The Council may pay the persons appointed by them to serve on the said Board of Audit, any sum not exceeding four dollars each per day for their attendance at such audit, and five cents for each mile necessarily travelled in respect thereof in going to and from such audit. (*b*) 36 V. c. 48, s. 394; 40 V. c. 7, *Sched, A.* (182).

Livery Horses, &c.

Regulating and licensing livery stables, &c.

476. The Council of every County, having County gravel or macadamized roads within its jurisdiction, and under its immediate control, such roads being kept up and repaired by municipal taxation, and upon which no toll is collected, (*c*) shall have power to pass a by-law or by-laws authorizing the regulating and licensing of the owners of livery stables, and of horses, cabs, carriages, omnibuses, and all other vehicles used or kept for hire; (*d*) and for issuing and regulating

Wheels.

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by the Government auditors and final allowance by the Government; for then occasions might be constantly arising for reclaiming from the officers any sums that the Government County Auditors or the Provincial Treasurer may have rejected. *Per* Robinson, C. J., in *Loudon* v. *Pousett*, 21 U. C. Q. B. 472, 484; *S. C.*, 22 U. C. Q. B. 42; see also *In re Davidson and Quarter Sessions*, 24 U. C. Q. B. 66; *In re Dartnell and Quarter Sessions*, 26 U. C. Q. B. 430; *In re The Sheriff of Lincoln*, 34 U. C. Q. B. 1.

(*b*) As to compensation to public officers. See note *s* to s. 273.

(*c*) This section does not extend to the Council of every County. It is restricted to a County "having County gravel or macadamized roads within its jurisdiction *and* under its immediate control, such roads being kept up and repaired by Municipal taxation, *and* upon which no toll is collected."

(*d*) The powers conferred are for—

1. Regulating and licensing of the owners of livery stables, and of horses, cabs, carriages, omnibuses, and all other vehicles used or kept for hire;

2. Issuing and regulating teamsters' licenses;

3. Regulating the width of tire used on vehicles;

4. Establishing the rates of fare that may be collected or taken by the owners or drivers;

5. Enforcing the payment of such licenses;

teamster's licenses; (*e*) for regulating the width of tire used on such vehicles; (*f*) for establishing the rates of fare that may be collected or taken by the owners or drivers; (*g*) for enforcing the payment of such licenses, (*h*) regulating rates of fares for the conveyance of goods or passengers; (*i*) and for enforcing the width of tire that may be used on such vehicles, when travelling on the aforesaid County gravel or macadamized roads. 36 V. c. 48, s. 395.

Rates of fare.

Horse Thieves.

Rewards for apprehension of persons guilty of horse stealing.

477. The Council of every County shall provide by by-law, that a sum not less than twenty dollars shall be payable as a reward to any person or persons who shall pursue and apprehend, or cause to be apprehended, any person or persons guilty of stealing any horse or mare within the said County, (*k*)

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6. Regulating the rates of fares for the conveyance of goods or passengers;

7. Enforcing the width of tire, &c.

See note *s* to sec. 415.

(*e*) It is presumed teamsters teaming for hire only are here intended. See note *g* to sec. 415.

(*f*) See note *n* to sub. 54 to sec. 466.

(*g*) See note *h* to sec. 415.

(*h*) See note *i* to sec. 415.

(*i*) See note *h* to sec. 415.

(*k*) One of the objects of Municipal government is the protection of property. In furtherance of this object, it has been held in some of the States of the Union that a Municipal Corporation may offer a reward for the detection of offenders against the property of another. Thus in cases of arson. *York* v. *Forscht*, 23 Pa. St. 391; *Crawshaw* v. *Roxbury*, 7 Gray (Mass.) 374. But in other States the power to offer rewards for the detection of criminals, in the absence of express legislation, has been denied. *Gale* v. *South Berwick*, 51 Me. 174; see also *Lee* v. *Flemingsburg*, 7 Dana (Ky.) 28. In this Province express legislative sanction is necessary to the exercise of the power. *Cornwall* v. *West Nissouri*, 25 U. C. C. P. 9. The power in this section is restricted to rewards for the pursuit and apprehension of a person or persons guilty of stealing any horse or mare within the County, and to By-laws passed by the Council of the County. *Ib.* The reward is not to be "*less* than twenty dollars." This is the minimum; so the Council may make the reward as much more as they think reasonable. The reward is to be payable to the person "who shall pursue and apprehend," or cause "to be apprehended," the guilty person. It is only to be paid on conviction of the thief, and on the order of the Judge before whom the conviction is obtained. Any per-

and such reward shall be paid out of the funds of the Corporation on Conviction of the thief, on the order of the Judge before whom the conviction is obtained. (*l*) 36 V. c. 48, s. 396. *See* 29-30 V. c. 51, s. 355 (26).

[*Subsection* 27 *of Section* 355 *of* 29-30 V. c. 51, *enacts as follows* :—

27 The said reward shall not disqualify the person claiming the same or entited thereto, from being a witness.] **Not to disqualify witness.**

son performing the service, who, without such reward, is not bound to perform the service, and placing himself in the position described by the statute, may sue in any Court of competent jurisdiction for the amount of the reward. If it were the duty of the person who made the arrest to have pursued and arrested him without any reward, he cannot recover, for, so far as he is concerned, it is a promise without consideration. See *Stotesbury* v. *Smith*, 2 Burr. 924; *Stilk* v. *Myrick*, 2 Camp. 317; *Harris* v. *Watson*, Peake 72; *Bridge* v. *Cage*, Cro. Jac. 103. It has therefore been held that a watchman, who, while in the discharge of his duty as such, discovers a person in the act of committing the crime of arson, cannot recover the reward offered. *Pool* v. *Boston*, 5 Cush. (Mass.) 219; *Gilmore* v. *Lewis*, 12 Ohio 281; *Means* v. *Hendershott*, 24 Iowa 78. But where three persons broke gaol, and immediately after their escape the defendant, who was Sheriff, offered a general reward of one hundred dollars for the capture of each prisoner, it was held that the Deputy Sheriff, having succeeded in capturing two of the fugitives, was entitled to two hundred dollars. *Davis* v. *Munson*, 43 Vt. 677. "Upon the facts as detailed, the plaintiff had authority to arrest these prisoners without process and as a Peace officer. It would, in a general sense, have been his duty to do so if they had been pointed out to him under circumstances to assure him of their identity and to lead him to apprehend reasonable danger of losing them if he waited for process. But the fact that he had this authority and was under this general duty did not put him, having no process in hand, under any specific legal obligation to look them up . . . . The plaintiff, being under no specific official obligation to enter upon the detective service, for which he would not legally be entitled to pay from the State, he is clearly a person who might engage in it in reliance upon the offer of this reward," &c. *Per* Steele, J., *Ib.*

(*l*) The obligation to pay is *conditional*—

1. On conviction of the thief;

2. On the order of the Judge before whom the conviction is obtained.

The plaintiff must in general prove performance according to the terms of the advertisement. See *Neville* v. *Kelly*, 12 C. B. N. S. 740; *Smith* v. *Moore*, 1 C. B. 438; *Thatcher* v. *England*, 3 C. B. 254; *England* v. *Davidson*, 11 A. & E. 856; *Lancaster* v. *Walsh*, 4 M. & W. 16; *Fallick* v. *Barber*, 1 M. & S. 108; *Williams* v. *Carwardine*, 4 B. & Ad. 621; *Turner* v. *Walker*, L. R. 1 Q. B. 641; *S. C.* L. R. 2 Q. B. 301; see further, *Janvrin* v. *Exeter* 48 N. H. 83;

Improvements by either County of a Union.

Enabling either county of a union to make improvements therein.

478. The Councils of United Counties may make appropriations and raise funds to enable either County separately to carry on such improvements as may be required by the inhabitants thereof. (*m*) 36 V. c. 48, s. 397.

Reeves, &c., of the county interested alone to vote.

479. Whenever any such measure is brought under the notice of the Council of any United Counties, none but the Reeves and Deputy-Reeves of the County to be affected by the measure shall vote ; (*n*) except in case of an equality of votes, when the Warden, whether a Reeve or Deputy Reeve of any portion of the County to be effected by the measure or not, shall have the casting vote. (*o*) 36 V. c. 48, s. 398.

Exception.

Provisions of this Act for re-payment to apply.

480. In all other respects, all the provisions of this Act giving such privileges and making provision for the payment of the amounts appropriated, whether to be borrowed upon a loan or to be raised by direct taxation, shall be adhered to. (*p*) 36 V. c. 48, s. 399.

Treasurer to pay over moneys without deduction.

481. The Treasurer of the United Counties shall pay over all sums so raised and paid into his hands by the several Collectors, without any deduction or pecentage, (*q*) 36 V. c. 48, s. 400.

The property to be

482. The property to be assessed for the purposes contemplated in the four last precceding sections of this Act, shall

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Codding v. *Mansfield*, 7 Gray (Mass.) 272. *The Auditor* v. *Ballard*, 15 Am. 728.

(*m*) The general rule is, that during the union of Counties all laws applicable to Counties shall apply to the Union as if the same formed but one County. Sec. 34. The exceptions made by the statute are as to representation in Parliament and registration of titles. *Ib.* The power for either County separately to carry on improvements is a further exception to the general rule.

(*n*) The improvements must be such as are required by the inhabitants of one of the United Counties. The desire for them may be signified to the Council of the United Counties by the Reeves, &c., of the County to be affected. When brought before the notice of the Council, composed as it will be of Reeves and Deputy Reeves of the United Counties, none except the Reeves and Deputy Reeves of the County to be affected by the measure are to vote.

(*o*) See note *j* to sec. 152.

(*p*) See sec. 340, *et seq.*

(*q*) It is not said to whom the Treasurer is to "pay over;" but it

be the same as the property assessed for any other County purpose, except that any sum to be raised for the purposes of one County only, or for the payment of any debt contracted for the purposes of one County only, shall be assessed and levied solely upon property assessed in that County, and not upon property in any other County united with it, (*r*) and any debenture that may be issued for such purposes may be issued as the debenture of the said one County only, and shall be as valid and binding upon that County as if that County were a separate Municipality, but such debenture shall be under the seal of the United Counties, and be signed by the Warden thereof. (*s*) 36 V. c. 48, s. 401. assessed in such cases.

DIVISION IX.—EXCLUSIVE POWER OF COUNCILS OF TOWNSHIPS.

Respecting Statute Labour. *Sec.* 483 (1-5).
" *Obstructions to Streams.* *Secs.* 484, 485.

483. The Council of every Township, (*h*) may pass by-laws— By-laws may be made for—

Statute Labour.

1. For empowering any person (resident or non-resident) liable to statute labour within the Municipality, to compound for such labour, (*i*) for any term not exceeding five years, at Voluntary commutation of statute labour.

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is apprehend only to persons directly entitled to receive, such as contractors, &c., for work done.

(*r*) *i. e.* "on the *whole* ratable property *in the County*. See note *c* to sec. 340.

(*s*) It is not easy to understand this part of the section. Is it intended that the promise to pay shall be that of the one County only? The difficulty is that, until separation, there is no corporate body capable of promising or making a contract. The provision that any debenture that may be issued may be issued "as the debenture of the one County only," and shall be as valid and binding upon that County "as if that County were a separate Municipality," would appear to indicate the affirmative of the proposition. But the concluding provision, that such debenture "shall be under the seal of the *United Counties*, and be signed by the Warden *thereof*," is inconsistent with such a conclusion.

(*h*) The section originally extended to "Towns and Incorporated Villages;" but by 40 Vict. cap. 7, Sched. A, 181, these words were struck out of the section.

(*i*) No person in Her Majesty's Naval or Military Service, on full pay or on actual service, is liable to perform statute labour or to

any sum not exceeding one dollar for each day's labour; 36 V. c. 48, s. 390 (1).

Compulsory commutation.

2. For providing that a sum of money, not exceeding one dollar for each day's labour, may or shall be paid in commutation of such statute labour; (*k*) 36 V. c. 48, s. 390 (2).

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commute therefor. Nor shall any commissioned officer or private of the Volunteer Force, certified by the Officer commanding the company to which such volunteer belongs or is attached as being an efficient volunteer; but this does not extend to any volunteer who may be assessed for property. Assessment Act, R. S. O. c. 180, s. 76. Every other male inhabitant of a City, Town or Village, of the age of 21 years and upwards, and under 60 years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the Assessment Roll of the City, Town or Village, or whose taxes do not amount to two dollars, must, instead of statute labour, be taxed two dollars yearly therefor, to be levied and collected at such time, by such person and in such manner as the Council of the Municipality shall by by-law direct. *Ib.* sec. 77. No person is exempt from the tax unless he produces a certificate of his having performed statute labour or paid the tax elsewhere. *Ib.* sec. 78. A proprietor of land cannot be compelled actually to do statute labour in a Township, unless himself a resident of such Township, *Moore* v. *Jarron*, 9 U. C. Q. B. 233, and the power to pass By-laws for enforcing performance of statute labour only applies to those cases where the burthen legally exists. *In re Dickson and Galt*, 9 U. C. Q. B. 257. Non-resident proprietors are, however, clearly subject to assessment for commutation for statute labour. A non-resident who has not required his name to be entered on the Roll is not entitled to be admitted to perform statute labour in respect of land owned by him. See Assessment Act, sec. 86. But a commutation tax must be charged against every separate lot or parcel according to its assessed value. *Ib.* In case any non-resident proprietor whose name has been entered on the Resident Roll, does not perform his statute labour or pay commutation for the same, the Overseer of Highways in whose division he is placed must return him as a defaulter to the Clerk of the Municipality before the 15th August, and the Clerk must in that case enter the commutation for statute labour against his name in the Collector's Roll. *Ib.* sec. 87.

(*k*) The power, by the preceding subsection, is to compound "for any term not exceeding five years." This subsection applies to the amount of commutation money for each day's statute labour, in respect of the period for which the commutation is made. The power is by By-law to provide that a sum of money not exceeding one dollar for each day's statute labour may or shall be paid in respect of such statute labour. There is no power to fix the amount of commutation, at a higher rate than one dollar per day. See *In re Tilt and Toronto*, 13 U. C. Q. B. 447. The sum so fixed must apply equally to residents who are subject to statute labour and to non-residents in respect of their property. Assessment Act, sec. 82. Where the Council of any Township by By-Law directs that a sum not exceed-

3. For increasing or reducing the number of days' labour, to which the persons rated on the assessment roll or otherwise shall be liable, in proportion to the statute labour to which such persons are liable in respect of the amounts at which they are assessed, or otherwise respectively; (*l*) 36 V. c. 48, s. 390 (3). **Fixing number of days statute labour.**

4. For enforcing the performance of statute labour, or payment of a commutation in money in lieu thereof, when not otherwise provided by law; (*m*) 36 V. c. 48, s. 390 (4). **Enforcing statute labour.**

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ing one dollar per day shall be paid as commutation for statute labour, the commutation tax may be added in a separate column in the Collector's Roll, and collected and accounted for like other taxes. *Ib.* sec. 81. Where no such By-law has been passed, the statute labour in Townships, in respect of lands of non-residents, must be commuted at the rate of one dollar for each day's labour. *Ib.* sec. 83. No By-law is necessary unless the Municipality desire to fix the commutation money at a less rate than one dollar a day. *Robinson* v. *Stratford*, 23 U. C. Q. B. 99.

(*l*) Every male inhabitant of a Township, between the ages of twenty-one and sixty, who is not otherwise assessed, and who is not exempt by law from performing statute labour, is liable to two days of statute labour on the roads and highways in the Township. Assessment Act, sec. 79. And no Council has power to reduce statute labour required under the last-mentioned section, *Ib.*; and every person assessed upon the Assessment Roll of a Township shall, if his property is assessed at not more than $300, be liable to two days' statute labour.

At more than	$300,	but not more than	$500	3	days.
Do.	500,	do.	do. 700	4	"
Do.	700,	do.	do. 900	5	"

And for every $300 over $900, or any fractional part over $150, one additional day. But the Council of any Township has power, by a By-law operating generally and ratably, to reduce or increase the number of days of statute labour to which all the parties rated on the Assessment Roll or otherwise are respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed. *Ib.* sec. 80. In Townships where farm lots have been subdivided into park or village lots, and the owners are not resident and have not required their names to be entered on the Assessment Roll, the statute labour must be commuted by the Township Clerk in making out the list required by the ninetieth section of the Assessment Act, where such lots are under the value of $200, to a rate not exceeding one-half per cent. on the valuation; but the Council may direct a less rate to be imposed by a general By-law affecting such lots. *Ib.*

(*m*) Any person liable to pay the sum named in the seventy-seventh section of the Assessment Act, or any sum for statute labour commuted under the eighty-first section of that Act, must pay the same to the Collector within two days after demand thereof. In case

Regulating performance, &c.

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended. (*n*) 36 V. c. 48, s. 390 (5). *See* 40 V. c. 7, *Sched. A* (181).

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of neglect or refusal to pay the same, the Collector may levy the same by distress. If no sufficient distress can be found, then upon summary conviction, before a Justice of the Peace of the County in which the local Municipality is situate, of his refusal or neglect to pay the said sum and of their being no sufficient distress, he incurs a penalty of five dollars with costs; and in default of payment at such time as the convicting Justice shall order, shall be committed to the common gaol of the County, and be there put to hard labour for any period not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the said person to gaol, be sooner paid. Assessment Act, sec. 85. And any person liable to perform statute labour, under section 79 of the Act, not commuted, is required to perform the same when required to do so by the pathmaster or other officer of the Municipality appointed for the purpose; and in case of wilful neglect or refusal to perform such same, statute labour after six days' notice requiring him to do the shall incur a penalty of five dollars, and upon summary conviction before any Justice of the Peace, such Justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offenders' goods and chattels; and in case there shall be no sufficient distress, such offender may be committed to the common gaol of the County, and there put to hard labour for any time not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the person to gaol, shall be sooner paid. *Ib.* All sums and penalties recovered under this section must be paid to the Treasurer of the local Municipality, and form part of the statute labour fund thereof. *Ib.* The warrant may, it seems, issue for imprisonment without first summoning the defaulter to answer, or making a formal conviction. *The Queen* v. *Morris*, 21 U. C. Q. B. 392; but see note *e* to sub 48 of sec. 466. A By-law directing that the Overseers of Highways should bring any person refusing or neglecting to perform statute labour before the Reeve of the Municipality or nearest Justice of the Peace, who, upon conviction, should impose a fine of five shillings for each days' neglect, with costs, and adjudge that the payment of such fine should not relieve the person fined from the performance of the labour, was held good. *In re Stoddard and Wilberforce, and Grattan and Fraser*, 15 U. C. Q. B. 163. So a By-law enacting that any person liable to perform statute labour, who after being duly notified should neglect or refuse to attend, should forfeit or pay five shillings for every day he should neglect or refuse, and that the payment of such fine should release such person from the performance of statute labour, was held good. *In re Bannerman and Yarmouth*, 15 U. C. Q. B. 14.

(*n*) The power to regulate the divisions implies a power to make divisions, to which is added a power to regulate the manner in which the labour shall be performed or the commutation money expended in each division. A party to save himself from fine must perform,

484. The Council of every Township (*t*) may also pass by-laws:— By-laws may be made for—

Obstructions to Streams and Water-courses.

1. For preventing the obstruction of streams, creeks and water-courses, (*u*) by trees, brushwood, timber, or other materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise; Preventing obstruction of streams, &c.

2. For levying the amount of such expense in the same manner as taxes are levied; (*v*) Levying expenses.

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when called upon, his statute labour within the division of the Township in which he resides. *Gates* v. *Devenish*, 6 U. C. Q. B. 260.

(*t*) Restricted to *Townships* only.

(*u*) According to the civil law which pervaded the Province of Quebec until the division thereof in 1792, all rivers were distinguished as public and private. Such rivers were called public rivers which maintained a perpetual stream and were capable of being navigated; and an express interdict was made that nothing should be placed in a public stream whereby the navigation might be prejudiced. The civilians held that a stream might acquire the denomination of river either by its magnitude or by the common acceptation of the neighbourhood. A river was distinguished from a common current occasioned by land floods, because one had always a constant stream, regularly confined within banks, and the other might be casual and temporary, flowing over a level. A temporary inundation by floods was not accounted to deserve the appellation of a river, or to alter the original private nature of the soil. Wherever a public stream flowed, though it were through a private channel artificially made, yet it constituted that place public; but on the other hand, if the stream ceased to flow over it, then it became again private. *Per* Macaulay, C. J., in *The Queen* v. *Meyers*, 3 U. C. C. P. 305-317.

In England there seems to be at common law three descriptions of rivers or water-courses:

1. Navigable rivers, technically so termed, see note *m* to sec. 495;

2. Rivers not navigable in law, but so in fact; and though private in relation to the ownership of the soil, yet public highways in relation to the use of the water;

3. Private rivers strictly so called. *Per* Macaulay, C. J., *The Queen* v. *Meyers*, 3 U. C. C. P. 318.

The powers under this section are for preventing the obstruction of "streams, creeks and water-courses," and would appear to apply to all the foregoing streams. A person having mills partly on a road allowance and partly on a public river, was held not to have such an interest in the river as to be entitled to complain of an obstruction in it. *Giles* v. *Campbell*, 19 Grant 226; see also *Cockburn* v. *Eager*, 24 Grant 409.

(*v*) In 1859 the defendants assuming to act under Consol. Stat. U. C. cap. 54, s. 277, passed a By-law requiring persons to clear out all

Penalties.

3. For imposing penalties on parties causing such obstructions. (*w*) 36 V. c. 48, s. 402.

When stream in any township cleared of obstructions, notice may be served on council of adjoining municipality through which stream runs, requiring them to remove obstructions within their municipality.

485. Whenever any stream or creek in any Township is cleared of all logs, brush or other obstructions to the Town line between such Township and any adjoining Township into which such stream or creek flows, the Council of the Township in which the creek or stream has been cleared of obstruction may serve a notice in writing on the head of the Council of the adjoining Township into which the stream or creek flows, requesting such Council to clear such stream or creek through their Municipality; (*y*) and it shall be the duty of such last named Council, within six months after the service of the notice as aforesaid, to enforce the removal of all obstructions in such creek or stream within their Municipality, to the satisfaction of any person whom the Council of the County in which the Municipality whose Council served the notice is situate, shall appoint to inspect the same. (*z*) 36 V. c. 48, s. 403.

TITLE II.—POWERS AND DUTIES OF COUNCILS AS TO HIGHWAYS AND BRIDGES.

DIV. I.—GENERAL PROVISIONS.
DIV. II.—COUNTIES, TOWNSHIPS, CITIES, TOWNS AND VILLAGES.

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obstructions in streams across their lots, and providing that the Council in their discretion might do the work and levy the cost thereof by special rate on the lands, imposing penalties, &c. The defendants therefore cleared a stream on and above the plaintiff's land, and assessed him as a non-resident for $75, the amount expended on his lot, which he paid. The defendants did not, however clear the stream on the lot below, nor compel the occupant to do so, whereby in times of freshet increased quantities of water were brought down and dammed back on the plaintiff's land. Held, that the defendants were not liable to an action for damages at the suit of the plaintiff. *Danard* v. *Chatham*, 24 U. C. C. P. 590.

(*w*) See note *w* to sec. 454, sub. 12,

(*y*) The previous section relates only to the removal of obstructions from a stream *within* a Township; but where the stream flows into an adjoining Township, so that it may be said to be the joint interest of both townships to have the stream cleared of obstruction, provision is made for the clearing of the stream through the second Municipality.

(*z*) This involves the appointment by the County Council of an Inspector. The work is to be done to his satisfaction. No provision

DIV. III.—TOWNSHIPS, CITIES, TOWNS AND VILLAGES.
DIV. IV.—COUNTY COUNCILS.
DIV. V.—TOWNSHIP COUNCILS.

DIVISION I.—GENERAL PROVISIONS.

Highways defined. *Sec.* 486.
Freehold in Crown. *Sec.* 487.
Jurisdiction of Councils. *Sec.* 488.
Possession in Municipalities. *Sec.* 489, 490.
Liability for Repairs. *Sec.* 491.
County Roads and Bridges defined. *Secs.* 492, 493.
Improving and Maintaining County Roads. *Secs.* 494, 495.
Maintaining Township Roads. *Secs.* 496, 497.
Roads under joint jurisdiction. *Secs.* 498–500.
Transfer of former powers of Justices in Sessions to County Councils. *Sec.* 501.
Roads vested in Her Majesty not affected *Sec.* 502.
Roads on Dominion Lands not affected. *Sec.* 503.
Roads necessary for egress. *Sec.* 504.
Width of Roads. *Sec.* 505.
Notices of By-Laws affecting Public Roads. *Sec.* 506.
Registration of Road By-laws. *Sec.* 507.
Disputes respecting Roads—Administration of Oaths. *Sec.* 508.

Highways Defined.

486. All allowances made for roads by the Crown Surveyors in any Town, Township or place already laid out, or hereafter laid out; (*a*) and also all roads laid out by virtue

What shall constitute public highways.

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is, in express terms, made for enforcing the duty here cast upon the second Township. Mandamus probably would be the proper remedy to enforce the performance of such a duty.

(*a*) The following are to be deemed common and public highways under the operation of this section, the origin of which is sec. 12 of Stat. U. C. 50 Geo. III. cap. 1:

1. All allowances for roads made by the Crown Surveyors, &c.;
2. All roads laid out by virtue of any statute;
3. Any roads whereon the public money has been expended for opening the same;
4. Any roads on which statute labour has been usually performed;
5. Any roads passing through the Indian lands;

of any statute, or any roads whereon the public money has

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6. The exception is where such roads have been already altered or may hereafter be altered according to law.

Before the passing of the 50 Geo. III. cap. 1, the Crown was not restricted from altering the original plan of a Township, although already laid out previous to making grants of lots of land therein. In the original survey, allowances for roads were of course made; and if afterwards the lots were located, described and granted in conformity thereto, it would be inferred that the allowances so made were dedicated by the Crown as public roads; but if, after survey, the Government deemed it expedient to abandon or deviate from the principles of it in the future grant of the Township, no law prevented the exercise of such a right. See *The King* v. *Allen et al.*, 2 U. C. Q. B. O. S. 90; *Field* v. *Kemp*, 3 U. C. Q. B. O. S. 374. In this respect the 50 Geo. III. cap. 1, altered the law, and it would now seem that if once a road acquires the legal character of a highway, by reason of the original survey or otherwise, it is out of the power of the Crown, by grant of the soil and freehold thereof to a private person, to deprive the public of their right to use the road. See *The Queen* v. *The Bishop of Huron*, 8 U. C. C. P. 253; *Mountjoy* v. *The Queen*, 1 E. & A. 429; *The Queen* v. *Hunt*, 16 U. C. C. P. 145; *S. C.* 17 U. C. C. P. 443. The enactment under consideration is in some respects clearly prospective as well as retrospective; for its language is, "all allowances *made*, &c., in any Town, Township, &c., *already* laid out, or *hereafter* [to be] laid out, &c." It is said that the fact of a Government Surveyor laying out certain allowances for roads or streets in the plan of the original survey of Crown lands, would be sufficient to give such roads or streets the legal character of highways, though there may have been no stakes planted on the ground to mark them out, and that they would be deemed in law highways, before they were actually opened and used, and before statute labour or public money had been expended upon them. *Per* Robinson, C. J., in *The Queen* v. *Great Western Railway Company*, 21 U. C. Q. B. 577; see also *The Queen* v. *Hunt*, 16 U. C. C. P. 145; *S. C.* 17 U. C. C. P. 443; *Rowe* v. *Sinclair*, 26 U. C. C. P. 233. The fact of a Crown Surveyor having laid out a road on the plan of the original survey makes it a highway, unless there be work on the ground clearly inconsistent with the plan. *Carrick* v. *Johnston*, 26 U. C. Q. B. 69. But where there is work on the ground, it must govern. *Ib.* Where roads, commonly called trespass roads, in unsettled parts of the country, are used, across the lands of private persons, owing to the original allowances not being opened, when the allowances in process of time become opened, the right to exclusive possession of the trespass roads would appear to vest in the proprietors of the soil. See *Borrowman* v. *Mitchell*, 2 U. C. Q. B. 155; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288; *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536. But where a highway has been surveyed, and a road constructed which was intended to be on the line so surveyed, if the road be found to differ from the true astronomical line mentioned as its course on the original survey, it does not follow that the owner of the freehold is entitled to possession of the part erroneously travelled, especially if user for many years be shown,

been expended for opening the same, (*b*) or whereon the statute labour has been usually performed, (*c*) or any roads

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and considerable expenditure of public money. *Prouse* v. *Glenny et al.*, 13 U. C. C. P. 560. Roads running hither and thither, without a defined course or definite boundaries, are not to be deemed common and public highways. *Schwinge* v. *Dowell*, 2 F. & F. 845; *Chapman* v. *Cripps*, *Ib.*, 864. All such cases should be dealt with in a liberal spirit, with a due regard to the customs and necessities of a new country, where roads are in their infancy and much land unenclosed. *Per* Hagarty, C. J., in *Moore* v. *Esquesing*, 21 U. C. C. P. 277-281. See further, *Bradburn* v. *Morris*, L. R. 3 Ch. Div. 812. On an application for a mandamus to open an alleged highway, the Court will require strict proof of the origin of the highway. *Re Lawrence and Thurlow*, 33 U. C. Q. B. 223. See further *Cubitt* v. *Lady Maxse*, L. R. 8 C. P. 704.

A road although obstructed at one end may be deemed a highway. *Wood* v. *Veal*, 5 B. & Al. 454. *The Queen* v. *Spence*, 11 U. C. Q. B. 31, 46, 47; but would not be deemed a highway if closed at both ends. *Bayley* v. *Jameson, et al.*, L. R. 1 C. P. Div. 329. And once a highway always a highway. *Badgley* v. *Bender*, 3 U. C. Q. B. O. S. 221. *Rex* v. *Marchioness of Downshire*, 4 A. & E. 232. *Regina* v. *Purdy*, 10 U. C. Q. B. 545. *Thomas* v. *Ringwood Board*, L. R. 9 Eq. 418. Land may under statute become a public highway by deposit of a plan shewing it as a highway. *McGregor* v. *Calcutt*, 18 U. C. C. P. 39. *The Queen* v. *Rubidge*, 25 U. C. Q. B. 299; and in some cases independently of any statute. *Guelph* v. *Canada Co.*, 4 Grant 632, 654. *Attorney-General* v. *Goderich*, 5 Grant 402. *Attorney-General* v. *Molson*, 10 Grant 436. *O'Brien* v. *Trenton*, 7 U. C. C. P. 246. *Attorney-General* v. *Boulton*, 21 Grant 598. The assumption of a highway by a road company for the purpose of macadamizing or planking it does not render the highway less a highway for the purpose of prosecution in the event of obstruction. *The Queen* v. *Davis*, 35 U. C. Q. B. 107. It is not clear that the ordinary power of indictment for obstructing a highway is applicable where the highway is one which had never been opened or used. See *Rex* v. *Allen*, 2 U. C. Q. B. O. S. 101; *Regina* v. *Great Western R. Co.*, 32 U. C. Q. B. 506.

(*b*) Public money may mean the money of the Government, or the money of the local Municipal Corporation. Either, it is apprehended, would be public money within the meaning of this section. But it must be shown that such money was lawfully expended, and expended for opening the road. *The Queen* v. *Hall*, 17 U. C. C. P. 292.

(*c*) It must be shown that statute labour was *usually* performed on the road. Where a witness stated that "being Pathmaster for two years some years since, he directed statute labour to be performed on the road, besides expending money of his own in improving it," it was held that the proof came very far short of what the statute requires. *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536-541.

passing through the Indian lands, (*d*) shall be deemed common and public highways, (*e*) unless where such roads have been already altered, or may hereafter be altered according to law. (*f*) 36 V. c. 48, s. 404. *See Rev. Stat.* c. 146, ss. 49, 50 & 67.

Freehold in the Crown.

Certain highways, etc., vested in the Crown.

487. Unless otherwise provided for, the soil and freehold (*g*) of every highway or road altered, amended or laid out, according to law, shall be vested in Her Majesty, Her Heirs and Successors. 36 V. c. 48, s. 405.

(*d*) "*Any* roads passing through *the* Indians lands" is very indefinite language. So far there has not been any case decided as to its meaning.

(*e*) "Shall be *deemed* common and public highways." These words have been read as if they were "shall be *presumed* to be common and public highways." In this view inquiry may be had as to the origin of the road, and if the facts repel the presumption, the road will not be held to be a common and public highway. *The Queen* v. *Great Western Railway Co.*, 32 U. C. Q. B. 506-517.

(*f*) Where it was shown that the road was only travelled as a temporary substitute for the proper allowance which ran near by, and the latter was afterwards opened, the Court inclined to think that the former might, within the spirit of this clause, be fairly said to have been altered when the public allowance was opened, for which it had for mere convenience been substituted. *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.

(*g*) The soil and freehold of a highway, at common law, remains in the owner of the land. *Lade* v. *Shepherd*, 2 Str. 1004; *Every* v. *Smith*, 26 L. J. Ex. 344; *Borrowman* v. *Mitchell*, 3 U. C. Q. B. 135; *Dawes* v. *Hawkins*, 4 L. T. N. S. 268; *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536. By this section it is provided that the soil and freehold of *every* highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty. By section 489, it is provided that *every* public road, street, bridge or other highway shall be vested in the Municipality, subject to any rights in the soil which the individuals who laid out such road, street, bridge or highway reserved. Between the two there is an apparent inconsistency. This may perhaps be reconciled by reading the section here annotated as applicable to roads laid out by public authority of some kind, and section 489 to roads laid out by private individuals over their own land. *Per* Burns, J., in *Sarnia* v. *Great Western Railway Co.*, 21 U. C. Q. B. 64; *Mytton et al.* v. *Duck*, 26 U. C. Q. B. 64. See further *Standley* v. *Perry*, 23 Grant 507. *Phifer* v. *Cox*, 8 Am. 98. The right of the public in either case is simply to use the road for the purpose of a highway. A user for different purposes, such as excavating soil, &c., would subject the person so using the road to an action of trespass at the suit of the owner of the freehold. *Cox* v.

Jurisdiction of Municipal Councils.

Jurisdiction of councils over roads, &c.

488. Subject to the exceptions and provisions hereinafter contained, every Municipal Council shall have jurisdiction over the original allowances for roads and highways and bridges within the Municipality. (*h*) 36 V. c. 48, s. 406.

Possession in Municipality.

Streets in cities towns and incorporated villages vested

489. Every public road, street, bridge or other highway, in a City, Township, Town or Incorporated Village, shall be vested in the Municipality, (*i*) subject to any rights in the

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Glue, 5 C. B. 533. But a plaintiff cannot maintain ejectment for a portion of a public highway. *Sarnia* v. *Great Western Railway Co.*, 21 U. C. Q. B. 59; *Fitzgibbon* v. *Toronto*, 25 U. C. Q. B. 137. But see *Goodtitle d. Chester* v. *Alker*, 1 Burr. 133.

(*h*) The control of the public highways has been by the Legislature committed to the Municipal Corporations. They have, subject to the reservations in sections 502 and 502, been entrusted with almost unlimited power of dealing with existing roads and opening new ones. *Per* Blake, C., in *Attorney-General* v. *Nepean Road Co.*, 2 Grant, 635; 636. The Corporation of a County is liable to damages for neglect to keep in repair a County road or bridge *Harold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; *S. C.* in appeal, 18 U. C. C. P. 1; see further, *The Queen* v. *Yorkville*, 22 U. C. C. P. 431, and may maintain an action for an injury wrongfully done to a County road or bridge. *Wellington* v. *Wilson, et al.*, 14 U. C. C. P. 299; *S. C.*, 16 U. C. C. P. 124.

(*i*) The declaration is, that *every public* road, street, bridge or other highway, in a City, Township, Town or Incorporated Village, shall be *vested* in the Municipality. The word "highway" is here used in its broadest sense, as including all public ways. See note *a* to sec. 486. It is made to include not only public roads, streets and *bridges*, but *other* highways. See *Fort Edward Plank Road Co.* v. *Payne*, 17 Barb. (N. Y.) 567; *Plank Road Co.* v. *Thomas*, 20 Pa. St. 91; *Benedict* v. *Goit*, 3 Barb. (N. Y.) 459; *Plank Road Co.* v. *Ramage*, 20 Pa. St. 95; *Plank Road Co.* v. *Rineman*, *Ib.* 99. It is now settled that the roads of joint stock companies are not included. *St. Catharines* v. *Gardner*, 20 U. C. C. P. 107; *S. C.*, in appeal, 21 U. C. C. P. 190; see also *Port Whitby, &c., Road Co.* v *Whitby*, 18 U. C. Q. B. 40; *The Queen* v. *Brown and Street*, 13 U. C. C. P. 356, unless purchased or otherwise legally acquired by the Municipalities in which situate. *The Queen* v. *Paris*, 12 U. C. C. P. 445: *The Queen* v. *Louth*, 13 U. C. C. P. 615; see also *Totten* v. *Halligan*, *Ib.* 567. If any such Company permit or allow their road to remain out of repair for the period of nine months next after the time fixed by arbitrators for repair of the same, the Company shall forfeit all right to their road, and the Municipal Council of the County through which such road or any part thereof passes, may enter upon and take possession of the same, and exercise the same jurisdiction over the same as the

In municipalities sub- soil which the individuals who laid out such road, street,

Road Company owning the road were entitled to do under the Joint-Stock Road Companies Act. Rev. Stat. Ont. c. 152, s. 121. In case the Municipal Council of the County do not think fit, within the period of one month next after the expiration of the nine months, to assume by By-law such road for the purposes of repairing the same and levying tolls thereon, the Municipal Council of any Municipality which would, under the provisions of the Municipal Institutions Act in force in the Province of Ontario, be required to maintain and keep such road in repair as a common and public highway, shall be liable to the same duties as such Municipal Council has or is subject to in respect of the public roads within its jurisdiction. *Ib.*, 122. Any such Company may by by-law abandon any portion of their road. *Ib.* s. 80. After such abandonment the Municipal Council of any Municipality within which such road or any part thereof lies may assume such abandoned portion of such road lying within the Municipality, and have and exercise the same jurisdiction over the same, and be liable to the same duties, as such Council has or is subject to in respect to the public roads within its jurisdiction. *Ib.*, s. 80. So the Company may abandon the whole of their road. After such abandonment, the Municipal Council of the County within which the road or any part thereof lies, may assume the abandoned portion of the road lying within the Municipality, and enjoy all the rights, and be subject to all the responsibilities and liabilities, as provided in section 121 of that Act. Failing such action on the part of the County Council, the road becomes subject to the same jurisdiction for the control and repair thereof, as further provided in section 122 of that Act. *Ib.* But no such Company is entitled to abandon any intermediate portion of their road without the consent of the Municipal Council of the County within which the portion of the road lies, such consent to be expressed by By-law of the Municipal Council. *Ib.* So provisions made for the vesting in the Municipalities of joint-stock company roads, after sales thereof to purchasers who make default in putting such roads in a proper state of repair. See *Ib.* ss. 124. 126. Roads or bridges laid out by Government and afterwards abandoned appear to be public roads, under the control of the local Municipalities in whose limits situate. *Irwin* v. *Bradford*, 22 U. C. C. P. 18; *S. C.*, in appeal, 421. "Each Municipality, as the law stands, can alone, in my judgment, be made responsible for the maintenance and repair of so much of such a bridge as lies within its borders, as in the case of a road similarly placed, unless where the road or bridge is assumed by the County." *Per* VanKoughnet, C., in *Harrold* v. *Simcoe and York*, 18 U. C. C. P. 9-16. A road or bridge may have originated in the convenience or for the protection of individuals, and yet afterwards become of public right a public road or bridge. *The King* v. *Northampton*, 2 M. & S. 262; *Rossin* v. *Walker*, 6 Grant 619; *The Queen* v. *Boulton*, 15 U. C. Q. B. 272; *O'Brien* v. *Trenton*, 6 U. C. C. P. 350; *Daniel* v. *North*, 11 East. 375, note; *The Queen* v. *East Mark*, 11 Q. B. 877; *The Queen* v. *Petrie*, 4 E. & B. 737; *Malloch* v. *Anderson*, 4 U. C. Q. B. 481; *The Queen* v. *Spence*, 11 U. C. Q. B. 31; *The Queen* v. *Gordon*, 6 U. C. C. P. 213; *The Queen* v. *Glamorganshire*, 2 East 356, n; *The King* v. *West Yorkshire*, 5 Burr. 2594; *The Queen* v.

bridge or highway reserved, (*k*) and except any concession or other road within the City, Township or Town or incorpor- ject to certain rights.

Yorkville, 22 U. C. C. P. 431; *Hoofe* v. *The Town of Fulton*, 17 Am. 463. Every individual in the community has an equal right to use a public road, street or bridge. The Municipal Corporations cannot be deemed proprietors, and as such entitled to control the possession, any more than any other corporation or person interested in the streets, roads or highways. The property vested in the Municipal Corporations is a qualified one, to be held and exercised for the benefit of the whole body of the Corporation. They hold as trustees for the public, and not by virtue of any title which confers possession sufficient to maintain an action of ejectment. *Per* McLean, J., in *Sarnia* v. *Great Western Railway Co.*, 21 U. C. Q. B. 62, but may, it seems, sue for injuries done to roads or bridges within their jurisdiction. See *Thurlow* v. *Bogart*, 15 U. C. C. P. 1; *Wellington* v. *Wilson et al.*, 14 U. C. C. P. 299; *S. C.*, 16 U. C. C. P. 124; *The Queen* v. *Fitzgerald*, 39 U. C. Q. B. 297; but see *Vespra* v. *Cook*, 26 U. C. C. P. 182. Defendants, if intending to deny property or possession when sued by a Municipal Corporation as proprietors of a road claiming property or exclusive possession, should, by plea, put in issue the right of property of the plaintiffs. *Sarnia* v. *Great Western Railway Co.*, 17 U. C. Q. B. 65. Roads within Townships may, under certain circumstances, be assumed as County roads. See s. 494.

(*k*) The soil and freehold of roads laid out by the *Crown*, is vested in the Crown. See note *g* to sec. 487. This portion of the section applies to roads laid out by *individuals*. The section applies as much to highways dedicated by permissive user as to highways created by some express act of dedication. *Mytton* v. *Duck*, 26 U. C. Q. B. 61. No one, however, is obliged to dedicate a road, and if the public take it, they must take it subject to any condition the owner imposes. *Fisher* v. *Prowse*, 2 B. & S. 780. The owner who dedicates to the public use as a highway a portion of his land, parts with no other right than the right of passage to the public over the land so dedicated, and may exercise all other rights of ownership not inconsistent therewith. *Per* Mellor, J., in *St. Mary's, Newington*, v. *Jacobs*, L. R. 7 Q. B. 53. There may be a dedication of a *cul de sac* in like manner as a thoroughfare. *Stone* v. *Brooks*, 2 Withrow 70. *S. C.* 35 Cal. 489. There may be a dedication to the public of a right of way, such as a footpath across a field, subject to the right of the owner of the soil to plough it up in due course of husbandry, and destroy all trace of it for the time. *Mercer* v. *Woodgate*, L. R. 5 Q. B. 26; *Arnold* v. *Blaker et al.*, L. R. 6 Q. B. 433; *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96. A deed executed by the owner of land abutting on a lane in which the limits of the lane were given may be referred to for the purpose of ascertaining the width of the lane. *The Queen* v. *Donaldson*, 24 U. C. C. P. 148. An owner who clears open a passage through his land and neither marks by any visible distinction nor excludes persons from passing through his land by positive prohibition, shall be presumed to have dedicated it to the public, *per* Lord Ellenborough, in *Rex* v. *Lloyd*, 1 Camp. 260. But an obstruction, such

ated Village, taken and held possession of by an individual in lieu of a street, road or highway laid out by him without compensation therefor. (*l*) 36 V. c. 48, s. 407.

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as a gate post or chains may be looked upon as evincing a contrary intention. *Roberts* v. *Kerr*, 1 Camp. 262 n; *Lethbridge* v. *Winter*, *Ib.* 263 n; *Woodyer* v. *Hadden*, 5 Taunt. 125; *Rex* v. *Inhabitants of St. Benedict*, 4 B. & Ad. 447; *Rex* v. *Inhabitants of Leake*, 5 B. & Ad. 469; *Marquis of Stafford* v. *Coyney*, 7 B. & C. 257; *Barraclough* v. *Johnson*, 8 A. & E. 99; *Poole* v. *Huskinson*, 11 M. & W. 827; *Pryor* v. *Pryor*, 26 L. T. N. S. 758; *Healey* v. *Corporation of Batley*, L. R. 19 Eq. 375; *Comonwealth* v. *Newbury*, 2 Pick. (Mass.) 51; *Proctor* v. *Lewiston*, 25 Ill. 153, but it is not conclusive. *Johnston* v. *Boyle*, 8 U. C. Q. B. 142; *Davies* v. *Stephens*, 7 C. & P. 570; *Beveridge* v. *Creelman et al.*, 42 U. C. Q. B. 29. A highway may be dedicated to the public subject to a pre-existing right of user by the occupiers of adjoining land for the purpose of depositing goods thereon. *Marant* v. *Chamberlin*, 6 H. & N. 541. Where an erection or evacuation exists upon land, and the land on which it exists or to which it is contiguous, is dedicated to the public it is dedicated subject to the inconvenience or risk arising from the existing state of things. *Fisher* v. *Prowse*, 2 & B. S. 770; *Robins* v. *Jones*, 15 C. B. N. S. 221; *Le Neve* v. *Mile End Old Town*, 8 E. & B. 1054. Where a Municipal Corporation laid out a street over defendant's lands and appraised his damages, it was held that the Corporation in reducing the street to the proper grade had the right to carry the soil therefrom and deposit it on a street in another part of the Municipality for a necessary purpose. *City of New Haven* v. *Sargent*, 9 Am. 360. It has been held that the owner of a fee of a public street is not entitled to compensation for the construction and operation of a horse railway thereon in the absence of special damage. *Hobart* v. *Milwaukee City Railway*, 9 Am. 461. See further *Indianapolis, Bloomington and Western R. W. Co.* v. *Hartley*, 16 Am. 624; *City of Pekin* v. *Brereton*, *Ib.* 629. It has been held that where a highway is out of repair the public have the temporary right to go on the adjoining land for the purpose of travel. *Carrick* v. *Johnston*, 26 U C. Q. B. 65. But see *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96, 100.

(*l*) A concession or other road, *taken* and *held* possession of by an individual in lieu of a street, road or highway laid out by him, without compensation therefor, is exempted from the operation of this section. In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof, and for which no compensation has been made to the owner, the owner, if his lands adjoin, is *entitled* thereto in lieu of the road laid out. Sec. 510. The Municipal Council is also authorized, under certain circumstances, to convey the portion of road to the person so entitled. *Ib.* If they are to exercise a discretion as to the conveying, and refuse to do so when they ought, the positive effect of the enactment, which declares that the person in possession of the original allowance "shall be entitled thereto," may be destroyed, unless the Courts have power to compel the Municipality to convey, or unless the enactment itself gives them a title thereto. The fact that this section vests the other road allowances in the Corporation

490. The Council of every City and Town may respectively pass by-laws for acquiring and assuming possession of and control over any public highway or road in an adjacent Municipality by and with the consent of such Municipality, the same being signified by a by-law passed for that purpose, for a public avenue or walk; (*m*) and to acquire from the owners of the land adjacent to such highway or road, such land as may be required on either side of such highway or road to increase the width thereof to the extent of one hundred feet or less, subject to the provisions of section number four hundred and fifty-six of this Act. (*n*) 36 V. c. 48, s. 408.

Liability for Repairs.

491. Every public road, street, bridge and highway (*o*) shall be kept in repair by the Corporation, (*p*) and

Repairing of public roads, &c.

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and excepts those taken and held by individuals in lieu of a road laid out without compensation therefor, goes to sustain the view that such allowances are vested in those who have taken such possession of them. *Per* Richards, C. J., in *Burritt and Marlborough*, 29 U. C. Q. B. 119, 132; but see *Purdy* v. *Farley*, 10 U. C. Q. B. 545. A Municipal Council may sell any work or macadamized, plank or other toll road which they have constructed or purchased, or any stock held in any road or other company, and apply the proceeds of such sale to the payment of existing debts contracted for the construction of the same, or for such stock, or if no debt exists for such work, road or stock, then to the general purposes of the Municipality or otherwise as they may determine. Rev. Stat. Ont. cap. 152, s. 64.

(*m*) The powers of each Council are generally restricted to the locality over which the Council governs, see note *a* to sec. 18; but for some purposes, in the interest of the general welfare or because of the public necessities, power is given to acquire land in an adjoining Municipality. This section is one in which a power of such a character is conferred. the power is to acquire and assume possession of and control over any public highway or road in an adjacent Municipality. The power is to be exercised for the purpose of using such highway or road "for a public avenue or walk." It cannot, of course, be of any avail unless exercised "by and with the consent" of the adjacent Municipality. Such consent is to be signified by the passing of a By-law for the purpose.

(*n*) In other words, only on payment for compensation to the owners for the land so taken. See sec. 456 and notes thereto.

(*o*) See note *a* to sec. 486.

(*p*) The duty is to keep every public road, street, bridge and highway in repair. In England an obligation to keep highways in repair rests at common law on the parishes and counties. *The King* v.

on default of the Corporation so to keep in repair,

Broughton, 5 Burr. 2700; *The King* v. *Penderryn*, 2 T. R. 513; *The Queen* v. *Scott*, 2 Ld. Rayd. 922; *The King* v. *Liverpool*, 3 East. 86; *The King* v. *Oxfordshire*, 4 B. & C. 194; *The King* v. *Ecclesfield*, 1 B. & Al. 348; *The King* v. *Eastrington*, 5 A. & E. 765; *The King* v. *Leake*, 5 B. & Ad. 469-482; *Regina* v. *Inhabitants of Lordsmere*, 19 L. J. M. C. 215; *Healey* v. *The Corporation of Batley*, L. R. 19 Eq. 375: *The Queen* v. *Horley*, 8 L. T. N. S. 382; see also the *Queen* v. *Kitchener*, L. R. 2 C. C. 88. It would seem that in this country there is a similar common law obligation. *Wellington* v. *Wilson*, 14 U. C. C. P. 304; *Harrold* v. *Simcoe*, 16 U. C. C. P. 43, *S. C.*, 18 U. C. C. P. 9; *The Queen* v. *Yorkville*, 22 U. C. C. P. 431; *Grawick* v. *City of Toronto*, 39 U. C. Q. B. 306. "Apart from section 337 (same this section) which imposes the burden of repairing the roads within the respective Municipalities in which they are situated, the common law duty would apply to all such bodies to repair the roads which are within their jurisdiction, and for which they can raise the funds required for the purpose." *Per* Wilson, J., in *Wellington* v. *Wilson*, 14 U. C. C. P. 304. "We are of opinion for the reasons hereafter given and upon the authority of decided cases, that there is a clear common law liability resting on the defendants both civilly and criminally." *Per* Wilson, J., in *Harrold* v. *Simcoe* 16 U. C. C. P. 50. "I take it that a Corporation, charged with or assuming the custody of a road or bridge, and having funds or the means of obtaining funds, by exacting toll or levying a rate upon the members of the Corporation, with which to make repairs, is at common law bound to keep such road or bridge in an efficient state." *Per* VanKoughnet, C., *S. C.*, 18 U. C. C. P. 14. "Satisfied as I am of the common law liability I have to consider whether the presence of this section 339 (similar to this section 491), restricts or affects the application of the common law." *Per* Hagarty, C. J., in *The Queen* v. *Yorkville*, 22 U. C. C. P. 438. In the United States such a duty is altogether the creature of statute. *Morey* v. *Newfane*, 8 Barb. (N. Y.) 645; *People* v. *Commissioners of Highways*, 7 Wend. (N. Y.) 474; *Chidsey* v. *Canton*, 17 Conn. 475; *Riddle* v. *Proprietors of Locks and Canals on the Merrimac River*, 7 Mass. 169; *Bigelow* v. *Randolph*, 14 Gray (Mass.) 541; see further, note *m* to sec. 495. Then, what is *repair?* It is impossible to give a definition which will apply to all cases. In general terms non-repair may be said to be any defect in a highway which renders it unsafe for ordinary travel. See *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Hixon* v. *Lowell*, 13 Gray (Mass.) 59; *Barber* v. *Roxbury*, 11 Allen, (Mass.) 318, 320; *Hewison* v. *New Haven*, 34 Conn. 136, 142. In determining the question of non-repair, the nature of the country, the character of its roads, and the care usually exercised by Municipalities in reference to such roads, must all be taken into account. *Hull* v. *Richmond*, 2 Wood. & M. 337. A new side line or concession line, opened in a Township thinly scattered, could scarcely be expected to be found in as perfect a condition as an old highway in a well settled Township. *Per* Robinson, C. J., in *Colbeck et ux.* v. *Brantford*, 21 U. C. Q. B. 276; see further, *The Queen* v. *Board of Guardians, &c.*, 8 L. T. N. S. 382; *O'Connor* v. *Otonabee*, 35 U. C. Q. B. 73. It must be a question of fact altogether for a jury to say whether the place alleged to be out of repair is dangerous, and, if so, from

the Corporation shall, besides being subject to any punishment provided by law, be civilly responsi-

what cause; and if from a natural cause or process, whether the persons liable to repair the road could reasonably and conveniently, as regards expenditure and labour, have made the road *safe for use*. *Per* Wilson, J., in *Caswell* v. *St. Mary's Plank Road Co.*, 28 U. C. Q. B. 247, 254. The season of the year, the place of the accident, the hour of the day or night, the manner and nature of the accident must all be taken into consideration in determining the question. See *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Ringland* v. *Toronto*, 23 U. C. C. P. 98: *Hutton* v. *Windsor*, 34 U. C. Q. B. 487; *Green* v. *Danby*, 12 Vt. 338; *Rice* v. *Montpelier*, 19 Vt. 470; *Cassedy* v. *Stockbridge*, 21 Vt. 391; *Sessions* v. *Newport*, 23 Vt. 9; *Kelsey* v. *Glover*, 15 Vt. 708; *Merrill* v. *Hampden*, 26 Me. 234; *Providence* v. *Clapp*, 17 How. (U. S.) 161; *Fitz* v. *Boston*, 4 Cush. (Mass.) 365; *Johnson* v. *Haverhill*, 35 N. H. 74; *Winship* v. *Enfield*, 42 N. H. 197; The cause of the accident may be either structural defect or inert matter left either upon or over the road. *Davis* v. *Bangor*, 42 Me. 522. In some cases it has been held that the defect must be such as to render the Corporation liable to an indictment for a nuisance. *Howard* v. *Bridgewater*, 16 Pick. (Mass.) 189; *Merrill* v. *Hampden*, 26 Me. 234; *Ringland* v. *Toronto*, 23 U. C. C. P. 93; *Hatton* v. *Windsor*, 34 U. C. Q. B. 487; *Ray* v. *Petrolia*, 24 U. C. C. P. 73; *Boyle et al.* v. *Dundas*, 25 U. C. C. P. 420; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; but however desirable that may be as a rule of decision it has not been adopted in our Courts. *Burns et ux* v. *Toronto*, 42 U. C. Q. B. 560; see further, *Goldthwait* v. *East Bridgewater*, 5 Gray (Mass.) 61. It it is not every nuisance which obstructs, hinders, or delays travellers on a highway, which constitutes non-repair of the highway. *Per* Carpenter, J., in *Hewison* v. *New Haven*, 34 Conn. 140. The traveller may be obstructed by a concourse of people, by a crowd of carriages, his horse may be frightened by the discharge of guns, the explosion of fireworks, by the falling of a signboard insecurely fastened, by military music, by the presence of wild animals, and yet the highway not be in any legal sense out of repair. *Hixon* v. *Lowell*, 13 Gray (Mass.) 59; *Davis* v. *Bangor*, 42 Me. 522; *French* v. *Brunswick*, 21 Me. 29; *Taylor* v. *Peckham*, 8 Rh. Is. 349; *S. C.* 5 Am. 578; *Jones* v. *Boston*, 104 Mass. 75; *S. C.*, 6 Am. 194; *Hewison* v. *New Haven*, 9 Am. 34; see further, note *x* to sub. 42 of sec. 466. "Any object in, upon or near the travelled path, which would necessarily obstruct or hinder one in the use of the road for the purpose of travelling thereon, or which, from its nature and position, would be likely to produce that result, would generally constitute a defect in the highway." *Per* Carpenter, J., in *Hewison* v. *New Haven*, 34 Conn. 140. In England it is held that the public are to be restricted to the use of the travelled highway. "Although the highway be of varying and unequal width between fences on each side, the right of passage or way, *primâ facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as the highway, and are not confined to the parts which may be metalled or kept in repair for the more convenient use of carriages or foot passengers." *Per* Martin,

B., in *The Queen* v. *The United Kingdom Telegraph Co.*, 3 F. & F. 74; see also Rev. Stat. Ont. c. 152, s. 137, and *Tutill* v. *West Ham Local Board of Health*, L. R. 8 C. P. 447; *The Queen* v. *Fitzgerald*, 39 U. C. Q. B. 297. A different rule prevails in the United States. *Tisdale* v. *Norton*, 8 Metc. (Mass.) 388; *Smith* v. *Wendell*, 7 Cush. (Mass.) 498; *Shepherdon* v. *Colerain*, 13 Metc. (Mass.) 55; *Kellogg* v. *Northampton*, 4 Gray (Mass.) 65; *S. C.* 8 Gray (Mass.) 504; *Howard* v. *North Bridgewater*, 16 Pick. (Mass.) 189; *Hayden* v. *Attleborough*, 7 Gray (Mass.) 338; *Coggswell* v. *Lexington*, 4 Cush. (Mass.) 307; *Sparhawk* v. *Salem*, 1 Allen (Mass.) 30; *Richards* v. *Enfield*, 13 Gray (Mass.) 344; *Rowell* v. *Lowell*, 7 Gray, (Mass.) 100; *Keith* v. *Easton*, 2 Allen (Mass.) 552; *Campbell* v. *Race*, 7 Cush. (Mass.) 408. The duty to keep the road in repair extends as much to sidewalks for the use of pedestrians as to the travelled way for the use of carriages. *Burns* v. *Toronto*, 42 U. C. Q. B. 560; *Hatton* v. *Windsor*, 34 U. C. Q. B. 487; *Ray* v. *Petrolia*, 26 U. C. C. P. 73; *Boyle et al.* v. *Dundas*, 25 U. C. C. P. 420; *Bacon* v. *Boston*, 3 Cush. (Mass.) 174; *Lowell* v. *Spaulding*, 4 Cush. (Mass.) 277; *Drake* v. *Lowell*, 13 Metc. (Mass.) 292; *Hart* v. *Brooklyn*, 36 Barb. (N. Y.) 226; *Kirby* v. *Boylston Market Association*, 14 Gray (Mass.) 249; *Manchester* v. *Hartford*, 30 Conn. 118; *Hubbard* v. *Concord*, 35 N. H. 54. So to street crossings. *Raymond* v. *Lowell*, 6 Cush. (Mass.) 524; *Coombs* v. *Purrington*, 42 Me. 332; *Baker* v. *Savage*, 45 N. Y. 191. But it is not a duty to plank from each man's house across a ditch to the street, and keep such planks in repair. *McCarthy* v. *Oshawa*, 19 U. C. Q. B. 245. Corporations of Townships may pass By-laws setting apart so much of any highway as they deem necessary for the purposes of a footpath, and prevent persons travelling thereon on horseback or in vehicles. Sec. 525, sub. 4; but see *Peck* v. *Batavia*, 32 Barb. (N. Y.) 634. Should a railing or other barrier be necessary to the safety of passengers, it may be held to be the duty of the Corporation to provide the same. *Toms et ux.* v. *Whitby*, 35 U. C. Q. B. 195; *S. C.* 37 U. C. Q. B. 100; *Sherwood* v. *Hamilton*, *Ib.* 410; *Chapman* v. *Cook*, 14 Am. 686; *Williams* v. *Clinton*, 28 Conn. 264; *Tolland* v. *Wellington*, 26 Conn. 578; *Palmer* v. *Andover*, 2 Cush. (Mass.) 600; *Rowell* v. *Lowell*, 7 Gray, (Mass.) 100; *Jones* v. *Waltham*, 4 Cush. (Mass.) 299; *Alger* v. *Lowell*, 3 Allen (Mass.) 402; *Burnham* v. *Boston*, 10 Allen (Mass.) 290; *Stinson* v. *Gardiner*, 42 Me. 248; *Doherty* v. *Wellham*. 4 Gray (Mass.) 596; *Davis* v. *Hill*, 41 N. H. 329; *Hayden* v. *Attleborough*, 7 Gray (Mass.) 338; *Blaisdell* v. *Portland*, 39 Me. 113; *Loker* v. *Damon*, 17 Pick. (Mass.) 284; *Drury* v. *Worcester*, 21 Pick. (Mass.) 44; *State* v. *Cornville*, 43 Me. 427; *Bowman* v. *Boston*, 5 Cush. (Mass.) 1; *Kellogg* v. *Northampton*, 8 Gray (Mass.) 504; *Munson* v. *Derby*, 9 Am. 332. But the duty is not an absolute one. *Gilchrist* v. *Garden*, 26 U. C. C. P. 1; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Wilson* v. *Halifax*, L. R. 3 Ex. 114; see also *Cornwell* v. *Metropolitan Commissioners of Sewers*, 10 Ex. 771; *Crafter* v. *Metropolitan Railway Co.*, L. R. 1 C. P. 300; *Sparhawk* v. *Salem*, 1 Allen (Mass.) 30; *Murphy* v. *Gloucester*, 105 Mass. 470; *Nebraska* v. *Campbell*, 2 Black. (U. S.) 590; *Chicago* v. *Gallagher*, 44 Ill. 295. There is no duty to light a highway with lamps, *Randall* v. *Eastern R. R.* 8 Am. 327. Allowing snow to lie on a macadamised road, does not as a general rule, come under the idea of allowing a road to be out of repair. *Stewart* v. *Woodstock and Huron Road Co.*, 15 U. C. Q. B.

427. There is no such thing as an absolute right against the act of God and the processes of nature. *Per* Maul, J., in *The Queen* v. *Hornsea*, 2 C. L. R. 599. But even in the case of snow or ice, it is for a jury to say, under the particular circumstances of the place, season, &c., if the non-removal was non-repair. *Caswell* v. *St. Mary's, &c., Road Co.*, 28 U. C. Q. B. 247. In *Providence* v. *Clapp*, 17 How. (U. S.) 161, the court held that after a fall of snow it was the duty of the City to use ordinary care and diligence to restore the walk to a reasonably safe and convenient state, and that it was for the jury to find whether it was in such state or not. Mr. Justice Nelson, in delivering judgment, said, "The just rule of responsibility, and the one we think prescribed by the statute, whether the obstruction be by snow or any other material, is the removal or abatement necessary so as to render the highway, street or sidewalk at all times safe and convenient, regard being had to its locality and uses. See *Horton* v. *Ipswich*, 12 Cush. (Mass.) 488; *Loker* v. *Brookline*, 13 Pick. (Mass.) 343; *Hall* v. *Lowell*, 10 Cush. (Mass.) 260; *O'Neill* v. *Lowell*, 6 Allen (Mass.) 110; *Shea* v. *Lowell*, 8 Allen (Mass.) 136; *Street* v. *Holyoke*, 105 Mass. 82; *Stone* v. *Hubbardston*, 100 Mass. 49; *Gilbert* v. *Roxbury*, *Ib.* 185; *Landolt* v. *Norwich*, 6 Am. Law Reg. N. S. 383; *Providence* v. *Clapp*, 17 How. (U.S.) 161; *Green* v. *Danby*, 12 Vt. 338; *Tripp* v. *Lyman*, 37 Me. 250; *Savage* v. *Bangor*, 40 Me. 176; *Hubbard* v. *Concord*, 35 N. H. 52; *Ib.*, 74; *Hall* v. *Manchester*, 40 N. H. 410; *Billings* v. *Worcester*, 102 Mass. 329; *S. C.*, 3 Am. 460. The mere fact that a highway is slippery from ice upon it, so that a person may be liable to slip and fall upon it while using ordinary care, if the way is properly and well constructed, and there is no such accumulation of ice or snow as to constitute an obstruction, and nothing in the construction or shape of the way which occasions any special liability to formation or accumulation of ice upon it, is not a defect or want of repair which will authorize a jury to find that it is not safe or convenient for travellers. *Stanton* v. *Springfield*, 12 Allen, (Mass.) 566. The doctrine of this case has been affirmed in *Johnson* v. *Lowell*, 12 Allen, (Mass.) 572; *Nason* v. *Boston*, 14 Allen (Mass.) 508; *Gilbert* v *Roxbury*, 100 Mass. 185; *Cook* v. *Milwaukee*, 1 Am. 183; see also *Durkin* v. *Troy*, 61 Barb. 437; *Ringland* v. *Toronto*, 23 U. C. C. P. 93. This doctrine only goes the length of holding that a way, properly constructed, and kept in such a condition as to be reasonably safe and convenient for travel at all seasons of the year, is not defective by reason of the fact that it is covered with a smooth and even surface of ice, which renders it slippery: but if the ice be allowed to remain in such an uneven and rounded condition on the surface that a person could not walk over it, using due care, without being in danger of falling down, the Municipality may be held liable. *Luther* v. *Worcester*, 97 Mass. 268; *Hutchins* v. *Boston*, *Ib.* 272; *Stone* v. *Hubbardston*, 100 Mass. 49; *Billings* v. *Worcester*, 102 Mass. 329; 3 Am. 460; *Collins* v. *Council Bluffs*, 32 Iowa, 324; *S. C.* 7 Am. 200; see also *Morey* v. *Troy*, 61 Barb. (N. Y.) 580; *Mayor* v. *Marriott*, 9 Md. 160; *Street* v. *Holyoke*, 105 Mass. 82; *S. C*, 7 Am. 500; *McLaughlin* v. *City of Corry*, 18 Am. 432. "In the case before us the question was, whether there was such evidence of non-repair that the jury might reasonably and properly conclude that there was negligence in the Corporation not having had removed the piece of frozen snow or

ice complained of, and that, without any want of reasonable and ordinary care upon the part of the plaintiff, the accident could and did happen, &c. *Per* Gwynne, J., in *Ringland* v. *Toronto*, 23 U. C. C. P. 100. In actions for slipping on a sidewalk, evidence that others had met with accidents at the same place was held inadmissible. *Hubbard* v. *Concord*, 35 N. H. 52; *Collins* v. *Dorchester*, 6 Cush. (Mass.) 396; *Aldrich* v. *Pelham*, 1 Gray (Mass.) 510. The following may be mentioned as a few from the many cases as to what have been held to be particular defects or want of repair:—A pile of stones, *Foreman* v. *Canterbury*, L. R. 6 Q. B. 214; *Bigelow* v. *Weston*, 3 Pick. (Mass.) 267; *Smith* v. *Wendell*, 7 Cush. (Mass.) 498; a rock, *Card* v. *City of Ellsworth*, 20 Am. 722; sticks of timber, logs, &c. *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Springer* v. *Bowdoinham*, 7 Me. 442; *Snow* v. *Adams*, 1 Cush. (Mass.) 443; *Johnson* v. *Whitefield*, 18 Me. 286; *Davis* v. *Bangor*, 42 Me. 522; a tent, *Ayer* v. *Norwich*, 12 Am. 396. A steam roller, *Young* v. *New Haven*, 12 Am. 400*n*; pole, *Mochler* v. *Shaftsborough*, 14 Am. 634; but not a broken-down waggon, *Rounds* v. *Stratford*, 26 U. C. C. P. 11; posts, *Soule* v. *Grand Trunk R. W. Co.*, 21 U. C. C. P. 368; *Coggswell* v. *Lexington*, 4 Cush. (Mass.) 307; see further, *Ray* v. *Manchester*, 46 N. H. 59; holes or excavations, *Reed* v. *Northfield*, 13 Pick. (Mass.) 94; *Congreve* v. *Morgan*,, 5 Duer, 495; *Doherty* v. *Waltham*, 4 Gray (Mass.) 596; *Willard* v. *Newbury*, 22 Vt. 458; *Batty* v. *Duxbury*, 24 Vt. 155; *Murphy* v. *Gloucester*, 105 Mass. 470; *Ghenn* v. *Provincetown*, *Ib.* 313; loose planks, projections, or other inequalities of surface. *Irwin* v. *Bradford*, 22 U. C. C. P. 19, 421; *Hall* v. *Manchester*, 40 N. H. 410; *Winn* v. *Lowell*, 1 Allen (Mass.) 177; *Raymond* v. *Lowell*, 6 Cush. (Mass.) 524; *Hubbard* v. *Concord*, 35 N. H. 52; *Smith* v. *Wendell*, 7 Cush. (Mass.) 498. Any object upon or near the travelled way, which in its nature is calculated to frighten horses of ordinary gentleness, may be held, under some circumstances, to constitute a defect in the way itself. *Morse* v. *Richmond*, 41 Vt. 435; *Chamberlain* v. *Enfield*, 43 N. H. 356; *Winship* v. *Enfield*, 42 N. H. 197; *Lund* v. *Tyngsboro'*, 11 Cush. (Mass.) 563; *Dimock* v. *Suffield*, 30 Conn. 129; but see *Horton* v. *Taunton*, 97 Mass. 266; *Kingsbury* v. *Dedham*, 13 Allen (Mass.) 186; *Cook* v. *Charlestown*, *Ib.* 190*n*.; *Keith* v. *Easton*, 2 Allen (Mass.) 552; see also *Corby* v. *Hill*, 4 C. B. N. S. 556; *Pickhard* v. *Smith*, 10 C. B. N. S. 470; *Parry* v. *Ashton*, L. R. 1 Q. B. Div. 314; *Soule* v. *Grand Trunk R. W. Co.* 21 U. C. C. P. 308; *Vars* v. *Grand Trunk R. W. Co.* 23 U. C. C. P. 143. The onus is on the plaintiff to give affirmative evidence of negligence. *Lester* v. *Pittsford*, 7 Vt. 158; *Perkins* v. *Concord R. W. Co.* 44 N. H. 223. Evidence to shew that other horses besides the plaintiff's were frightened at the object, is admissible, *Darling* v. *Westmoreland*, 13 Am. 55. The jury are not to infer a defect on the highway at a particular time and place merely from the fact that an injury was sustained at that time and place. *Church* v. *Cherryfield*, 33 Me. 460; *Sherman* v. *Kortright*, 52 Barb. (N. Y.) 267; *Collins* v. *Dorchester*, 6 Cush. (Mass.) 396; *Packard* v. *New Bedford*, 9 Allen (Mass.) 200; *Calkins* v. *Hartford*, 33 Conn. 57; but see *Kearney* v. *London*, *Brighton*, *&c.*, *R. W. Co.*, L. R. 5 Q. B. 411; *S. C.* L. R. 6 Q. B. 759; *Feital* v. *Middlesex R. W. Co.*, 12 Am. 720; *Mullen* v. *St. Johns*, 15 Am. 530. If the evidence is as consistent with the absence as with the presence of negligence, the

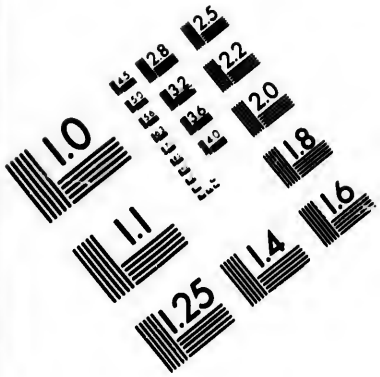
plaintiff is not entitled to recover. *Deverill* v. *Grand Trunk R. W. Co.*, 25 U. C. Q. B. 517; see also *Cotton* v. *Wood*, 8 C. B. N. S. 568; *Tooney* v. *London, Brighton, &c. R. W. Co.*, 3 C. B. N. S. 146; *Corman* v. *Eastern Counties R. W. Co.*, 4 H. & N. 781; *Crafter* v. *Metropolitan R. W. Co.*, L. R. 1 C. P. 300; *Jackson* v. *Hyde*, 28 U. C. Q. B. 294; *Henderson* v. *Barnes*, 32 U. C. Q. B. 176. Negligence is want of care. Want of ordinary care is the true measure of liability. *Johnston* v. *Charleston*, 16 Am. 721. A corporate body never can either take care or neglect to take care except through its servants. If such a body, by its servants, have the means of knowledge that a highway is unfit for travel, and are negligently ignorant of its state, they are guilty of negligence. See *Mersey Dock and Harbour Co.* v. *Penhallow*, 7 H. & N. 329; *S. C.* L. R. 1 H. L. Cases, 93; see also *Thompson* v. *North Eastern R. W. Co.*, 3 L. T. N. S. 618; *Submarine Telegraph Co.* v. *Dickson*, 15 C. B. N. S. 759; *Rapho and West Hempfield Townships* v. *Moore*, 8 Am. 202; *Adair* v. *City of Kingston*, 27 U. C. C. P. 126; *Sherwood* v. *Hamilton*, 37 U. C. Q. B. 410; *Boyle* v. *Dundas*, 27 U. C. C. P. 129; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113. It is no defence that they appointed a proper Overseer of Highways and gave him means and authority to keep the road in good order. The Municipal Corporation are, as it were, themselves the overseers of the highway, and on this principle bound to keep it in repair. They have not only the duty thrown expressly upon them of keeping highways in repair, but have all necessary powers given to them for enabling them to perform that duty. The Corporation must at their peril answer for the consequences of the duty not being performed. The negligence of their officers or servants is no answer. *Per* Robinson, C. J., in *Colbeck* v. *Brantford*, 21 U. C. Q. B. 276. Nor is it any excuse that the alleged defect arose from the necessary repairs of the highway; for in such a case there should be a light or other signal to warn travellers of existing danger in the use of the way. *Buffalo* v. *Holloway*, 3 Seld. (N. Y.) 493; *Hutson* v. *New York*, 9 N. Y. 163; *Storrs* v. *Utica*, 17 N. Y. 104; *Milwaukee* v. *Davis*, 6 Wis. 377; *Smith* v. *Milwaukee*, 18 Wis. 63; *Pettigrew* v. *Evansville*, 25 Wis. 223. Where a statutory obligation is imposed on a person, he is liable for any injury that arises to others in consequence of its having been negligently performed, and this whether it was performed by himself or by a contractor employed by him. *Gray et ux.* v. *Pullen et al.*, 5 B. & S. 970; *S. C.* in error, *Ib.* 980. If the defect arise otherwise than from faulty structure, and from some act other than the direct conduct of the defendants or their servants, and be a recent defect, it is generally necessary to show that defendants or their servants had knowledge thereof, or were negligently ignorant of it. See *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *New York* v. *Sheffield*, 4 Wall. (U. S.) 189; *Griffin* v. *New York*, 9 N. Y. 456; *Vandyke* v. *Cincinnati*, 1 Disney 532; *McGinity* v. *New York*, 5 Duer (N. Y.) 674; *Hart* v. *Brooklyn*, 36 Barb. (N. Y.) 226; *Dewey* v. *Detroit*, 15 Mich. 307; *Prindle* v. *Fletcher*, 39 Vt. 257; *Yale* v. *Hampden, and Berkshire Turnpike Co.*, 18 Pick. (Mass.) 357; *Davis* v. *Lamoille Plank Road Co.*, 27 Vt. 602; *Goodnough* v. *Oshkosh*, 24 Wis. 549; *S. C.* 1 Am. 202; *Cooley* v. *Westbrook*, 57 Me. 181; *S. C.* 2 Am. 30; *Weisenberg* v. *Appleton*, 26 Wis. 56; *S. C.* 7 Am. 39. Notice may be inferred from the notoriety of the defect,

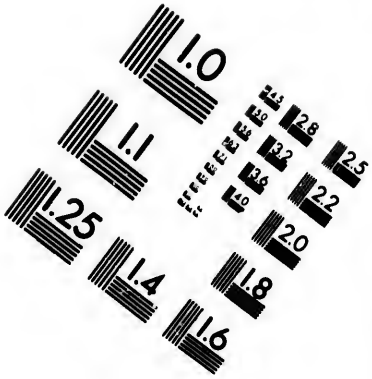
and from its continuance for such a length of time as to lead to the presumption that the proper officers of the Municipality did in fact know, or with proper vigilance and care might have known, the fact. This latter is sufficient, because this degree of care and vigilance they are bound to exercise; and therefore if, in point of fact, they do not know of such defect, when by ordinary and due vigilance and care they would have known it, they must be responsible, as if they had actual notice." *Per* Shaw, C. J., in *Reed* v. *Northfield*, 13 Pick. (Mass.) 94; see further, *Castor* v. *Uxbridge*, 30 U. C. Q. B. 113; *Dewey* v. *Detroit*, 15 Mich. 307; *Mayor* v. *Sheffield*, 4 Wall. (U. S.) 189; *Serrot* v. *Omaha*, 1 Dill. C. C. R. (U. S.) 312; *Howe* v. *Plainfield*, 41 N. H. 135. If the defect be palpable, dangerous, and has existed for a long time, the jury may very properly infer either negligent supervision and ignorance consequent upon and chargeable to such neglect, or notice of the defect and a disregard of the duty to repair it. *Manchester* v. *Hartford*, 30 Conn. 118; see further *Bloomington* v. *Bay*, 42 Ill. 503; *Howe* v. *Lowell*, 101 Mass. 99; *Donaldson* v. *Boston*, 16 Gray (Mass.) 508; *Colley* v. *Westbrook*, 57 Me. 181; *S. C.* 2 Am. 30. Where an injury was produced by some sudden and unexpected cause, it was held that the Corporation were not liable till they had a reasonable opportunity to repair before the accident. *Hubbard* v. *Concord*, 35 N. H. 52; *Barton* v. *Syracuse*, 36 N. Y. 54; *Springfield* v. *LeClaire*, 49 Ill. 476. Notice to a citizen is not to the Corporation, *Donaldson* v. *Boston*, 16 Gray (Mass.) 508, although held otherwise in Maine, *Springer* v. *Bowdoinham*, 7 Greenl. (Me.) 442; *Mason* v. *Ellsworth*, 32 Me. 271. Speaking of a sewer, Morrison, J., said, "It did not appear, however, when the mud accumulated in the culvert or when the stone fell at its mouth, the mere existence of these obstructions was not, in my opinion, enough to establish negligence. There was no evidence that the defendants or their officers had any notice of these obstructions, nor did it appear that they were of so notorious a character, or had continued so long as to charge the defendants with constructive notice of them." *Bateman* v. *Hamilton*, 33 U. C. Q. B. 251. But as to sewers, see *Barton* v. *Syracuse*, 36 N. Y. 54; *Springfield* v. *LeClaire*, 49 Ill. 476. There is no presumption of law as to notice. It is for a jury to decide whether, from the circumstances, there was notice. *Colley* v. *Inhabitants*, 2 Am. 30; *Hall* v. *Lowell*, 10 Cush. (Mass.) 260; *Stanton* v. *Springfield*, 12 Allen (Mass.) 566; *Mosey* v. *Troy*, 61 Barb. (N. Y.) 580; *Alletson* v. *Chichester*, L. R. 10 C. P. 319. In some States of the Union existence of the defect for twenty-four hours, *Brady* v. *Lowell*, 3 Cush. (Mass.) 121, or express notice, *Tripp* v. *Lyman*, 37 Me. 250, is necessary by statute before there can be any right of action against the Corporation. Where the encroachment of the sea destroyed the road, so that the subject of repair was not in existence, it was held that there was no obligation at an enormous cost to rebuild the road. *Regina* v. *Bamber*, 5 Q. B. 279; *The Queen* v. *Inhabitants of Hornsea*, Dears. C. C. 291; but see *The Queen* v. *Greenhow*, L. R. 1 Q. B. Div. 703. If the cost of rebuilding the road or making the necessary repair would exceed the statutable limit of taxation it may be that there would be no obligation to repair. See *Grant* v. *Sligo Harbour Commissioners*, L. R. 11 Ir. C. L. R. 190; *Butler* v. *The Bray Commissioners*, *Ib.* 181. But

ble (*q*) for all damages sustained by any person by reason of such default, but the action must be brought Limitation of actions.

in such a case it would, it is apprehended be the duty of the Corporation so to close up the road that there could be no danger in using or attempting to use it. See *Harrold* v. *Simcoe and Ontario R. W. Co.*, 16 U. C. C. P. 43; *S. C.* 18 U. C. C. P. 9; see further, note *s* to sec. 495.

(*q*) Although non-repair may be one subject of an indictment, it is not, in the absence of special damage, peculiar to the plaintiff, or of some statutable provision giving the right of action to the subject of a civil action. *Butler* v. *The Bray Commissioners*, L. R. 11 Ir. C. L. R. 181; *Gibson* v. *The Mayor of Preston*, L. R. 5 Q. B. 218; but see *Foreman* v. *The Mayor of Canterbury*, L. R. 6 Q. B. 214; *White* v. *Hindley Local Board*, L. R. 10 Q. B. 219. Such is also the rule in the United States. *Detroit* v. *Blakeley*, 4 Am. 456; *White* v. *County of Bond*, 11 Am. 65, and cases in note. Here the action is given in express terms. *Hurst* v. *Town of Winfield*, 17 Am. 482; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113. The action is local and must be brought in the County where the road is situate. *Ferguson* v. *Howick*, 25 U. C. Q. B. 547; *Irwin* v. *Bradford*, 22 U. C. C. P. 18. In such an action it must be made to appear that the alleged defect was the direct and proximate cause of the injury. *Adams* v. *Carlisle*, 21 Pick. (Mass.) 146; *May* v. *Princeton*, 11 Metc. (Mass.) 442; *Holman* v. *Townsend*, 13 Metc. (Mass.) 297; *Lund* v. *Tyngsboro'*, 11 Cush. (Mass.) 563; *Horton* v. *Ipswich*, 12 Cush. (Mass.) 488; *Marble* v. *Worcester*, 4 Gray (Mass.) 395; *Tuttle* v. *Holyoke*, 6 Gray (Mass.) 447; *Stickney* v. *Maidstone*, 30 Vt. 738; *Sears* v. *Dennis*, 105 Mass. 310; *Munderschid* v. *Dubuque*, 29 Iowa 73. The obligation to keep in repair is only as against such accidents as are likely to and actually do concur in using a highway for the purpose of travel. *Per* Barrett, J., in *Sykes* v. *Pawlet*, 43 Vt. 446; *S. C.*, 5 Am. 296. If the violence of the horse, acting without guidance or discretion, be the immediate cause of the injury, the cases are conflicting as to whether or not the Corporation is liable. The decisions on the point in Maine, New Hampshire and Massachusetts will be found reviewed in *Sherwood* v. *Hamilton*, 37 U. C. Q. B. 410. The rule adopted in this Province is, that where two causes combine to produce the injury, both in their nature proximate, the one being the defect in the highway and the other some occurrence for which neither party is responsible, such as the accident of a horse running away beyond control, the Corporation is liable, provided the injury would not have been sustained but for the defect in the highway. *Toms et ux* v. *Whitby*, 37 U. C. Q. B. 100; *Sherwood* v. *Hamilton*, 37 U. C. Q. B. 410; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113. But there can be no recovery if the injury be attributable to any unskilfulness or want of care on the part of the driver. *Flower* v. *Adam*, 2 Taunt. 314; *Cassedy* v. *Stockbridge*, 21 Vt. 391; *Peoria Bridge Association* v. *Loomis*, 20 Ill. 235; *Alger* v. *Lowell*, 3 Allen (Mass.) 402; *Stuart* v. *Machias Port*, 48 Me. 477; *Cobb* v. *Standish*, 14 Me. 198; *Marriott* v. *Stanley*, 1 M. & G. 568. So if the accident really and substantially arose by reason of some defect in the plaintiff's waggon, harness, &c. *Jenks* v. *Wilbraham*, 11 Gray (Mass.) 142; *Noyes* v. *Morristown*, 1 Vt. 357; *Allen* v. *Hancock*, 16 Vt. 230;





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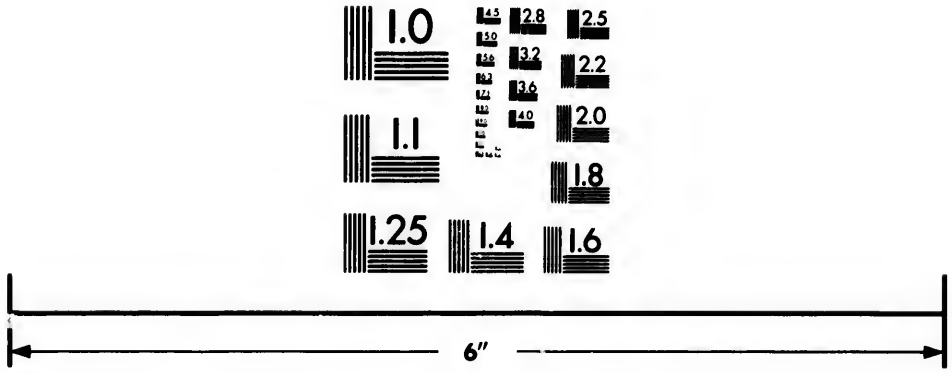

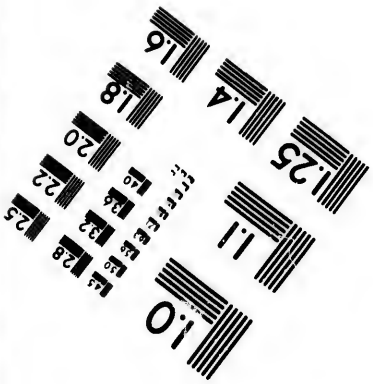

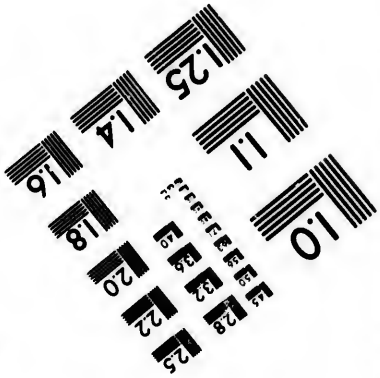

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Bigelow v. *Rutland*, 4 Cush. (Mass.) 247; *Moore* v. *Abbot*, 32 Me. 46; *Farrar* v. *Greene*, *Ib.* 574; see also *Clark* v. *Barrington*, 41 N. H. 44; *Tucker* v. *Hennecker*, *Ib.* 317; *Winship* v. *Enfield*, 42 N. H. 197; *Palmer* v. *Andover*, 2 Cush. (Mass.) 600; *Hunt* v. *Pownall*, 9 Vt. 411. So if it be shown that the plaintiff in any manner, by his own want of care, directly contributed to the happening of the accident. *Butterfield* v. *Forrester*, 11 East 60; *Woolf* v. *Beard*, 8 C. & P. 373; *Smith* v. *Smith*, 2 Pick. (Mass.) 621; *Bridge* v. *Grand Junction Railway Co.*, 3 M. & W. 244; *Waite* v. *North Eastern Railway Co.*, E. B. & E. 719; *Baker* v. *Portland*, 58 Me. 199; *S. C.*, 4 Am. 274; *Tuff* v. *Warman*, 2 C. B. N. S. 740; *S. C.*, 5 C. B. N. S. 573; *Witherley* v. *Regent's Canal Co.*, 12 C. B. N. S. 2; *Bradley* v. *Brown et al.*, 32 U. C. Q. B. 463. The rule operates also in the case of children of tender age. *Mangan* v. *Atterton*, L. R. 1 Ex. 239; *Singleton* v. *Eastern Counties Railway Co.*, 7 C. B. N. S. 287. The question of contributory negligence arises when both parties are substantially at fault, and when the fault of each contributes to the disaster. *Per* Cleasby, B., in *Gee* v. *Metropolitan Railway Co.*, L. R. 8 Q. B. 177. If there be no dispute as to the fact, the question of contributory negligence becomes a question of law, and the Court may properly nonsuit. *Winckler* v. *Great Western Railway Co.*, 18 U. C. C. P. 250, 262; *Nicholls* v. *Great Western Railway Co.*, 27 U. C. Q. B. 382; *Rastrick* v. *Great Western Railway Co.*, *Ib.* 396; see also *Bridges* v. *North London Railway Co.*, L. R. 6 Q. B. 377; *Bellfontaine Railroad Co.* v. *Hunter*, 33 Ind. 335; *S. C.*, 5 Am. 201; *Adams* v. *Lancashire and Yorkshire Railway Co.*, L. R. 4 C. P. 739; *Gee* v. *Metropolitan Railway Co.*, L. R. 8 Q. B. 177; *Cornish* v. *Toronto Street Railway Co.*, 23 U. C. C. P. 355; *Blackwell* v. *Toronto Street Railway Co.*, 38 U. C. Q. B. 172. It is not such negligence as to prevent a recovery, that the traveller did not know the road, and yet proceeded on a dark night. *Williams* v. *Clinton*, 28 Conn. 264. So driving in a violent storm through the streets of a city with which the driver was unacquainted was held not of itself to be such negligence as to prevent recovery by him for injuries sustained through defect in the street. *Milwaukee* v. *Davis*, 6 Wis. 377. Nor driving on the wrong side of the road. *Damon* v. *Inhabitants of Scituate*, 20 Am. 315. Being blind, halt or deaf is not *per se* to be taken as evidence of contributory negligence. All persons, however blind, halt or deaf, have a right to act on the assumption that the highway is reasonably safe. *Davenport* v. *Ruckman*, 37 N. Y. 568; *Renwick* v. *New York Central Railroad Co.*, 36 N. Y. 133. "The streets and sidewalks are for the benefit of all conditions of people; and all have the right, in using them, to assume that they are in good condition, and to regulate their conduct upon that assumption. A person may walk or drive in the darkness of the night, relying upon the belief that the Corporation has performed its duty, and that the street or the walk is in a safe condition. He walks by a faith justified by law, and if his faith is unfounded, and and he suffers an injury, the party in fault must respond in damages. So one whose sight is dimmed by age, or a near-sighted person whose range of vision was always imperfect, or one whose sight has been injured by disease, is each entitled to the same rights, and may act on the same assumption. Each, however, is bound to know that prudence and care are in turn required of him, and that if he fail in

within three months after the damages (*r*) have been

this respect, any injury he may suffer is without redress." *Per* Hunt, C. J., in *Davenport* v. *Ruckman*, 37 N. Y. 573. It is not, however, too much to ask of persons of defective sight greater care than is required of persons free from such infirmity. *Winn* v. *Lowell*, 1 Allen (Mass.) 177; see also *Bridges* v. *North London Railway Co.*, L. R. 6 Q. B. 377, 397; *Hutton* v. *Windsor*, 34 U. C. Q. B. 487. No person is required to have perfect vision, or to be vigilant in the discovery of defects which ought not to exist. *Thompson* v. *Bridgewater*, 7 Pick. (Mass.) 188. No person is in fault in neglecting to observe and avoid a defect not so plain and obvious as to be necessarily observable by one in the possession of ordinary faculties, travelling at an ordinary pace. *Cox* v. *Westchester Turnpike Co.*, 33 Barb. (N. Y.) 414; *Frost* v. *Waltham*, 12 Allen (Mass.) 85. The fact that the traveller knew the danger, or was familiar with the road, is a circumstance to be considered in determining the question whether the plaintiff contributed by his own want of care to the accident. *Clayards* v. *Dethick*, 12 Q. B. 439; *Reed* v. *Northfield*, 13 Pick. (Mass.) 94; *Humphreys* v. *Armstrong County*, 56 Pa. St. 204; *Smith* v. *Lowell*, 6 Allen (Mass.) 39; *Snow* v. *Housatonic Railroad Co.*, 8 Allen (Mass.) 441; *Frost* v. *Waltham*, 12 Allen (Mass.) 85; *Clark* v. *Lockport*, 49 Barb. (N. Y.) 580; *Whittaker* v. *West Boylston*, 97 Mass. 273; *Fox* v. *Sackett*, 10 Allen (Mass.) 535; *Hutton* v. *Windsor*, 34 U. C. Q. B. 487. Such knowledge in some cases has been held sufficient to raise a presumption of negligence on plaintiff's part, so as to require evidence to negative the presumption. *Fox* v. *Glastenbury*, 29 Conn. 204: *Folsom* v. *Underhill*, 36 Vt. 580; *Wilson* v. *Charlestown*, 8 Allen (Mass.) 137; *Jacobs* v. *Bangor*, 16 Me. 187; *Hanlon* v. *Keokuk*, 7 Iowa 477; *Brown* v. *Jefferson*, 16 Iowa 339; *Smith* v. *Lowell*, 6 Allen (Mass.) 39; *Wilson* v. *Charlestown*, 8 Allen (Mass.) 137; *Horton* v. *Ipswich*, 12 Cush. (Mass.) 488; *James* v. *San Francisco*, 6 Cal. 528. Contributory negligence is not an answer to an indictment for manslaughter, in which the Queen, as representing the nation, is plaintiff. *The Queen* v. *Kew et al.*, 12 Cox. C. C. 355.

(*r*) The question of the measure of damages is one that has produced more difficulty than perhaps any other branch of the law. *Per* Wilde, B., in *Gee* v. *Lancashire, &c., Railway Co.*, 6 H. & N. 211; see also *Rowley* v. *London and North Western Railway Co.*, L. R. 8 Ex. 221. "We have no means of ascertaining by a fixed rule what shall be the limit of damages in such a case (action for negligence.) There is no principles which will apply equally to animals, goods and passengers. Damages in such a case must be left to the common sense of the jury, assisted by the presiding Judge." *Per* Mellor, J., in *Fair* v. *London and North Western Railway Co.*, 21 L. T. Rep. 326; see also *Collins* v. *Council Bluffs*, 32 Iowa 324; 7 Am. 200; *Chicago* v. *Langlass*, 4 Am. 603; *Chicago* v. *Martin*, 49 Ill. 241. "It would be most unjust if, whenever an accident occurs, juries were to visit the unfortunate cause of it with the utmost amount that they think an equivalent for the mischief done. . . . Scarcely any sum would compensate a labouring man for the loss of a limb; yet you do not, in such a case, give him enough to maintain him for life." *Per* Parke, B., in *Armsworth* v. *South Eastern Railway Co.*, 11 Jur. 760, cited in 18 Q. B. 104. "It is very true that

cases sometimes occur in which a jury, being over-anxious to fully compensate a party, give damages so great as to induce the Court to interfere. In the great majority of cases, however, I am satisfied with the common sense views upon which they act." *Per* Cockburn, C. J., in *Fair* v. *London and North Western Railway Co.*, 21 L. T. N. S. 327. The rule is that the damages should be such as to furnish a *reasonable compensation* for the injury sustained. *Chicago* v. *Langlass*, 4 Am. 903; see also *Decatur* v. *Fisher*, 53 Ill. 407. In assessing the compensation to a person injured through the negligence of a Municipal Corporation, the jury should take into consideration two things—first, the pecuniary loss he sustains by the accident; second, the injury he sustains in his person, or his physical capacity for enjoying life. When they come to the consideration of pecuniary loss, they have to take into account not only his present loss, but his incapacity to earn a future improved income. Then as to the second ground; undoubtedly health is the greatest of all physical blessings, and to say that when it is utterly shattered no compensation is to be made for it, is really perfectly extravagant. *Per* Cockburn, C. J., in *Fair* v. *London and North Western Railway Co.*, 21 L. T. N. S. 327. It is difficult to conceive a case against a Municipal Corporation which would justify the allowance of exemplary damages. *Chicago* v. *Mark et ux*, 2 Withrow 205; 49 Ill. 241. There is no limitation by this Statute as to the amount, or the elements for consideration in estimating the amount. In Maine a person can recover only for "bodily injury" or "damage to property." *Weeks* v. *Shirley*, 33 Me. 271; *Verrill* v. *Minot*, 31 Me. 299; *Mason* v. *Ellsworth*, 32 Me. 271; *Brown* v. *Watson*, 47 Me. 161; *State* v. *Hewett*, 31 Me. 396, 400; *Reed* v. *Belfast*, 20 Me. 246; *Sanford* v. *Augusta*, 32 Me. 536; *Stover* v. *Bluehill*, 51 Me. 439. So in Connecticut and Massachusetts, the recovery can only be for damages "to the person or property." *Chidsey* v. *Canton*, 17 Conn. 475; *Beecher* v. *Derby Bridge Co.*, 24 Conn. 491; *Canning* v. *Williamstown*, 1 Cush. (Mass.) 451; *Harwood* v. *Lowell*, 4 Cush. (Mass.) 310. In Vermont, however, any special damage sustained is recoverable. *Bailey* v. *Fairfield*, Brayt. (Vt.) 126. So in Wisconsin. *Weisenberg* v. *Appleton*, 26 Wis. 56; 7 Am. 39. If the action be, by the personal representative, brought under what is commonly called Lord Campbell's Act, the jury, in estimating the damages, are restricted to compensation for pecuniary loss only, and cannot take into consideration mental or bodily suffering. *Armsworth* v. *South Eastern Railway Co.*, 11 Jur. 758; *Blake* v. *Midland Railway Co.*, 18 Q. B. 93; *Franklin* v. *South Eastern Railway Co.*, 3 H. & N. 211; *Ducksworth* v. *Johnson*, 4 H. & N. 653; *Dalton* v. *South Eastern Railway Co.*, 4 C. B. N. S. 296; *Pym* v. *Great Northern Railway Co.*, 2 B. & S. 759; *S. C.* 4 B. & S. 396; *Secord* v. *Great Western Railway Co.*, 15 U. C. Q. B. 631; *Morley* v. *Great Western Railway Co.*, 16 U. C. Q. B. 504; *Pennsylvania Railroad Co.* v. *McCloskey*, 23 Pa. St. 526; *Quin* v. *Moore*, 15 N. Y. 432; *Lucas* v. *New York*, 21 Barb. (N.Y.) 245; *Safford* v. *Drew*, 3 Duer. (N.Y.) 627; *Soule* v. *New York Railroad*, 24 Conn. 575; *Rowley* v. *London and North Western Railway Co.*, L. R. 8 Ex. 221; *Johnson* v. *Hudson River Railroad Co.*, 6 Duer. (N.Y.) 634, 648. The Corporation cannot claim to have deducted the amount of an accident policy, *Hanning* v. *Townshend*, 43 Vt. 536; *S. C.* 5 Am. 304; *Althorf* v. *Wolfe*, 2

sustained : (*s*)

To what roads applicable.

2. This section shall not apply to any road, street, bridge or highway laid out by any private person, and the corporation shall not be liable to keep in repair any such last mentioned road, street, bridge or highway, until established by

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Hilt. (N.Y.) 344, affirmed 22 N.Y. 365; see also *Yates* v. *Whyte*, 4 Bing. N.C., 272; *Hunter* v. *King*, 4 B. & Al. 209; *Bradburn* v. *The Great Western Railway Co.*, L. R. 10 Ex. 1, and is without remedy against the party who caused the obstruction, unless the remedy be given by statute. *Vespra* v. *Cook*, 26 U. C. C. P. 182. In several of the New England States a recovery over is given by statute. See *Lowell* v. *Short*, 4 Cush. (Mass.) 275; *Milford Holbrook*, 9 Allen (Mass.) 17; *Lowell* v. *Boston and Lowell Railroad Co.*, 23 Pick. (Mass.) 24; *Winship* v. *Enfield*, 42 N. H. 197; *Hooksett* v. *Amoskeag Co.*, 44 N. H. 105; *Monmouth* v. *Gardiner*, 35 Me. 247; *Patterson* v. *Colebrook*, 9 Foster (N. H.) 94; *Veazie* v. *Penobscot Railroad Co.*, 49 Me. 119. In the State of Maine, a person travelling on Sunday, unless for charity or necessity, so far violates the law that he cannot maintain an action for injuries sustained on that day by non-repair of a highway. *Hinckley* v. *Penobscot*, 42 Me. 81. No distinction, in such case, is made between those who travel within the Corporation limits and those who travel from Township to Township. *Tillock* v. *Webb*, 56 Me. 100. A person walking on Sunday to make visit of pleasure to the house of a friend, and so sustaining an injury, was held not entitled to sue. *Cratty* v. *Bangor*, 57 Me. 423; *S. C.* 2 Am. 56. See also *Johnson* v. *Town of Irasburgh*, 19 Am. 111; *Connolly* v. *Boston*, *Ib.* 396; *Doyle* v. *Lynn and Boston Railroad*, *Ib.* 431. But the weight of authority in the United States, apart from some statutory provisions on the subject, appears to be in the opposite direction. See *Myers* v. *Meinrath*, 3 Am. 268; *Sutton* v. *Wauwatosa*, 9 Am. 534; *Hill* v. *Wilker*, 5 Am. 540; *McClary* v. *Lowell*, 8 Am. 366; *Hall* v. *Corcoran*, 9 Am. 30; *Parker* v. *Latner*, 11 Am. 210; *Johnson* v. *Warburgh*, 12 U. C. L. J. N. S. 21; *Frost* v. *Plumb*, 16 Am. 18; *Carroll* v. *Staten Island Railway Co.*, 17 Am. 221; *O'Connell* v. *Lewiston*, 20 Am. 673, and the law in this Province, it is apprehended, is not in favour of any such distinction as attempted in Maine between travelling on Sunday and other days of the week.

(*s*) The section is inapplicable where the cause of the injury was gravel simply placed on the road by the defendants, *Rowe* v. *Leeds and Grenville*, 13 U. C. C. P. 515; but it is different where in the course of repairing a highway a hole is left without a light or other adequate protection. *Pearson* v. *County of York*, 41 U. C. Q. B. 378. Where the section is applicable, no additional time is given to a legal representative to bring the action, owing to the death of the intestate, by reason of negligence within the meaning of the section. *Turner* v. *Brantford*, 13 U. C. C. P. 109. The plaintiff brought an action against two Townships for non-repair of a road, and while it was appending before the Court of Appeal, and there being some doubt as to his right to recover against the Townships, he, as a matter of precaution issued a writ against the County. A notice to proceed to trial having been served on the plaintiff, the

by-law of the Corporation, or otherwise assumed for public user by such Corporation. (*t*) 36 V. c. 48, s. 409.

[*By sections* 1 *and* 3 *of C. S. C. c.* 85, *it is provided that*:—

Use of public roads in cities and towns vested in the municipality.

1. The right to use as public highway all roads, streets and public highways within the limits of any City or incorporated Town in this Province, shall be vested in the Municipal Corporation of such City or incorporated Town, (except in so far as the right of property or other right in the land occupied by such highways have been expressly reserved by some private party when first used as such roads, street or highway, and except as to any concession road or side road within the City or Town where the persons now in possession or those under whom they claim have laid out streets in such City or Town without any compensation therefor in lieu of such concession or side road). 13, 14 V. c. 15, s. 1.

Consequences of neglect.

3. If the Municipal Corporation of any such City or incorporated Town fail to keep in repair any such road, street or highway within the limits thereof, such default shall be a misdemeanor for which such Corporation shall be punished by fine in the discretion of the Court before whom the conviction is had. 13, 14 V. c. 15, s. 1].

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time for trial was enlarged till after the decision of the Court of Appeal. *McHardy* v. *Perth*, 7 U. C. P. R. 101. The statute begins to run from the occurrence of the accident, not from the death. *Miller* v. *North Fredericksburg*, 25 U. C. Q. B. 31. So where plaintiff's mare fell through a bridge and was injured, but did not die for four months afterwards, when the action was brought it was held to be too late. *Ib.* As soon as the mare was injured by falling through the bridge, the plaintiff's cause of action was complete. His damages in the words of the statute were then and from that time sustained. The subsequent death of the mare was merely additional evidence of the extent of his damages. *Ib.* The damage was not the less because he did not at the time know its full extent. *Ib.*

(*t*) This proviso does not apply to roads laid out by the Government and afterwards abandoned to the Municipalities. *Irwin* v. *Bradford*, 22 U. C. C. P. 18. All the Legislature meant by it is, that the merely laying out of a road or the building of a bridge by private owners shall not thereby cast a criminal and civil responsibility on the Municipality, or on the public represented by them. See *Green* v. *Town of Bridge Creek*, 20 Am. 18. "It is very easy to imagine cases where such a provision should most properly apply, especially in a country where such large open spaces are included in town and city limits—in some cases containing tracts of land in their original state. A landholder might, merely for his personal convenience, stake out half-a-mile of road through his land, cleared or uncleared, and declare that he dedicated it to the public. Such a proceeding, by itself, should not render the Municipality liable. But after this is done, and for a long series of years, the public (*alias* the Municipality) use the road as a frequented thoroughfare; houses are built along it as their chief if not their only way of egress and ingress, and which houses are forthwith taxed by the Municipality; repairs are regularly done to it every year by the road officers out of public moneys;—it would then, I think, be an unparalleled state of the

What are County Roads and Bridges.

492. The County Council shall have exclusive jurisdiction (*u*) over all roads and bridges lying within any Township, Town or Village of the County, and which the Council by by-law assumes with the assent of such Township, Town or Village Municipality as a County road, or bridge, until

Jurisdiction of county councils over roads and bridges.

law if it lie in the mouth of the Municipality to declare that they are under no responsibility." *Per* Hagarty, C. J., in *The Queen* v. *Yorkville*, 22 U. C. C. P. 431, 439. The adoption of a road by the parish is no more than the use of it by the public. *The King* v. *Leake*, 5 B. & Ad. 484. If the road be used by the public, the parish must repair it, although neither the dedication nor the user has been adopted or acquiesced in by the parish. *Ib.*, 469; see also *The King* v. *Lyon*, 5 D. & R. 497; *The Queen* v. *Newbold*, 19 L. T. N. S. 656; *Foreman* v. *Canterbury*, L. R. 6 Q. B. 214. If a Municipal Corporation have created a street as a public street, taking charge of it and regulating it as other streets in the Municipality, they cannot be allowed, when sued for an injury arising out of their negligence by one of the public, to repudiate their liability. *Mayor, &c.*, v. *Sheffield*, 4 Wall. (U.S.) 189; see also *Irwin* v. *Bradford*, 22 U. C. C. P. 18; *S. C.*, *Ib.* 421. Work done by proper authority to repair roads used as highways, when no evidence of their establishment under statute nor other evidence of acceptance is shown, has repeatedly, in the United States, been held sufficient to authorize the inference of acceptance by the constituted public authorities. *Marcy* v. *Taylor*, 19 Ill. 634; *Folsom* v. *Underhill*, 36 Vt. 580; *State* v. *Atherton*, 16 N. H. 203; *People* v. *Jones*, 6 Mich. 176; *Alvord* v. *Ashley*, 17 Ill. 363; *Commonwealth* v. *Belding*, 13 Metc. (Mass.) 10; *Green* v. *Canaan*, 29 Conn. 157; *Guthrie* v. *New Haven*, 31 Conn. 308. Though the rule is not uniformly recognized in the United States, it is believed that the weight and prevailing current of authorities support it. *Curtiss* v. *Hoyt*, 19 Conn. 154, 169; *Baker* v. *Clark*, 4 N. H. 380; *State* v. *Nudd*, 3 Fost. (N. H.) 327; *Cole* v. *Sprowle*, 35 Me. 161; *People* v. *Beaubien*, 2 Doug. (Mich.) 256, 286; *State* v. *Catlin*, 3 Vt. 530; *Marcy* v. *Taylor*, 19 Ill. 634; *Boyer* v. *State*, 16 Ind. 451; *Morse* v. *Ranno*, 32 Vt. 600; *Holdane* v. *Cold Spring*, 21 N. Y. 474; *Guyman* v. *Homan*, 15 Ind. 201; *Leech* v. *Waugh*, 24 Ill. 228; *Connehan* v. *Ford*, 9 Wis. 216; *Daniels* v. *People*, 21 Ill. 439; *Holdane* v. *Cold Spring*, 23 Barb. (N. Y.) 103; *Jennings* v. *Tisbury*, 5 Gray (Mass.) 73; *Russell* v. *New York Central Railroad, Co.* 26 Barb. (N.Y.) 430; *Hays* v. *State*, 8 Ind. 425; *State* v. *Hill*, 10 Ind. 219; *Smith* v. *State*, 3 Zabr. (N. J.) 130; *State* v. *Sartor*, 2 Stro. (S. Car.) 60; *State* v. *Atherton*, 16 N. H. 202. It is doubtless within the power of Municipal Councils to close up or by proper action refuse to accept highways established by dedication; so that it is impossible for landowners to force upon the public, roads not necessary for public convenience. Such as are necessary the public ought to repair. *Per* Beck, J., in *Manderschid* v. *Dubuque*, 29 Iowa 73; *S. C.* 4 Am. 196.

(*u*) It is by section 487 enacted t' at *the soil and freehold* of every highway or road, altered, amended or laid out according to law should be vested in Her Majesty, her heirs and successors. It is by section.

the by-law has been repealed by the Council, and over all bridges across streams separating two Townships in the County, and over all bridges crossing streams or rivers over one hundred feet in width, within the limits of any incor-

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486 enacted that *every public road, street, bridge, or other highway* (not saying soil or freehold), in a City, Township, Town or Incorporated Village, shall be vested in the Municipality, *subject to any rights in the soil* which the individuals who laid out such road, street, bridge or highway reserved. It is, by the section here annotated, enacted that the County Council shall have *exclusive jurisdiction* over the roads and bridges mentioned, which may include roads and bridges such as mentioned in sections 487 and 488. An endeavour was made, in note *g* to section 487, to reconcile sections 487 and 489. It is now necessary to reconcile the section under consideration with those sections.

The section under consideration, it will be observed, omits all reference to "the soil and freehold," as provided for in sections 487 and 489, and omits the use of the word "vest," as used in the latter section. It simply declares that as to the roads and bridges intended, the County Council (not Corporation) shall have *exclusive jurisdiction*. The reason which probably led the Legislature to confer the exclusive jurisdiction upon Counties over County roads and bridges, without vesting the soil or property of them in the Counties, was, that the County has no peculiar or exclusive locality constituting the County, apart from the separate Municipalities which compose it; and it might seem inconsistent, after vesting every public road, street, bridge or other highway, in a City, Township, Town or Incorporated Village, in the Crown or in the particular local Municipality, to vest any of the same highways in the Corporation of the County, and therefore "the exclusive jurisdiction" was alone conferred upon the County Council, as the grant of a power sufficiently large for all practical purposes, and indicating that the local Municipality or Municipalities are to be excluded from all interference in the exercise of that power. *Per* Adam Wilson, J., in *Wellington* v. *Wilson et al.*, 16 U. C. C. P. 130. That every public road in a Township is vested in the Municipality thereof, must be taken with some limitation; for the County Council has, under this section, exclusive jurisdiction over all roads, &c., lying within any Town or Village of the County which the County Council, with the assent of such Town or Village Municipality, assumes as a County road. See *Per* John Wilson, J., in *The Queen* v. *Louth*, 13 U. C. C. P. 615-618. The section here annotated, before amendment, applied only to roads or bridges within Townships. *Per* Burns, J., in *St. George's Church* v. *Grey*, 21 U. C. Q. B. 265. It will be observed by carefully reading the section that the powers of County Councils are now much extended.

The exclusive jurisdiction is now conferred as to the following roads and bridges:

1. All roads and bridges lying *within* any Township, Town or Village of the County, *and* which the Council of the County by By-law, with the assent of the local Municipality, assumes as a County road or bridge.

porated Village in the County, and connecting any highway leading through the County, and over all bridges over rivers forming or crossing boundary lines between two Municipalities. 37 V. c. 16, ss. 17, 19 ; 39 V. c. 7, s. 2, *Sched.* B.

493. Any County Council may assume, make and maintain any Township or County boundary line at the expense of the County, or may grant such sum or sums from time to time for the said purposes as they may deem expedient. (*r*) 36 V. c. 48, s. 411.

Boundary lines may be maintained by County.

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2 All bridges across streams separating two Townships in the County.

3 All bridges crossing streams or rivers over one hundred feet in width, within the limits of any Incorporated Village in the County, and connecting any highway leading through the County.

4 Over all bridges, over rivers forming or crossing boundary lines between two Municipalities.

The first subjects in the section it is quite plain must be assumed by the County by By-law. The remaining three subjects are not within that part of the section to which the word "By-laws" refers, *per* Wilson, J., in *O'Connor* v. *Otonabee*, 35 U. C. Q. B. 82. The section does not in terms require that the last three subjects shall be assumed by By-law. The section reads better by itself that the County Council shall have exclusive jurisdiction over these three subjects . . . It is the positive duty of the County to perform the necessary acts with respect to subjects two and three although the County Council has passed no By-law assuming such subjects because the County Council has exclusive jurisdiction over them. *Ib.* 83. The section must be read as modified by sections 498 and 515, and as meaning that every road dividing different Townships shall, when assumed by the County Council be withinthe exclusive jurisdiction of the County, *Ib.*, 84; see further, *Regina* v. *Wellington*, 39 U. C. Q. B. 194. The case of *Re McBride and York*; 31 U. C. Q. B. 355, so far as it expresses that roads between Townships are without having been assumed by the County within the sole control of the County must be modified. See *per* Wilson, J., in *O'Connor* v. *Otonabee*, 35 U. C. Q. B. 85.

The section was held in *The Queen* v. *Perth*, C. P. M. T. 1872, (not reported,) to be inapplicable to roads between Townships acquired by the County Council by purchase, and this decision which was followed in *Hacking* v. *The Corporation of Perth*, 35 U. C. Q. B. 460, was disapproved of in *S. C.* 35 U. C. Q. B. 467, by the Court of Appeal.

(*r*) By Township boundary line, here mentioned, is intended a road which forms the boundary line of a Township or boundary line between townships, and a road may also be a boundary line of a County or a boundary line between Counties. In either event the County Council may do one of two things—assume, make and maintain it, or grant money from time to time for the purpose of making or maintaining it. See note *a* to preceding section.

As to Improving and Maintaining County Roads.

Roads or bridges assumed by county councils.

494. When a County Council assumes, by by-law, any road or bridge within a Township as a County road or bridge, the Council shall, with as little delay as reasonably may be, and at the expense of the County, cause the road to be planked, gravelled or macadamized, or the bridge to be built in a good and substantial manner; (*f*) and further, the County Council shall cause to be built and maintained in like manner, all bridges on any river or stream over one hundred feet in width, within the limits of any incorporated Village in the County, necessary to connect any public highway leading through the County. (*g*) 37 V. c. 16, s. 18.

Maintenance of certain bridges in villages.

(*f*) Power is often conferred on Municipal Councils without the imposition of a duty, in which case the exercise of the power is discretionary. See *In re Weston Grammar School*, 13 U. C. C. P. 423; *Bell* v. *Crane*, L. R. 8 Q. B. 481; *Hovey* v. *Mayor*, 43 Me. 322; *Benjamin* v. *Wheeler*, 8 Gray (Mass.) 413. But here the power is subordinate to the imposition of duty, viz., the Council *shall*, with as little delay as possible, &c. See note *b* to sub. 45 to sec. 466, "It would seem to be reasonable, when a County Council assumes by By-law, the exclusive jurisdiction over any road or bridge lying entirely within a Township as a County road or bridge, that the Council should be compelled to improve and sustain it at the expense of the County, which is just the very direction the statute makes, otherwise there can be no sense or purpose in the Township being divested of the jurisdiction over its own internal roads. *Per* Wilson, J., in *Rose and Stormont*, 22 U. C. Q. B. 531, 536. The County cannot, in the absence of express legislation, cast the obligation of repairing a road or bridge so assumed on the local Municipalities. *Ib.* 537. "To cast the burden upon the special locality, and to make it provide for the whole general advantage, where it has no power or jurisdiction, and its only privilege is to pay under the dictation of another power, would be as onerous and unreasonable an obligation as can well be conceived." *Per* Wilson, J., *Ib.* Nor has the County, in the absence of express legislation, any power to cast upon the local Municipalities the obligation to keep in repair a Township road purchased by the County. *The Queen* v. *Louth*, 13 U. C. C. P. 615; but see sub. 6 of sec. 524.

(*g*) The latter part of this section was an addition made to sec. 342 of 29 & 30 Vict. cap. 51. It was added by Stat. 34 Vict. cap. 30, s. 8, Ont. Before the addition, the County Council could only assume as county roads such roads or bridges as were within townships and were under no obligation to keep in repair any bridge within an Incorporated Village. Where such a bridge is across a river over one hundred feet in width, and is necessary to connect the parts of any public highway leading through the County, the obligation to build and maintain it is absolutely cast on the

495. It shall be the duty of County Councils to erect and maintain bridges over rivers, forming or crossing boundary lines between two Municipalities (other than in the case of a City or separated Town) within the County ; (*m*) and in case

Bridges between municipalities.

County ; and very properly so, for a bridge so situated is really a part of the County road, which by statute is within the exclusive jurisdiction of the County ; see further, sec. 495, and notes thereto.

(*m*) A bridge is defined as being any structure of wood, stone, brick or iron, raised over a river, pond or lake for the passage of men and animals. See *The Queen* v. *Derbyshire*, 2 Q. B. 745 ; *State* v. *Gorham*, 37 Me. 451 ; *Sussex* v. *Strader*, 3 Harris (N. J.) 108. The word "bridge" may embrace under its meaning such abutments as are necessary to make the structure accessible and useful. *The King* v. *West Riding of York*, 7 East. 596 ; *Bardwell* v. *Jamaica*, 15 Vt. 438 ; *Tolland* v. *Wellington*, 26 Conn. 578 ; *Commonwealth* v. *Deerfield*, 6 Allen (Mass.) 449. A bridge is said to be a mere substitute for a ferry. *Per* Savage, C. J., in *People* v. *Saratoga and Rensselaer Railroad Co.*, 15 Wend. (N. Y.) 133. The duty of repairing bridges in England, in the absence of legislation to the contrary, rested on the County 2 Inst. 700, 701 ; *The King* v. *West Riding of Yorkshire*, 2 East. 342, 356 ; *Hill* v. *Livingston*, 12 N. Y. 52 ; *Follett* v. *People*, *Ib.* 273 ; *People* v. *Cooper*, 6 Hill (N. Y.) 516 ; and at common law it was indispensable to the legal character of the bridge repairable by the County, that it should be shown to cross a stream or watercourse. *The King* v. *Oxfordshire*, 1 B. & Ad. 289 ; *The King* v. *Salop*, 13 East, 95 ; *The King* v. *Lindsey*, 14 East. 317 ; *The King* v. *Northampton*, 2 M. & S. 262 ; but these words were held to cover water flowing in a channel between banks more or less defined, even though the channel were occasionally dry. *The King* v. *Marquis of Buckingham*, 4 Camp. 189 ; *The King* v. *Oxfordshire*, 1 B. & Ad. 289 ; see also *The King* v. *Trafford*, *Ib.* 874 ; *The King* v. *Whitney*, 3 A. & E. 69 ; *The King* v. *West Riding of Yorkshire*, 2 East. 342 ; *The King* v. *Northampton*, 2 M. & S. 262 ; *The King* v. *Marquis of Buckingham*, 4 Camp. 189 ; *The King* v. *Devon*, Ry. & M. 144 ; *The Queen* v. *Derbyshire*, 2 Q. B. 745, 756. Whether the particular structure is a bridge or not, if there be reasonable evidence as to it, is a question for the jury. *The Queen* v. *Gloucestershire*, 1 C. & M. 506 ; *Tolland* v. *Willington*, 26 Conn. 578. The common law responsibility of Counties to repair bridges has never prevailed in the United States. *Hedges* v. *Madison*, 1 Gilm. (Ill.) 567 ; *Hill* v. *Livingston*, 12 N. Y. 52 ; *Huffman* v. *San Joaquin*, 21 Cal. 426. In some of the States it is imposed by statute on Townships. *Lewis* v. *Litchfield*, 2 Root. (Conn.) 436 ; *Swift* v. *Berry*, 1 Root. (Conn.) 448 ; *Lobdell* v. *New Bedford*, 1 Mass. 153 ; *State* v. *Campton*, 2 N. H. 513 ; *State* v. *Canterbury*, 8 Fost. (N. H.) 195 ; *State* v. *Boscawen*, 32 N. H. 331 ; and in some on Counties, *Wilson* v. *Jefferson*, 13 Iowa 181 ; *Freeholders, &c.*, v. *Strader*, 3 Harrison (N. J.) 108. The common law obligation seems to prevail in Ontario, with this qualification, that it is cast upon the local Municipality or the County according to the nature of the structure, position of the bridge, and other surrounding circumstances. *Har-*

of a bridge over a river forming or crossing a boundary line between two Counties, or a County and a City, such bridge shall be erected and maintained by the Councils of the

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rold v. *Simcoe and Ontario*, 16 U. C. C. P. 43; *S. C.*, in Appeal, 18 U. C. C. P. 9; *The Queen* v. *Yorkville*, 22 U. C. C. P. 431. It is here by this section expressly declared to be the duty of County Councils to erect and maintain bridges over rivers *forming* or *crossing* boundary lines between two Municipalities in the County, excepting the case of a City or separated Town.

The Legislature has not given any definition as to the meaning of the word "river." The Legislature in some of the sections of the Municipal Act use the word "stream," in others "water-course," in others "river," and in others "creek." See s. 492, 494, 495 and 529. The words "stream" and "water-course" may be looked upon as synonymous, but certainly not the words "river" and "creek." Every stream may be said to be a water-course, and every water-course may be said to be a stream of water; but every river cannot with propriety be said to be a creek, or every creek a river. The stream crossing the public road between the Townships of Ellice and Downie at Sebringville, which is from thirty to forty feet in width with clearly defined banks, and which the people there call "Black Creek," has been held by the Court of Appeal to be a river, within the meaning of the section here annotated. *McHardy* v. *Ellice, et al.*, 1 App. R. 628; reversing 37 U. C. Q. B. 580. But even where the stream is beyond controversy a river the County Council must have some discretion as to the place where the bridge should be erected and must be allowed to some extent to judge of the necessity of the erection. *Kinnear and Haldimand*, 30 U. C. Q. B. 398; *Re Wescott and Peterborough*, 33 U. C. Q. B. 280; *Regina* v. *Haldimand*, 38 U. C. Q. B. 396, it was, however, intimated but not decided by Mr. Justice Wilson that the Council might be compelled by mandamus to establish a bridge across the Grand River at some convenient place between Cayuga and Caledonia, there being none for that distance—eleven miles, and subsequently the Court (Harrison, C. J., *diss.*) made a rule absolute for a mandamus for that purpose. *In re Brooks and Haldimand*, 41 U. C. Q. B. 381. The leading road through the County of Wellington running north and south, crosses the Grand River in the village of Fergus, by the Tower street bridge, less than 100 feet in width, which was built in 1834, and by that bridge only till 1850, when another bridge more than 100 feet wide, was built by a private owner of property in the village over the river at St. David street, about 300 yards from Tower street. The County never by By-law assumed either bridge, but had granted aid in keeping up both. Held, that the County could not be compelled to maintain the St. David street bridge. *Regina* v. *Wellington*, 39 U. C. Q. B. 194. Indictment would appear to be the proper remedy in all cases where a municipality is charged with the non-repair of an existing road or bridge. *The Queen* v. *Commissoners of Llandilo Roads*, 2 T. R. 232; *The Queen* v. *Oxford and Whitney Turnpike Roads*, 12 A. & E. 427; *The Queen* v. *Haldimand*, 20 U. C. Q. B. 574; *The Queen* v. *Brown and Street*,, 13 U. C. C. P. 356; *Regina* v. *The Corporation of the Township of McGillivray*,

Counties or County and City respectively; (*n*) and in case the Councils of such County and City, or the Councils of such Counties, fail to agree on the respective portions of the expense to be borne by the several Municipalities, it shall be the duty of each Council to appoint arbitrators, as provided by this Act, to determine the amount to be so

Differences to be settled by arbitration.

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38 U. C. Q. B. 91; *Re Jameson and The Corporation of the County of Lanark*, *Ib.* 647. A person sustaining special injury, owing to the defective state of a bridge, may sue the Municipality on whom rests the duty to repair. *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; *S. C.* 18 U. C. C. P. 9; *Richardson* v. *Royalton and Woodstock Turnpike Co.*, 6 Vt. 496; *Gregory* v. *Adams*, 14 Gray (Mass.) 242; *Dugan* v. *Bridge Co.*, 27 Pa. St. 303; *Patterson* v. *East Bridge in Belfast*, 40 Me. 404. A bridge may be so constructed over a navigable river, in the absence of legislative authority, as to be a public nuisance. *The King* v. *West Riding of Yorkshire*, 2 East. 342; *Ex parte Jennings*, 6 Conn. 518; *Arundel* v. *McCulloch*, 10 Mass. 70; *Lansing* v. *Smith*, 4 Wend. (N. Y.) 9, 24; *Thomas* v. *Leland*, 24 Wend. (N. Y.) 65; *Philadelphia* v. *Field*, 58 Pa. St. 320. But because it may be a nuisance to those navigating the river, it does not follow that those who do not navigate it can complain. *Fort Plain Bridge Co.* v. *Smith*, 30 N. Y. 44. A proviso in a charter to erect a bridge over a navigable river, in such a manner as not to injure, stop or interrupt the navigation, is a limitation of the franchise only, but not of the liability to persons injured when navigating. *Monongahela Bridge Co.* v. *Kirk*, 46 Pa. St. 112. Such a bridge must, if necessary, be altered to accommodate increased travel. *Manley* v. *St. Helen's Canal and Railway Company*, 2 H. & N. 840.

(*n*) A bridge over a stream forming or crossing a boundary line between two local Municipalities is, except in the first part of the section, to be kept and maintained by the County in which situate; but in the case of a bridge over a river forming or crossing a boundary line between Counties, or a County and a City, the obligation is cast on the Councils of the Counties or County and City respectively. This applies whether the bridge was originally constructed by a Municipality or the Crown. The state of repair in which such a bridge was, when owned by the Crown, is no measure of subsequent liability. So long as the bridge be kept open, it must be kept reasonably safe for the use of the public. *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; *S. C.* 18 U. C. C. P. 9. "This bridge was kept by the defendants as a safe and convenient thoroughfare. The public were invited to use it. They could not tell whether the bridge had been built by the Crown or by the defendants, or who else it was built by; and they could not be required to discriminate as to the relative safety of one bridge over another, because one was built by the Crown and the other by the Municipality. Nor are their rights to be measured, nor their means of redress for injuries sustained to be affected, by the consideration that the defendants were not builders of the bridge." *Per* Wilson, J., 16 U. C. C. P. 48, 49.

expended, (*o*) and the award made shall be final. (*p*) 37 V. c. 16, s. 19.

Maintaining Township Roads.

Boundary lines not assumed by county council

496. All Township boundary lines (*q*) not assumed by the County Council shall be opened, maintained and improved by the Township Councils, except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two Municipalities. 36 V. c. 48. s. 414, and 37 V. c. 16, s. 19.

Township boundaries, being also county boundaries.

497. Township boundary lines forming also the County boundary lines, (*r*) and not assumed or maintained by the respective Counties interested, shall be maintained by the respective Townships bordering on the same, except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two Municipalities. 36 V. c. 48, s. 415 ; 37 V. c. 16 s. 19.

Roads under Joint Jurisdiction.

Joint jurisdiction over certain roads.

498. In case a road lies wholly or partly between a County, City, Town, Township or incorporated Village, and an ad-

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(*o*) See sec. 367 *et seq.*

(*p*) See notes to sec. 57 of the Assessment Act.

(*q*) By "Township boundary *line*" is probably meant a road forming a Township boundary. This (if not assumed by the County Council) is to be opened, maintained and improved by the Township Councils, except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two Municipalities. The object of the section is, as much as possible, to relieve Counties of the burden of keeping roads in repair, and throw that burden upon the local Municipalities adjacent thereto. To cast the burden upon a particular locality of keeping in repair a County road, used by the whole County, seems unfair and unreasonable. See remarks of Adam Wilson, J., in *Rose and Stormont*, 22 U. C. Q. B. 537 ; see further, note *m* to sec. 495, but such is apparently the policy of this section.

(*r*) Roads forming Township boundary lines, when *not* forming County boundary lines, are to be opened, maintained and improved by the Township Councils ; but when forming County boundary lines they are, unless assumed by the Counties, to be under the operation of this section, maintained "by the respective Townships bordering on the same," except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two Municipalities. A different policy prevails as to bridges over rivers

joining County or Counties, City, Town, Township or incorporated Village, (*s*) the Councils of the Municipalities between which the road lies shall have joint jurisdiction over the same, (*t*) although the road may so deviate as in some

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forming or crossing a boundary line between two Municipalities. See sec. 492.

(*s*) In case a road lies *wholly* or *partly between* a County, &c., and an adjoining County, &c. A road situate wholly *within* a City, Town, Township or Incorporated Village, is vested in the local Municipalities. Sec. 489. "When, therefore, the defendants assert that the road in question is a County road, properly constituted such, under the provisions of the statute, they are asserting that to be the case which we see *could not be.*" *Per* Burns, J., in *St. George's Church* v. *Grey et al.*, 21 U. C. Q. B. 265, 268. When is a road to be said to lie wholly *between* a County, &c., and an adjoining County, &c.? Does the word "between" mean that the road separates the two Municipalities, so that a traveller might go along it being in neither one Municipality nor the other? Such was the interpretation given to the 39th section of 12 Vict. c. 81, in *Woods* v. *Wentworth and Hamilton*, 6 U. C. C. P. 101. And such appears to be the interpretation of this section. *Per* Draper, C. J., in *Harrold* v. *Simcoe and Peel*, 18 U. C. C. P. 10. "When you speak of something lying between two other places or things, you mean, in the accurate use of language, something lying between the boundaries or limits of the other two places or things—something dividing them, within the borders of that which does divide them, you don't in such a case employ the word, 'between' as meaning something common to two parties or places, as when you speak in common ordinary terms of a well or a stable as in use between two parties or common to both," &c. *Per* VanKoughnet, C., *Ib.* 15. When is a road to be said to be *partly* between two Municipalities? This question can be best answered by a decided case. A road had for more than fifty years been used as a road between the Townships of York and Vaughan, the original allowance for road being to the north of it, and this road being in fact wholly within the Township of York, and part of lot 25. The owner of the lot had been indicted for closing up this road and convicted in 1870. The Corporation of the Township of York then passed a By-law to close it, reciting that there was no further necessity for it by reason of the road allowance. Held, that the road was one dividing the Townships, and though in fact wholly within the Township of York, could not be legally closed by the Council of that Township. *In re McBride and York*, 31 U. C. Q. B. 355. The section applies where the deviation has been made to obtain a good line of road—not in order to suit the convenience of either Municipality. *Per* Robinson, C. J., *In re Brant and Waterloo*, 19 U. C. Q. B. 450.

(*t*) It is doubtful if the words used in this section, conferring joint jurisdiction, standing by themselves, mean anything more than that the Municipalities jointly interested are to concur in any regulation necessary to be applied to the road or bridge in regard to tolls or otherwise. *In re Brant and Waterloo*, 19 U. C. Q. B. 450; see

places to be wholly or in part within one or either of them; (*u*) and the said road shall not include a bridge over a river forming or crossing the boundary line between two Municipalities. (*v*) 36 V. c. 48, s. 416.

Both councils must concur in by-laws respecting them.

499. No by-law of the Council of any one of such Municipalities with respect to any such last mentioned road or bridge, (*w*) shall have any force until a by-law has been passed in similar terms, as nearly as may be, by the other Council or Councils having joint jurisdiction in the premises. (*x*) 36 V. c. 48, s. 417.

Arbitration if they do not concur.

500. In case the other Council or Councils, for six months after notice of the by-law, (*y*) omit to pass a by-law or by-laws in similar terms, the duty and liabilities of each Muni-

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further, note *u* to sec. 492. But the words "duties" and "liabilities," used in sec. 500, may be held to give a more extended meaning to them. If they mean more, so as to render the Corporation liable for neglect to repair, the obligation must be proved as laid. *Wood* v. *Wentworth and Hamilton*, 6 U. C. C. P. 101. That the words do mean more would appear to follow from the decision in *Harrold* v. *York and Ontario*, 16 U. C. C. P. 43; *S. C.*, 18 U. C. C. P. 9, if that case be taken as determining the liabilities, under the statute, of the Corporation there sued.

(*u*) See note *s* to this section.

(*v*) Much difficulty was created owing to the language used in the section as formerly framed, 29 & 30 Vict. c. 51, s. 329. It was held, when the words used were "In case a road or bridge lies," &c., that each was a nominative case, and that the Act did not apply to the case of a bridge *forming part* of a road. *In re Brant and Waterloo*, 19 U. C. Q. B. 450; see difference of opinion on the point between the late Chancellor and the President of the Court of Appeal, in *Harrold* v. *Simcoe and Ontario*, 18 U. C. C. P. 10, 17. The original Act was in this respect first amended by 33 Vict. c. 26, ss. 1, 8, by striking out the words "or bridge." See *Beaver* v. *Manchester*, 26 L. J. Q. B. 311. If the road were held to embrace a bridge forming part of the road, the liability to repair the bridge must be the same as the liability to keep the road in repair. See *McHardy* v. *Ellice*, 37 U. C. Q. B. 580; 1 App. R. 628.

(*w*) *i. e.*, a road lying wholly or partly between a County, Town, City, Township or Incorporated Village, and an adjoining County, &c., or a bridge forming part of a road. See notes *s* and *v* to sec. 498.

(*x*) "Joint jurisdiction." See note *t* to sec. 498.

(*y*) It would be well for the Municipal Council first passing the By-law and requiring the other Municipal Council to do so, to serve the latter with a copy of the By-law. That would be the best notice of the same. Six months are allowed to the Council of the latter Municipality within which to pass a By-law in similar terms.

cipality in respect to the road or bridge shall be referred to arbitration under the provisions of this Act. (z) 36 V. c. 48, s. 418.

Transfer of Powers of Justices in Sessions.

Certain powers of Justices in Sessions transferred to county councils.

501. All powers, duties and liabilities which at any time before the first day of January, one thousand eight hundred and fifty, belonged to the Magistrates in Quarter Sessions, with respect to any particular road or bridge in a County, and are not conferred or imposed upon any other Municipal Corporation, shall belong to the Council of the County, or in case the road or bridge lies in two or more Counties, to the Councils of such Counties; (a) and the neglect and disobedience of any regulations or directions made by such Council or Councils shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations of the Magistrates would have subjected them to. 36 V. c. 48, s. 419.

Roads vested in Her Majesty not affected.

Roads etc., as Provincial

502. No Council shall interfere with any public road or bridge vested as a Provincial work in Her Majesty, (b) or in

(z) Whether or not the Arbitrators have power in respect to a bridge, to direct when and at what cost the bridge shall be built, and to compel the respective Municipalities to contribute, is doubtful. *In re Brant and Waterloo*, 19 U. C. Q. B. 450.

(a) This section is not to be understood as *limiting* the responsibility of Counties to just the same measure of responsibility to which Magistrates in Quarter Sessions were subjected. This is not the purpose of the clause. It is a transfer clause or clause of conveyance from the Magistrates to the County Councils of all the powers, &c.; and on the completion of such transfer the Councils are to hold the property operated upon in like manner and subject to the general duties and liabilities applicable to their other property. The section, it will also be seen, applies only to such *particular* roads and bridges as were not conferred or imposed on any other Municipal Council; but it is difficult to say what roads or bridges can be within it, when sections 488, 489 and 492 have already conferred or imposed every road and bridge upon some Municipality, excepting those Government works specially exempted under section 502. The section under consideration was, it is presumed, inserted *ex abundanti cautela*, and not because there was any case or special property upon which it can really operate. *Per* Adam Wilson, J., in *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 50, 51.

(b) All public roads, with few exceptions, are vested in the Municipality in which situate. Sec. 489. Among the exceptions may be

works vested in Her Majesty, etc., not to be interfered with.

any public Department or Board, and the Lieutenant-Governor shall by Order in Council have the same powers as to such road and bridge as are by this Act conferred on Municipal Councils with respect to other roads and bridges; (c) but the Lieutenant-Governor may by proclamation declare any public road or bridge under the control of the Commissioner of Public Works, to be no longer under his control, (d) and in that case, after a day named in the proclamation, the road or bridge shall cease to be under the control of the Commissioner, and no tolls shall be thereafter levied thereon by him, and the road or bridge shall thenceforth be controlled and kept in repair by the Council of the Municipality. (e) 36 V. c. 48, s. 420.

Proclamation by Lieutenant-Governor as to roads, etc., under control of Commissioner of Public Works.

Nor Roads on Dominion Lands.

Ordnance roads, lands, etc., not to be interfered with.

503. No Council shall pass any by-law (*f*)

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classed roads coming under the operation of this section, viz., public roads, &c., vested as Provincial works in Her Majesty, or in any public Department or board, such as the Department of Public Works.

(c) There is a difference between a power and an obligation. See note *f* to sec. 494. The Corporation in which a public road is vested is not only empowered to keep it in repair, but is bound to do so. Sec. 491. The power, without the obligation, is here conferred upon the Governor in Council.

(*d*) Such a proclamation was presumed, in an action to recover damages for non-repair, where the local Municipality was shown to have used the road as a road vested in them. *Irwin* v. *Bradford*, 22 U. C. C. P. 18; *S. C.*, *Ib.* 421.

(*e*) Suppose the public way to be a bridge, and that bridge crossing a stream which is a boundary line between two Counties, but not in either of them, on whom devolves the obligation to keep such a bridge in repair after it ceases to be under the control of the Commissioners of Public Works? In *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43, *S. C.*, 18 U. C. C. P. 9, the obligation was held to rest on the Corporations of the two Counties. "I think that, looking at the question before us, we may properly give to the word 'between,' the popular rather than the more limited, though possibly more rigidly correct sense; and that when a bridge is constructed over navigable waters, and connects two opposite shores lying in different Counties, we should hold such a bridge to be between such two Counties, and that they are jointly answerable for its maintenance, even though the Counties, as respectively containing the Townships between the shores of which the current flows, reach to the middle of the water, and are divided only by the invisible, untraceable line called *medium filum aquæ*." *Per* Draper, C. J., in *Harrold* v. *Simcoe and Ontario*, 18 U. C. C. P. 13.

(*f*) The power to legislate as to Municipal institutions in the Pro-

1. For stopping up or altering the direction or alignment of any street, lane or thoroughfare made or laid out by Her Majesty's Ordnance, or the Principal Secretary of State in whom the Ordnance Estates became vested under the Statute of the Province of Canada passed in the nineteenth year of Her Majesty's reign, chapter forty-five, or the Consolidated Statute of Canada, chapter twenty-four, respecting the Ordnance and Admiralty lands, or by the Dominion of Canada; (*g*) or

Ordnance roads, lands, etc., not to be interfered with.

19 V., c. 45, Con. Stat. Can. c. 24.

S. 40 V. c. 8. (D.)

2. For opening any such communication through any lands held by the Dominion of Canada; (*h*) or

Dominion lands.

3. Interfering with any bridge, wharf, dock, quay or other work vested in the Dominion of Canada; (*i*)

Bridges, etc.

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vince is by the B. N. A. Act. s. 92, sub. 8, vested in the Legislature of each Province. But whether a public work be vested in Her Majesty as representing the Province, or the Dominion, see *Attorney-General* v. *Harris*, 33 U. C. Q. B. 94, it is equally beyond the power of a local Municipal Act to interfere with or control it without the consent of the Queen. The previous section makes this the law in in reference to Provincial works, vested in Her Majesty. This has reference to Dominion works and Dominion property.

(*g*) The object of this part of the section is to protect roads, &c., laid out through Ordnance lands. The Ordnance Transfer Act of 1856 divided Ordnance lands into two schedules; the first schedule comprising all lands vested in one of Her Majesty's Principal Secretaries of State, and the second such lands as are reinvested in the Crown for the public nses of the Province. See Con. Stat. Can. cap. 36.

(*h*) See preceding note.

(*i*) The following public works, belonging to the late Province of Canada, are by the B. N. A. Act declared to be the property of the Dominion of Canada:

1. Canals, with lands and water power connected therewith;
2. Public Harbours;
3. Lighthouses and Piers;
4. Steamboats, Dredges and Public Vessels;
5. Rivers and Lake Improvements;
6. Railways and Railway Stocks, Mortgages and other Debts due by Railway Companies;
7. Military Roads;
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments;
9. Property transferred by the Imperial Government, and known as Ordnance Property, see note *g* to this section

Military lands.

4. Interfering with any land reserved for military purposes, or with the integrity of the public defences,

Without consent of Dominion.

without the consent of the Government of the Dominion of Canada; (*k*) and a by-law for any of the purposes aforesaid shall be void unless it recites such consent. 36 V. c. 48, s. 421.

Roads Necessary for Egress, not to be Closed.

Council not to close road required by individuals for ingress, egress, etc.

504. No Council shall close up any public road or highway, whether an original allowance or a road opened by the Quarter Sessions or any Municipal Council, or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, (*l*) unless the Council, in addition to compensation, also provides for the use of such person some other convenient road or way of access to the said lands or residence. (*m*) 36 V. c. 48, s. 422.

Proviso.

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10. Armouries, Drill sheds, Military Clothing and Munitions of War, and lands set apart for public general purposes. B. N. A. Act, s. 108, sch. 3.

(*k*) No Council has power to pass any such By-law as mentioned without the consent of the Government of the Dominion of Canada: in other words, the proper Council has the power with the consent. The consent being essential to a valid exercise of the power, it is declared that the By-law shall be void unless it recite such consent.

(*l*) The power of a Municipal Council to close up a highway is subject to certain limitations. One of these, under this section, is against doing so in the case of a road "whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road." "The Legislature says in effect, 'You must not stop up any road whereby any person will be excluded from ingress or egress to and from his lands or place of residence *over such road.*' If then, such a road be stopped, most certainly all persons must be excluded from ingress and egress to or from their lands *over that road.* There can be no ingress or egress over a stopped-up road. Therefore, I presume, all persons who come into their lands directly from that road, or pass from their lands directly on to that road, are to be protected. This would leave all persons who merely used the road as *a convenience*, but had no lands abutting thereon, from or to which ingress or egress would be effected, without the protection of the clause." *Per* Hagarty, C. J., in *Moore and Esquesing*, 21 U. C. C. P. 277, 285. The Court will not, on the application of a person who merely used the road as a convenience but had no lands abutting thereon, quash a By-law for alleged contravention of this section. *In re Falle and Tilsonburg*, 23 U. C. C. P. 167.

(*m*) The effect of the latter part of the section is to permit a

Width of Roads.

505. No Council shall lay out any road or street more than one hundred nor less than sixty-six feet in width, except where an existing road or street is widened, or unless with the permission of the Council of the County in which the Municipality is situate; but any road, when altered, may be of the same width as formerly, and no highway or street shall be laid out by any owner of land of a less width than sixty-six feet, without the consent of the Council of the Municipality. (*o*) 36 V. c. 48, s. 423. Width of roads.

Notices Requisite for By-laws affecting Public Roads.

506. No Council shall pass a by-law for stopping up, altering, widening, diverting or selling any original allow- Conditions precedent to passing by

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Council to close up such a road as mentioned in the first part of the section, provided compensation be paid to the persons directly affected and a substituted road or way of access be provided. *In re Annis and Mariposa*, 25 U. C. C. P. 133; *In re Thurston and Verulam*, *Ib.* 593. In Indiana it has been held that a Municipal Corporation cannot close up a street in front of land owned by private individuals without the consent of landowners whose land abuts thereon, or compensating them for the damage. See *Haynes* v. *Thomas*, 7 Ind. 38; *Indianapolis* v. *Croas*, *Ib.* 9; *Tate* v. *Ohio and Mississippi Railroad Co.*, *Ib.* 479, 483.

(*o*) The object of this section is to make all highways at least sixty-six feet, or one chain, in width. A maximum width of one hundred feet is also given. A By-law opening a new road should on the face of it show the width of the road, *In re Smith and Euphemia*, 8 U. C. Q. B. 222, and should, it seems, when it authorizes a road through a man's land, show where it enters and what course it takes. *Dennis* v. *Hughes et al.*, *Ib.* 444. All By-laws authorizing new roads should, either by reciting the whole description of the road given in the survey or report, or by describing it fully, whether such By-laws refer to the report or not, make it plain to every one that sees the By-laws where the road is to run and how wide it is to be, and should not leave the information to be gleaned from documents not referred to in the By-laws as annexed and not in fact annexed. *In re Brown and York*, *Ib.* 596; *McIntyre* v. *Bosanquet*, 11 U. C. Q. B. 460. The same strictness does not of course apply to a by-law closing up an old road. *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. Where the road was not sufficiently described, but it appeared that on the ground it was defined by fences on each side, and had been travelled for eight years, the Court refused to quash the By-law. *Hodgson* v. *York, Peel and Ontario*, 13 U. C. Q. B. 268. The public are *prima facie* entitled to the use of the entire width as a highway. See notes to sec. 491.

laws intended to affect public roads.

ance for road (*p*) or for establishing, opening, stopping up,

(*p*) Non-user of a highway is not enough to destroy its character as a highway. *Badgley* v. *Bender*, 3 U. C. Q. B. O. S. 221. *Nash* v. *Glover*, 24 Grant 219. The common law mode of closing a highway was by writ *ad quod damnum*. *Rex.* v. *Ward*, Cro. Car. 266. This both in England and here has fallen into disuse because of less expensive and more convenient procedure enacted by statutes. Statutes authorizing an interference with the rights of the public over highways are strictly construed. *ib.* The conditions here mentioned are precedent to the validity of the By-law. *In re Nichol and Alnwick*, 41 U. C. Q. B. 577. The declaration is here that no Council shall pass a By-law until, &c., enables the Council to pass the By-law subject to the conditions imposed. The powers here inferentially conferred are *for*—

1. Stopping up;
2. Altering;
3. Widening;
4. Diverting; or,
5. Selling—

Any *original allowance* for road;

And for—

1. Establishing;
2. Opening;
3. Stopping up;
4. Altering;
5. Widening;
6. Diverting; or,
7. Selling—

Any *other* public highway, road, street or lane.

These powers are directly conferred by sec. 509, sub. 1.

It was at one time supposed that a Municipal Council could not in any case legally close up or vacate a road, except for the purpose and with the view of substituting some other line of road in its place. See *Welch* v. *Nash*, 8 East. 394; *De Ponthieu* v. *Pennyfeather*, 5 Taunt. 634; *Wright* v. *Frant*, 4 B. & S. 118; *The Queen* v. *Shiles*, 1 Q. B. 919; *The Queen* v. *Phillips*, L. R. 1 Q. B. 648. But the Court, in *Johnston* v. *Reesor et al.*, 10 U. C. Q. B. 101, refused to give effect to such a construction, saying, "Here was a road, first allowed at an early period as a mere accommodation to the immediate neighbours for enabling them to pass through private property by a short road from one concession to another, instead of going round by the nearest public allowance, where the ground might have been wet or unfavourable. It may be very reasonable afterwards, when the Township becomes cleared and populous, and roads can be made more easily, to relieve the proprietor of the land from the disadvantage of having a thoroughfare through his property, and to leave only the public allowance." *Per* Robinson, C. J., *Ib.* 103-104; see also *The*

altering, widening, diverting or selling any other public highway, road, street or lane; (*q*)

Queen v. *Plunkett*, 21 U. C. Q. B. 536; *Moore and Esquesing*, 21 U. C. C. P. 277. This is supposing the owners of the land abutting thereon to be willing that the road should be so closed. But if the effect of closing the road will be to prevent such owners from ingress and egress to and from their lands or places of residence over the road, the same cannot be closed without compensation to them, and some other road or way of access as a substitute. Sec. 504. Subject to this and other statutable restrictions, the Municipal Corporation has full power to close up highways within the Municipality. See *Gray* v. *Iowa Land Co.*, 26 Iowa 387; *Kimball* v. *Kenosha*, 4 Wis. 321; *Stuber's Road*, 28 Pa. St. 199; *Commissioners* v. *Gas Co.*, 12 Pa. St. 318; *Jersey City* v. *State*. 1 Vroom (N. J.) 521; *Trenton Railroad Case*, 6 Whart. (U.S.) 25; *Bailey* v. *Philadelphia, Wilmington and Baltimore Railroad Co.*, 4 Harring. (Del.) 389; *Hinchman* v. *Detroit*, 9 Mich. 103. As to closing up square, park, &c., see *Attorney-General* v. *Toronto*, 10 Grant 436; and as to closing up a highway so as to make it a *cul de sac*. See *Mayor, &c., of Montreal* v. *Drummond*, L. R. 1 Ap. Div. 384. It has been held that a Municipal Corporation, under power "to locate and establish streets and alleys, and *vacate* the same," had power to shut up or vacate streets, and that such a power, when exercised with a due regard to individual rights, is not to be restrained at the instance of property owners claiming that the streets be for ever kept open as dedicated to the public. *Gray* v. *Iowa Land Co.*, 26 Iowa 387; distinguished from *Warren* v. *Lyons*, 22 Iowa 351. If no other disposition were made of the stopped-up road, the soil and freehold would be and become the soil and freehold of the owner of the soil relieved of the easement in favour of the public. *Barclay* v. *Howell's Lessee*, 6 Pet. (U.S.) 498, 513; *Harris* v. *Elliott*, 10 Pet. (U. S.) 25. The conveying away the land to another, where the Corporation has authority to do so, is a distinct matter altogether, and not necessary to the extinction of the public right of way. *Johnson* v. *Reesor et al.* 10 U. C. Q. B. 101. Counties have in certain cases, power to stop up highways and convey the right of way. Sec. 524; and Townships in certain cases, subject to the confirmation of the County Council. Sec. 525, sub. 2.

(*q*) It ought to be observed that notice is requisite, not only before a Council shall pass a By-law for "stopping-up, altering, widening, diverting or selling any original allowance," but "for establishing, *opening*, stopping up, altering, widening, diverting or selling any other public highway, road, street, or lane." Under the old Acts it was held that no notice was necessary before passing a By-law to open a new road; the clause then in force only applying to By-laws "for stopping up, altering, widening or diverting a road," &c. *Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444. It was at one time contended that the Municipal Councils had only authority to change the direction of existing roads, and to widen or otherwise alter them, not to make *new* roads; but it is now settled that such Councils have power to make new roads through any person's lands, not merely as substitutes for other roads running near and between the same points, but to afford a passage from one point to another where there has been

Notice to be posted up.

1. Until written or printed notices of the intended by-law have been posted up one month previously in six of the most public places in the immediate neighbourhood of such original allowance for road, street or other highway, road, street or lane; (*r*)

And published in newspaper.

2. And published weekly for at least four successive weeks in some newspaper (if there be any) published in the Municipality; or if there be no such newspaper, then in a news-

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no passage before. *Ib.* It seems that a road is not made, &c., when a By-law authorizing the making of it is passed, but only that it is authorized to be made, &c., by the proper officer acting in a reasonable manner. *Ib.* As to stopping up, &c., it is not necessary for the Council to do more than close or abolish the highway by their enactment. They are not required to fence it in, or to place any physical obstruction in the way of persons passing. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. *Johnson* v. *Reesor et al.*, 10 U. C. Q. B. 101.

(*r*) Notices in the English language are intended. See *Graham* v. *King*, 11 Am. 401. The Court, on an application to quash a By-law, will assume that the Council have acted regularly in their preliminary proceedings till the contrary be shown. *In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 232; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. It would be well, however, that the Corporation should in every case preserve proof of regular notices by affidavit of the person employed to put them up. *Per* Robinson, C. J., *In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 235. Where applicant, attacking a By-law, ventured to go no further than file an affidavit of a person who said he had no recollection of seeing any notice, without asserting his belief that due notice had not been given, or taking any means whatever to ascertain whether or not the notices were put up, the Court refused to interfere. *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. So where applicant did not positively negative any notices having been put up, the Court refused to interfere, although the Municipal Council did not prove that six notices were put up. *Parker* v. *Pittsburg and Howe Island*, 8 U. C. C. P. 517; see also *In re Baker et al. and Saltfleet*, 31 U. C. Q. B. 386. It is not necessary that such notices should be framed with such particularity as to require recourse to be had to a lawyer before framing them. See *The Queen* v. *Powell*, L. R. 8 Q. B. 403. To a declaration in trespass *quare clausum fregit*, the defendant filed several pleas, justifying the trespass as done by him as servant of the Municipal Council of the United Counties of Wentworth and Halton, and by their command, in pursuance of a By-law passed on the 31st January, 1850, in accordance with the provisions and requirements of the Municipal Act of 1849, which came into force on 1st January, 1850. *Held*, on demurrer, that it was a valid objection to the several pleas, that they did not show a calendar month's notice given previous to the passing of the By-law; that on the contrary they imported on the face of them that it could not have been given, because the By-law was

paper published in some neighbouring Municipality; and, in either case, in the County Town, if any such there be; (*s*)

Parties prejudicially affected to be heard.

3. Nor until the Council has heard, in person or by counsel or attorney, any one whose land might be prejudicially affected thereby, and who petitions to be so heard; (*t*)

Clerk to give the notices on payment of expenses.

4. And the Clerk shall give such notices, at the request of the applicant for the by-law, upon payment of the reasonable expenses attendant on such notices. (*u*) 36 V. c. 48, s. 424.

Registration of By-laws for opening Roads.

By-laws under which roads are opened on private property to be registered.

507. Every by-law passed since the twenty-ninth day of March, one thousand eight hundred and seventy-three, or hereafter to be passed by any Municipal Council under the authority of which any street, road or highway has been or

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passed within a month after the Municipal Act of 1849 came into operation. *Lafferty* v. *Stock*, 3 U. C. C. P. 1.

(*s*) It will be observed that the statute does not fix any number of insertions of the By-law in a newspaper, but the publication weekly for a fixed period, viz., "at least four successive weeks." If, therefore, the final publication be on a Saturday, that week would expire on the following Friday, and so for each successive week. A notice first published on Thursday, the 12th January, for Tuesday, the 7th February, was held not to be a publication for "four consecutive weeks." *In re Coe and Pickering*, 24 U. C. Q. B. 439; see also *In re Miles and Richmond*, 28 U. C. Q. B. 333.

(*t*) Where applicant, being aware of the day of the passing of the By-law, gave notice that he intended opposing the same, but took no further steps in opposition until making an application to the Court to quash the By-law, his rule was discharged. *Parker* v. *Pittsburgh and Howe Island*, 8 U. C. C. P. 517. Where the persons intending to oppose a By-law to open a road appeared before the Council and took only general grounds of opposition, the Court afterwards, when he applied to quash the By-law on grounds more specific, declined to interfere. *In re Scarlett and York*, 14 U. C. C. P. 161. Before paying money for land, required for the purposes of a highway, investigation should be made into the title. A mortgagee was held entitled to compel payment in Equity of the compensation, although the Township Council had previously, in ignorance of the mortgage, paid the amount to an attaching creditor of the mortgagor. *Dunlop* v. *York*, 16 Grant. 216; see further *Cameron* v. *Wigle*, 24 Grant 8.

(*u*) The right of the Clerk is to exact "the reasonable expenses attendant on such notices." The Municipality has no right to throw the expense of opening an ordinary road on the petitioners. *Lafferty* v. *Stock*, 3 U. C. C. P. 1; but a By-law directing the occupants of an original allowance for road to open the same at their own expense, held not to be illegal. *In re McMichael and Townsend*, 33 U. C. Q.

is opened upon any private property, shall, before the same becomes effectual in law, (*a*) be duly registered in the Registry Office of the County or other Registration Division in which the land is situate; (*b*) and for the purpose of registration a duplicate original of such by-law shall be made out, certified under the hand of the Clerk and the seal of the Municipality, and shall be registered without any further proof. (*c*)

As to by-laws already passed.

2. Every by-law passed before the said day, and every order and resolution of the Quarter or General Sessions passed before said day, under the authority of which any street, road or highway has already been opened upon any private property, may, at the election of any party interested, and at the cost and charges of such party or Municipality, be also duly registered, (*d*) upon the production to the Registrar of a duly certified copy of the by-law under the hand of the Clerk of the Municipality and seal of such Municipality, (*e*) or by a duly certified copy of such order or resolution of such Quarter or General Sessions, given under the hand of the Clerk of the Peace, as the case

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B. 158. Where it is the clear duty of a Municipal Council to make a road, the Court may grant a mandamus to compel the performance of that duty. *In re Augusta and Leeds and Grenville*, 12 U. C. Q. B. 522. The Council, in opening a road, must act by By-law. *The Queen* v. *Rankin*, 16 U. C. Q. B. 304.

(*a*) It is essential to the validity of a By-law under the authority of which a street, road or highway shall be opened through private property, that the By-law be registered as required by this section. The section as ordered is not retrospective. *Beveridge* v. *Creelman et al.*, 42 U. C. Q. B. 29.

(*b*) Whenever the Registry Office is only for a Riding less than a County, it is presumed that the By-law shall, in order to its validity, be registered in the Registry Office of such Riding.

(*c*) It is only a duplicate original of the By-law that can be registered, and such duplicate original must be certified under the hand of the Clerk and seal of the Municipality. If so certified, it may be registered without further proof. If not so certified, it is apprehended the Registrar may reject it.

(*d*) In the case of streets, &c., *hereafter* opened, the section is imperative. In the case of streets, &c., opened *heretofore*, the duty is optional. See *Beveridge* v. *Creelman et al.*, 42 U. C. Q. B. 29. The option may be exercised by any party interested. If exercised, it is to be at the cost and charges "of such party or the Municipality."

(*e*) See note *e*, to sec. 322.

may be. (*f*) 36 V. c. 48, s. 445. *See also Rev. Stat.* c. 111, s. 73.

Disputes respecting Roads.—Who to Administer Oaths.

Power to administer oaths in certain cases.

508. In case of disputes in any Municipality concerning roads, allowances for roads, side lines, boundaries or concessions, within the cognizance of and in the course of investigation before a Municipal Council, the head of the Council may administer an oath or affirmation to any party or witness examined upon the matters in dispute. (*g*) 36 V. c. 48, s. 446.

DIVISION II.—POWERS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES IN RELATION TO ROADS AND BRIDGES.

Power in General. *Sec.* 509 (1).
Respecting Tolls. *Sec.* 509 (2, 3, 6).
" *Timber on Road Allowances.* *Sec.* 509 (4).
" *Granting of privileges to Road or Bridge Companies.* *Sec.* 509 (5).
" *Materials for Roads.* *Sec.* 509 (7).
" *Road Allowances.* *Sec.* 509, (8), 510, 511, 512.
" *Aid to Adjoining Municipalities in Making Roads or Bridges.* *Sec.* 513.

By-laws may be made for—

509. The Council of every County, Township, City, Town and incorporated Village may pass by-laws—

General Powers.

Opening or stopping up roads, etc.

1. For opening, making, preserving, improving, repairing, widening, altering, diverting or stopping up roads, streets, squares, alleys, lanes, bridges or other public communications

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(*f*) In the case of a certified copy of an order or resolution of Quarter Sessions, no seal is made necessary. If given under the hands of the Clerk of the Peace, no more will be required for purposes of registration.

(*g*) It is not intended to give Municipal Councils jurisdiction to *try* and *determine* disputed boundaries, &c., but only to institute such an investigation respecting such roads or lines, &c., as are material to the exercise of the jurisdiction which the Councils possess. The section is founded on s. 126 of the old Act 12 Vict. cap. 81.

within the jurisdiction of the Council, (*a*) and for entering

(*a*) It is by section 506 enacted that *no Council* shall pass a By-law for stopping up, altering, widening, diverting or selling any original allowance for road, or for establishing, opening, stopping up, altering, widening, diverting or selling any *other* public highway, road, street, or lane, until, &c. This subsection expressly empowers the Council of every County, Township, City, Town or Incorporated Village—in other words, *every Council*—to pass By-laws for the following purposes:

(1.) Opening;
(2.) Making;
(3.) Preserving;
(4.) Improving;
(5.) Repairing;
(6.) Widening;
(7.) Altering;
(8.) Diverting;
(9.) Stopping up;

Roads, streets, squares, alleys, lanes, bridges or *other* public communications.

Each of these words conveys a distinct idea and a distinct power, as it were, growing out of and becoming necessary in consequence of the preceding power. It is of little use to *open* a street unless it be *made*, little use in *making* it unless to be *preserved*, little use in *preserving* it with growth of population unless *improved*, little use *improving* it unless to be *kept in repair;* and necessary, perhaps, owing to change of circumstances, to *widen*, *alter* or *divert* it, or, in the public interest, proper to *stop it up*.

As to the meaning of similar words, see *Welsh* v. *Nash*, 8 East. 394; *De Ponthieu* v. *Pennyfeather*, 5 Taun. 634; *The Queen* v. *Shiles*, 1 Q. B. 919; *Wright* v. *Frant*, 4 B. & S. 118; *The Queen* v. *Phillips*, L. R. 1 Q. B. 648.

Municipal Corporations are empowered not only to change the direction of existing roads, but to open new roads, see note *q* to sec. 506; and, subject to certain limitations, empowered to stop up existing roads without substituting new roads, see note *p* to sec. 506; and are obliged, under penalties civil and criminal, to keep all existing roads in repair, see sec. 491.

The statute 12 Vict. cap. 81, s. 60, empowered Municipal Corporations to pass By-laws not only for opening, making, preserving, improving, repairing, widening, altering and diverting streets, but for *levelling*, *raising* and *lowering* them, and omitted in any manner to provide for payment of compensation to persons whose land was injuriously affected by the exercise of these powers; and so it was held that such persons could not at law maintain actions for damages arising to their property from a change of level in the streets. *Croft* v. *Peterborough*, 5 U. C. C. P. 35; *Reid* v. *Hamilton*, *Ib.* 269; *The Queen* v. *Perth*, 14 U. C. Q. B. 156. See further, *Lewis* v. *Toronto*, 39 U. C. Q. B. 343; *Bissel* v. *Collins*, 15 Am. 217; *City of*

upon, breaking up, taking or using any land in any way ne-

Dixon v. *Baker*, 16 Am. 591, note 593; *Mitchell* v. *The Mayor of Rome*, 15 Am. 669; *City of Quincy* v. *Jones*, 20 Am. 243. No such words are used in this section. See, however, sec. 513; and sec. 525, sub. 1. The effect of the omission of levelling, raising and lowering from the enumerated powers conferred on a Municipal Corporation under this section, has not been before the Courts for decision. Whether power to widen, alter, divert and repair streets would not include power to change the level of streets, is the question. Macaulay, C. J., in *Croft* v. *Peterborough*, 5 U. C. C. P. 45, said, "I am at present disposed to think it within the general and incidental powers of the defendants to maintain, repair and improve the public streets of the town placed under their charge, and in doing so to raise or lower them as may be found necessary, judicious or convenient for the public use, not exceeding what is reasonably requisite and proper, and doing no unnecessary injury to the property of others, but using due care and precaution to avoid injury to the same. But if the work cannot be justified on such grounds, then, in the absence of *any by-law*, I think the defendants would be responsible to the injured parties." Again he says, "Whatever is cast upon the defendants as *executive* duties, under the statutes in relation to the maintenance or repair of the roads, or whatever is fairly included in those terms, they may do without a By-law. When not so, and it is only within their discretion in the exercise of their *legislative* powers, it would be otherwise." In *Reid* v. *Hamilton*, 5 U. C. C. P. 287, he said, "My present impression is, that whenever the acts to be done by the Municipality will invade private rights, *which may be so invaded legally* through the medium of By-laws, and for which, if not legalized by the statutes creating or the powers conferred upon the Corporation, the party injured may maintain an action against the wrong-doer, a By-law is essential to enable the Municipality to justify the act, unless it can be shown to be a repair of a highway, &c." The Council of a City, Town or Incorporated Village has power to pass By-laws for ascertaining and compelling owners, tenants and occupants to furnish the Councils with the levels of their cellars, such levels to be with reference to a line fixed by the By-laws, sec. 466, sub. 47; and before commencing the erection of any new building, to deposite a plan of the building, with the levels of the cellars and basements thereof. *Ib.* sub. 48. But no power now exists in express terms to change the level of a street to the prejudice of owners of land abutting thereon. The general rule is, that when private rights are interfered with for the public advantage, compensation is given. See sec. 456, and notes thereto. In a recent case, where a person was complaining of an injury to his property by reason of a change in the level of the street, Kelly, C. B., said, "I cannot but observe, in a case like this, that whenever it appears that the case is one in which it is plain that very serious injury may have been done to the premises of the party claiming compensation, I think that we must put a liberal construction upon the Acts of Parliament before us in determining the points raised. Unless it is perfectly clear that the language of the different Acts is not sufficiently ample or extensive to embrace the case in question, we ought to hold that a party whose property is injuriously affected, and to a very

cessary or convenient for the said purposes, subject to the

great extent by the operations of a public body, *shall be entitled in a court of law to compensation.*" *The Queen* v. *St. Luke's*, L. R. 7 Q. B. 148-153; see further, *Bigg* v. *London*, L. R. 15 Eq. 376; but see also, *Ferrars* v. *Commissioners of Lewis*, L. R. 4 Ex. 227; *Baker* v. *Vestry of Marylebone*, 24 W. R. 848. This is in accordance with the decisions of our courts in several cases, where the complaint was that the plaintiff's land was flooded by municipal corporations, in their efforts to drain, and so keep in repair, public highways vested in them. *Brown* v. *Sarnia*, 11 U. C. Q. B. 87; *Perdue* v. *Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590; *Stonehouse* v. *Enniskillen*, 32 U. C. Q. B. 562; *Rowe* v. *Rochester*, 22 U. C. C. P. 319. In the last mentioned case, Hagarty, C. J., said, "No power is conferred upon them (the corporation) to do any such injurious act. No provision is made for compensating any person injured by this performance of their statutable duties. In the absence of any such power, it seems to us impossible to accede to the defendant's argument. It may be quite possible that the defendants have the right to raise or lower the level of this road, and that no remedy is given to persons injured or inconvenienced thereby. But it is a totally different matter when the acts complained of amount to an interference with the natural flow of the water, or to the gathering of scattered waters into one course, and causing them to flow upon adjoining lands. The question, however, seems not open to discussion unless a Court of Error interpose." *Ib.* 320. In *Callender* v. *March*, 1 Pick. (Mass.) 417, it was said that those who purchase house lots bordering upon streets are supposed to calculate the chance of such elevations and reductions as the increasing population of the city may require, &c. This case has been approved in the courts of every State of the Union except one. *Per* Randal, C. J., in *Dorman* v. *Jacksonville*, 7 Am. 253. In the United States, therefore, it is generally held that a municipal corporation is not responsible, unless expressly so declared by statute, for mere consequential damages resulting from a change of grade in a street where there is no negligence in the doing of the work. *Green* v. *Reading*, 9 Watts (Pa.) 382; *O'Connor* v. *Pittsburgh*, 18 Pa. St. 187; *Radcliff's Executors* v. *Brooklyn*, 4 Comst. (N. Y.) 195; *Graves* v. *Otis*, 2 Hill (N. Y.) 466; *Hoffman* v. *St. Louis*, 15 Mo. 651; *Macy* v. *Indianapolis*, 17 Ind. 267; *Markham* v. *Mayor*, 23 Ga. 402; *Hooker* v. *New Haven and Northampton Co.*, 14 Conn. 146; *Hovey* v. *Mayo*, 43 Me. 322; *Creal* v. *Keokuk*, 4 Green (Iowa), 47; *Benedict* v. *Goit*, 3 Barb. (N. Y.) 459; *Wilson* v. *New York*, 1 Denio (N. Y.) 595; *Simmons* v. *Camden*, 26 Ark. 276; *S. C.* 7 Am. 620; *Indianapolis* v. *Huffer*, 2 With. 227; *S. C.* 30 Ind. 235; *Imler* v. *Springfield*, 17 Am. 645. If the power be exercised in an unreasonable manner, or wantonly and maliciously, the rule is different. *Roberts* v. *Chicago*, 26 Ill. 249; *Rudolphe* v. *New Orleans*, 11 La. An. 242; *Rounds* v. *Mumford*, 2 Rh. I. 154; *Louisville* v. *Rolling Mill Co.*, 3 Bush. (Ky.) 416; *Dorman* v. *Jacksonville*, 13 Fla. 538; *S. C.* 7 Am. 253. But in Ohio the corporation is held liable, even though the change of grade be lawful and judiciously made. *Goodloe* v. *Cincinnati*, 4 Ohio, 500; *Rhodes* v. *Cincinnati*, 10 Ohio, 159; *McCombs* v. *Akron*, 15 Ohio, 474; *S. C.* 18 Ohio, 229. The corporation is to judge of the necessity for a change

restrictions in this Act contained; (*b*) and for preventing and removing any obstruction upon any roads or bridges within its jurisdiction, and also for permitting sub-ways for cattle under any highway; (*c*) 36 V. c. 48, s. 425 (1).

Tolls.

2. For raising money by toll on any bridge, road or other work, to defray the expense of making or repairing the same; (*d*) 36 V. c. 48, s. 425 (2). Raising money by toll.

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of grade. *Macy* v. *Indianapolis*, 17 Ind. 267; and of the best grade to adopt. *Snyder* v. *Rockport*, 6 Ind. 237; *Reynolds* v. *Shreveport*, 13 La. An. 426; *Roberts* v. *Chicago*, 26 Ill. 249. Where the statute gives a specific remedy for compensation, it alone can be properly pursued. *Andover and Medford Turnpike Corporation* v. *Gould*, 6 Mass. 40; *Ernst* v. *Kunkle*, 5 Ohio St. 520; *Hovey* v. *Mayo*, 43 Me. 322; *Cole* v. *Muscatine*, 14 Iowa, 296. A by-law of a County Council, appropriating a certain sum of money "to be expended on certain roads within the county (not defined,) in such manner as the township and town councillors may think proper," has been held bad. *In re Conger and Peterborough*, 8 U. C. Q. B. 349. So a By-law taxing the wild lands of a district, "for the purpose of improving the roads and bridges (not defined,) and liquidating the debts of the district." *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91.

(*b*) It is by sec. 456 expressly provided that every council shall make the owners or occupiers or other persons interested in real property entered upon, taken or used by the corporation in the exercise of any of its powers, or injuriously affected by the exercise of any of its powers due compensation for damages resulting from the exercise of such powers. So in the case of land entered upon, taken or used, there is a positive restriction, unless upon payment of due compensation. The difficulty arises in cases where the injury is not direct but indirect, and such as mentioned in the previous note. It is clear that no municipal council has a legal right to say they may trespass a little upon the property of a private person, doing no unnecessary damage, unless they show that it was necessary and convenient for the purposes of the road, street or other work. *The Churchwardens of St. George's Church* v. *Grey et al.*, 21 U. C. Q. B. 265. Unless a By-law were shown, the corporation would be looked upon as trespassers; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. *Ib.*

(*c*) A sub-way is a way or passage under a highway. Being under this section, designed merely for the use of cattle, predestrians would not have a right to use such sub-way for ordinary travel so as to hold the Municipal Corporation responsible for accidents from non-repair.

(*d*) It is a principle of law that taxes and tolls are not to be imposed by any latitude of construction given to an Act of Parliament. The authority for them must be clear and express. *Per* Robinson, C. J., in *Wilson* v. *Groves*, 17 U. C. Q. B. 419, 424. The

Making regulations as to dangerous places.

3. For making regulations as to pits, precipices and deep waters, and other places dangerous to travellers; (*e*) 36 V. c. 48, s. 425 (3).

Timber, &c., on Road Allowances.

For preservation of trees, stone, etc.

4. For preserving or selling timber, trees, stone, sand or gravel, on any allowance or appropriation for a public road; (*f*) but this shall be subject to the provisions of *The*

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amount of tolls authorized by this subsection appears, subject to limitation left to the discretion of the municipality. *Municipality* v. *Pease*, 2 La. An. 538; *Muscatine* v. *Hershey*, 18 Iowa 39. And the limitation in effect is, that they be no more than sufficient "to defray the expense of making and repairing" the bridge, road or other work. See *In re Campbell and Kingston*, 14 U. C. C. P. 285. It has been held that a Municipal Corporation which acquired a public road or bridge is bound by stat. 16 Vict. cap. 190, sec. 31, (R. S. O. c. 152 s. 90,) and is not entitled to collect tolls for merely crossing any road, or for travelling thereon in crossing from one transverse road to another, when the distance between such transverse roads does not exceed 100 yards. *Wilson* v. *Groves*, 17 U. C. Q. B. 419. And thus although a portion of the road be a bridge, and a by-law be passed authorizing the collection of tolls for the use of such bridge. *Wilson* v. *Middlesex*, 18 U. C. Q. B. 348. Councils of Counties and Incorporated Villages may pass By-laws for the assumption by the Village of any bridge within its limits under the jurisdiction of the County Council, such bridge being toll free. 41 Vict. cap. 11, Ont.

(*e*) Dangerous places on a highway subject the Corporation in whom the highway is vested to an action for damages for injury arising from such places being allowed to remain in the highway. See note *p* to sec. 491. The power to regulate such places is therefore essential to the protection of the Corporation, as well as the safety of the travelling public. The power to pass By-laws for the purposes mentioned in this section is permissive not obligatory *Wilson* v. *The Mayor of Halifax*, L. R. 3 Ex. 114; but see *Toms et ux* v. *Whitby*, 35 U. C. Q. B. 195. No one is at liberty to leave an excavation of any kind adjoining a highway if it render the highway unsafe for the use of travellers. *Barnes* v. *Ward*, 9 C. B. 392; *Hadley* v. *Taylor*, L. R. 1 C. P. 53; see also *Cornwall* v. *Metropolitan Commissioners of Sewers*, 10 Ex. 771; *Hardcastle* v. *South Yorkshire Railway and River Dun Co.*, 4 H. & N. 67.

(*f*) The right of a Municipal Corporation to sell timber growing and standing on a road allowance, so as to vest a property in the trees in the vendee was at one time doubted. *Cochran* v. *Hislop*, 3 U. C. C. P. 440. But express power to sell includes the power to pass the property, and also gives the right to recover the value of trees wrongfully taken from a road allowance. *Burleigh* v. *Hales*, 27 U. C. Q. B. 72. If there were no such provision, the property in trees growing on original road allowances would undoubtedly be in the Crown as the owner of the soil. The leading object of the reserva-

Act respecting the Sale and Management of Timber on Public Lands relative to Government road allowances and the granting of Crown timber licenses; (*g*) 36 V. c. 48, s. 425 (4) Rev. Stat. c. 26.

Permitting Companies to make, &c., Roads and Bridges, &c.

5. For regulating the manner of granting to Road or Bridge Companies permission to commence or proceed with roads or bridges within its jurisdiction, and for regulating the manner of ascertaining and declaring the completion of the work so as to entitle such Companies to levy tolls thereon, and for regulating the manner of making the examinations necessary for the proper exercise of these powers by the Council; (*h*) 36 V. c. 48, s. 425 (5). *See also Rev. Stat.* c. 152. Granting privileges to road or bridge companies.

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tion of road allowances, however, was not to grow timber trees upon them, but that they should be subservient to the use of settlers upon land adjoining or near thereto, as well as of the general public. *Per* Draper, C. J., *Ib.* 76. See also *Burleigh* v. *Campbell*, 18 U. C. C. P. 457. In the absence of legislation, the Crown has no right, without the consent of the municipality, to sell standing timber on road allowances. *Barrie* v. *Gillies*, 20 U. C. C. P. 369; *S. C.* on appeal, 21 U. C. C. P. 213. The section also empowers the Council to sue persons for removing sand or gravel from the highway. *Brock* v. *Toronto & Nipissing Railway Co.*, 37 U. C. Q. B. 372.

(*g*) This Act declares road allowances to be ungranted lands for the purpose of granting licenses to cut timber; gives the right to the government licensee to cut the same; declares that no municipal By-law shall have any effect against such a license, but entitles the municipalities to a portion of the timber dues, to be expended on the improvement of highways within the Mucicipality. R. S. O. c. 26 s. 3, *et seq.* The Act was passed in consequence of the decision of *Barrie* v. *Gillies*, mentioned in the last note.

(*h*) The powers are, to pass By-laws:

1. For regulating the manner of granting to road or bridge companies permission *to commence* or proceed with roads or bridges within its jurisdiction.

2. For regulating the manner of ascertaining and declaring *the completion* of the work, so as to entitle such companies to levy tolls.

3. For regulating the manner of making *the examinations necessary* for the proper exercise of these powers by the Council.

The Legislature has conferred upon Municipal Corporations very extensive powers in relation to public highways. Upon these Corporations, in the first place, is devolved the duty—and perhaps it may be found the option too—of constructing roads and bridges throughout the several localities represented by Municipal Councils. Before others can legally exercise these powers, permission is required

Grant of Tolls.

Granting right to take tolls.

6. For granting to any person, in consideration or part consideration of planking, gravelling or macadamizing a road, or of building a bridge, the tolls fixed by by-law to be levied on the work for a period of not more than twenty-one years after the work has been completed, and after such completion has been declared by a by-law of the Council authorizing tolls to be collected; (*i*) and the grantee of such tolls shall, during the period of his right thereto, maintain the road or bridge in repair; (*k*) 36 V. c. 48, s. 425 (6).

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from the local Municipal Corporation. The power to grant permission involves the power to withhold it; and if a road company were, without such permission, to attempt to interfere with the highways of the Municipality, the Court of Chancery, upon an application made at the proper time, grounded on proper materials, no doubt would interfere by injunction. *Attorney-General ex rel. The Township of Nepean* v. *The Bytown and Nepean Road Company*, 2 Grant 626. The power is not only to grant or withhold permission to commence, but, if granted, to make regulations for the completion of the work, and to make the examinations necessary for the proper exercise of these powers. So that the controlling and directing power is, as it were, vested in the Municipal Corporations. See note *n* sub. 54 to sec. 466. No Company formed under the Joint tock Companies Road Act is allowed to commence any work until thirty days after the directors have served a written notice upon the head of the Municipality in the jurisdiction of which such road is intended to pass or be constructed. Rev. Stat. Ont. c. 152, s. 12. If the Municipal Council pass a By-law prohibiting, varying or altering any such intended line of road, the By-law shall have the same force and effect, and be obligatory upon all persons and upon the Company, if the Company proceed in the construction of the road, as much as if the provisions thereof were part of the said Act. *Ib.* But if no By-law be passed within thirty days after service of the notice, then the Company may proceed with the intended road, without being liable to any interruption or opposition from any source whatever. *Ib.* sec. 13. No such road, however, shall, under any circumstances, be constructed or pass within the limits of any City, Incorporated Town or Village, except by permission, under a By-law, of the City, Town or Village, passed for the purpose. *Ib.* sec. 8.

(*i*) A grant for a term of years is authorized for a consideration stated. The grant is to be of the tolls fixed by By-law to be levied, &c. The term is not to be more than twenty-one years, and the consideration, or part consideration, is to be that of planking, gravelling or macadamizing the road, &c, or of building a bridge, &c. The right of the lessee to give in his own name for tolls is doubtful. *Whiteside* v. *Bellchamber*, 22 U. C. C. P. 241; *Hinckley* v. *Gildersleeve* 19 Grant, 212. As to the rate of tolls, see note to sub. 2 of this section.

(*k*) See note *m* to sec. 495.

Taking Materials.

Searching for and taking materials for roads, etc.

7. For searching for and taking such timber, gravel, stone or other material or materials as may be necessary for making and keeping in repair any road or highway belonging to any such Municipality; and the right of entry upon such lands, as well as the price or damage to be paid to any person for such materials, shall, if not agreed upon by the parties concerned, be settled by arbitration in the manner provided by this Act; (*l*) 36 V. c. 48, s. 425 (7).

Selling Old Road Allowances.

When the council may stop up and sell a road allowance.

8. For selling the original road allowance to the parties next adjoining whose lands the same is situated, when a public road has been opened in lieu of the original road allowance, and for the site or line of which compensation has been paid, and for selling in like manner to the owners of any adjoining land any road legally stopped up or altered by the Council; and in case such parties respectively refuse to become the purchasers at such price as the Council thinks reasonable, then for the sale thereof to any other person for the same or a greater price. (*m*) 36 V. c. 48, s. 425 (8).

(*l*) This is an exercise of eminent domain, and so is made expressly subject to the payment of compensation. See sec. 456, and notes thereto. The right is to pass By-laws for searching for and taking such timber, gravel, stone or other material or materials as may be *necessary* for making and keeping in repair any road or highway belonging to the Municipality. But the right of entry, as well as price or damage to be paid to any person for such materials, is either to be agreed upon or settled by arbitration. See sec. 367 *et seq.*

(*m*) Where a public road has been opened through private property, in lieu of an original allowance for road, for which compensation has been paid, the original allowance may be sold "to the *parties* next adjoining whose lands the same is situated." The allowance may, adjoin on each side the lands of different parties, and it then becomes a question whether the Council is bound to sell to each one half of the allowance, or may sell the whole to one. Similar authority is conferred as to "any road legally stopped up and and altered by the Council." If the parties entitled to preëmption refuse to purchase, then, and only then, is the Council authorized to sell to any *other* person. See *The Queen* v. *The Highway Board of Drayton in Hales*, L. R. 1 Q. B. Div. 608. The statute does not require the Corporation to do more than close or stop up the road allowance. They are not required to fence it in or place any physical obstruction in the way of persons using it. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. The selling of the road allowance is one thing; the

When a road is substituted for an original allowance, compensation to person whose land is taken who owns land adjoining original road.

510. In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof without receiving compensation therefor, or in case a new or travelled public road has been laid out and opened in lieu of an original allowance for road, and for which no compensation has been paid to the owner of the land appropriated as a public road in place of such original allowance, the owner, if his lands adjoin the concession road, side line, or original allowance, shall be entitled thereto, in lieu of the road so laid out, (*n*) and the Council of the Municipality, upon the report in writing of its Surveyor, or of a Deputy Provincial Land Surveyor, that such new or travelled road is sufficient for the purposes of a public highway, (*o*) may

Conveying of former road allowance.

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stopping up of a road allowance is an entirely different thing. The sale is by no means necessary to the extinction of the public easement. *Johnston* v. *Reesor et al.*, 10 U. C. Q. B. 101. The stopping up an original allowance for road is a distinct thing from selling and conveying it, and requires to be distinctly and directly provided for. Until a By-law has been passed to stop up the allowances they still continue public highways, and cannot be sold or conveyed. *Per* Robinson, C. J., in *In re Choate and Hope*, 16 U. C. Q. B. 423. Where it is contended by a private individual that a road allowance has been legally stopped up and conveyed to him, he must show that all the proceedings made necessary in that behalf have been taken by the Corporation. *Winter* v. *Keown et al*, 22 U. C. Q. B. 341.

(*n*) So far, this section provides for two cases: first, where a person in *possession* of a concession road or side line has *himself* laid out and opened a road, &c., in place thereof; secondly, where a new or travelled road has been laid out and opened by, it is conceived, *the proper authority*, in lieu of an original allowance for road, &c. In either of these cases, if no compensation has been paid to the owner of the land, and if his lands adjoin the concession road, side line, or original allowance, he shall be *entitled* to the original road allowance in lieu of the road laid out. It is not clear whether or not a person who is a mere locatee from the Crown of the land through which the new road runs, can afterwards, by obtaining the patent, become an owner within the meaning of this section, so as to be entitled to a conveyance of the old road allowance. Chief Justice McLean thought not; Hagarty, J., in same case, guarded himself from expressing any opinion on the point. *Winter* v. *McKeown*, 22 U. C. Q. B. 341. See further *Cameron* v. *Wait*, 27 U. C. C. P. 475.

(*o*) It is a clear principle of law that every intendment is to be made in favour of the public, and against the individual who seeks to deprive the public of the right which it is confessed the public once had, and that it is incumbent upon the individual who asserts a private right acquired over a public one which was once vested, that he shall do so upon clear, irrefragable evidence, and that nothing shall be left to depend upon conjectural inference and assumption. *Per* Burns, J., in *Purdy* v. *Farley et al*, 10 U. C. Q. B. 545, 568;

convey the said original allowance for road in fee simple to the person or persons upon whose land the new road runs. (*p*)

Compensation to party whose land is taken who does not own land adjoining original road.

2. When any such original road allowance is, in the opinion of the Council, useless to the public, and lies between lands owned by different parties, the Municipal Council may subject to the conditions aforesaid, sell and convey a part thereof to each of such parties as may seem just and reasonable; (*q*) and in case compensation was not paid for the new road, and the person through whose land the same passes does not own the land adjoining the original road allowance, the amount received from the purchaser of the corresponding part of the road allowance when sold shall be paid to the person who at the time of the sale owns the land through which the new road passes. (*r*) 36 V. c. 48, s. 426.

Possession of Unopened Road Allowances.

Original allowance for roads when to be deemed legally possessed till a

511. In case a person is in possession of any part of a Government allowance for road laid out adjoining his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu

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see also *The Queen* v. *Great Western Railway Company*, 32 U. C. Q. B. 506. The surveyor's report should be express that the new and travelled road is sufficient for the purposes of a public highway; and in the report he should state the width of the new road and the line to be run. *The King* v. *Sanderson*, 3 U. C. Q. B. O. S. 103; *Purdy* v. *Farley*, 10 U. C. Q. B. 545; see further, *The Queen* v. *Phillips*, L. R. 1 Q. B. 648.

(*p*) While it is declared that certain persons shall be *entitled* to the old road allowance, it is declared that the Council *may* (not shall) convey, &c. The question arises whether or not the Municipal Council can refuse a conveyance to the persons entitled. The section certainly contemplates that the Municipal Council may convey, and it is apprehended that the conveyance, if made at all, must be to the persons entitled and when entitled. If the Municipal Council is to exercise its discretion as to conveying, and refuse to do so when it ought, the positive effect of the enactment, which declares that certain persons "shall be entitled thereto," would be destroyed, unless the Courts have power to compel the Municipality to convey, or unless the enactment itself gives them a title thereto. *In re Burrit* v. *Marlborough*, 29 U. C. Q. B. 119. See also *Cameron* v. *Wait*, 27 U. C. C. P. 475.

(*q*) See note *m* to sub. 8 of sec. 509.

(*r*) If the person from whom the land for the new road is taken has not land adjoining the old road allowance, the allowance would

by-law is passed for opening them.

thereof, or is in possession of any Government allowance for road parallel or near to which a road has been established by law in lieu thereof, such person shall be deemed legally possessed thereof, as against any private person, (*s*) until a by-law has been passed for opening such allowance for road by the Council having jurisdiction over the same. (*t*) 36 V. c. 48, s. 427.

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be of little or no use to him. For this reason it is provided that in such case the allowance shall be sold, and the proceeds paid to the person whose land is taken for the new road.

(*s*) This section provides for the security of, first, a person in possession of any part of a Government allowance for road, &c., not opened for use "by reason of *another* road *being used* in lieu thereof;" and secondly, a person in possession of any Government allowance for road parallel or near to which "a road *has been established by law*, in lieu thereof," &c. A person so situated is to be deemed legally possessed as against any "*private person*," but not as against the Crown; and he is to be deemed so possessed "until a By-law has been passed for opening such allowance," &c. So that as well against private persons as Municipal Councils, until a By-law is passed for opening, &c., he is to be deemed legally possessed. See *Curry* v. *McLeod*, 12 U. C. Q. B. 545. By an Act of 1810 all allowances for roads laid out by public authority were declared, whether opened or not, used or not, "public highways." 50 Geo. III. c. 1, s. 12. But for the security of persons in possession of them when not used, it was in 1846 enacted that no allowance for road in possession of a private person should be opened unless upon notice to him, and the passing of an order of the proper Municipal authority. 9 Vict. c. 8. Both these enactments are here in substance re-enacted. A person in possession of a road allowance where a new road has been opened or is used in lieu of it, to save himself from all disturbance, ought to acquire a legal title thereto, pursuant to sec. 510 of this Act. See *Purdy* v. *Farley*, 10 U. C. Q. B. 545; *Nash* v. *Glover*, 24 Grant 219; *McKillop* v. *Smith*, *Ib.* 278.

(*t*) A Municipal Corporation has a clear right to open an original allowance for road, and in doing so they must, at their peril, be correct as to its true position. The By-law should really describe the boundaries of the allowance, if there be any uncertainty as to the true boundary. *McMullen and Caradoc*, 22 U. C. C. P. 356. "If the limits assigned be not the true limits of the side road as originally surveyed, the Council has no jurisdiction to enact and declare that they shall be; and whether the declaratory enactment have any validity or not, a person *bona fide* contesting the true site of the road has, I think, reason to complain of such a clause being inserted in the By-law, as calculated to expose him to difficulties at any rate, if not to prejudice him in the conduct of any litigation which he may institute for the purpose of bringing the point in difference up for judicial inquiry. But in enacting that the original allowance shall be opened, although describing that road by metes and bounds, I do not see that the applicant can be prejudiced; for in any litigation arising upon the point, it would, I apprehend, in such a case be

Notice of By-laws for Opening such Allowances.

Notice of by-law to be given.

512. No such by-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the Council, that an application will be made for opening such allowance. (*u*) 36 V. c. 48, s. 428.

Aiding in making Roads and Bridges.

By-laws to aid adjoining municipality to open roads, &c.

513. The Council of any Municipality may pass by-laws for granting aid to any adjoining Municipality in making, opening, maintaining, widening, raising, lowering, or otherwise improving any highway, road, street, bridge, or communication passing from or through an adjoining Municipality. (*v*) 36 V. c. 48, s. 429.

DIVISION III.—POWERS OF TOWNSHIPS, CITIES, TOWNS, AND VILLAGES IN RELATION TO ROADS AND BRIDGES.

Aiding Counties in opening New Roads. *Sec.* 514 (1).
Joint Work with other Municipalities. *Sec.* 514 (2).
Repair of Township Roads, how enforced. *Secs.* 515-523.

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necessary to establish that the metes and bounds assumed to be, are in fact the true limits of the original allowance. The first clause of the By-law will have, therefore to be quashed," &c. *Per* Gwynne, J., *Ib.* 360, 361. A By-law enacting that "every person or persons having enclosed or occupying any part or parts of said quarter town line (an original allowance for road) shall be required, on or before the first day of November next, to give up possession, and open the same for the use of the public travel; the same to be made by gratuitous or statute labour," &c., was held to be valid. *In re McMichael and Townsend*, 33 U. C. Q. B. 158. And *per* Morrison, J., "The By-law is in effect a notification to such parties (parties in possession) that after the day named the road allowance will be opened for the the use of the public, when the Council will take the steps for that purpose. It is inartificially expressed, but can do no harm; and we see no ground for quashing the By-law." *Ib.* 164.

(*u*) There must be a notice in writing, which must be given to the person in possession *at least* eight days before the meeting of the Council. See *In re Sams and Toronto*, 9 U. C. Q. B. 181. The object is to prevent his being taken by surprise in regard to the intention to open the road allowance of which he is in possession.

(*v*) In general, the jurisdiction of a Municipal Council is restricted within the boundaries of the Municipality. See note *u* to sec. 18; see also note *b* to sec. 277. But as roads, streets, bridges and other like public communications may extend from one adjoining

By-laws may be made for—

514. The Municipal Council of every Township, City, Town and incorporated Village may pass by-laws—

New Roads.

Aiding counties in making roads and bridges.

1. For granting to the County or United Counties in which such Municipality lies, aid, by loan or otherwise, towards opening or making any new road or bridge on the bounds of such Municipality; (*w*)

General Arrangements.

Joint works with other municipalities.

2. For entering into and performing any arrangement with any other Council in the same County or United Counties for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the Council. (*x*) 36 V. c. 48, s. 430.

Repair of Township Roads—how Enforced.

If any township council fails to perform its duty.

515. Whenever Township Councils fail to maintain Township boundary lines not assumed by the County Council, (*z*) in the same way as other Township road, by mutual agreement as to the share to be borne by each, it shall be competent for one or more of such Councils to apply to the County Council to enforce joint action on all Township Councils interested. (*a*) 36 V. c. 48, s. 431.

Municipality into another, so as to be partly in each, power is here given to pass By-laws for granting aid to an adjoining Municipality in making, opening, maintaining, widening, raising, lowering or otherwise improving any such road, &c. See note *a* to sub. 1 to sec. 509.

(*w*) As a rule, Councils of Municipalities less than Counties have not power spontaneously to assess themselves for County purposes. See note *b* to sec. 277. The power given by this clause is to grant aid, by loan or otherwise, towards opening or making any new road, *i.e.* not stating whether the same may be done voluntarily or only upon the solicitation of the Council of the County. See note *r* to sec. 513.

(*x*) The arrangement should be a completed one, in order to render valid a By-law for carrying it into effect. See *In re Nichol* and *Almonte*, 41 U. C. Q. B. 577.

(*z*) See *O'Connor* v. *Otonabee and Duro*, 35 U. C. Q. B. 73.

(*a*) The roads here intended are "Township boundary lines." Apparently the intention is to embrace roads dividing Townships; otherwise there would be no necessity for a provision as "to the share to be borne by each" in respect of the obligation to open,

Resident rate-payers may petition county council to enforce opening up of road.

516. In cases where all the Township Councils interested neglect or refuse to open up and repair such lines of road in a manner similar to the other local roads, it shall be competent for a majority of the ratepayers resident on the lots bordering on either or both sides of such line to petition the County Council to enforce the opening up or repair of such lines of road by the Township Councils interested. (*b*) 36 V. c. 48, s. 432.

Duty of county councils on petition.

517. A County Council receiving such petition, either from Township Councils or from ratepayers, as in the preceding section mentioned, may (*c*) consider and act upon the same at the session at which the petition is presented. (*d*) 36 V. c. 48, s. 433.

Amount, &c., to be furnished by each township.

518. The County Council may (*e*) determine upon the amount which each Township Council interested shall be required to apply for the opening or repairing of such lines of road, or to direct the expenditure of a certain portion of statute labour, or both, as may seem necessary to make the

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repair and improve. It is true that in the case of Townships adjacent to an unsurveyed track, the provision would be in terms applicable, whether Townships were divided or not by "the boundary line." But the probability is, that the Legislature meant the section to have a more extended operation. This supposition is confirmed by a reference to sec. 516, which gives certain powers to the ratepayers bordering "on either or *both* sides of such line." The County Council is, in relation to such Townships, as it were, made the arbiter. Power it given to the County Council, on the application of any Township interested, "to enforce joint action" on all interested. The application should be by petition.

(*b*) The preceding section supposes at least one of the Townships interested disposed to do what is required of it. But if all interested fail to perform the duty cast upon them, a majority of the ratepayers resident on the lots bordering on either or both sides of such line may petition the Council to enforce the opening up or repair of such line by the Township Councils interested. The time and mode of so doing are provided for by the next section.

(*c*) "May" is permissive. See note *f* to sec. 494. The original section, 29-30 Vict. cap. 51, sec. 341, sub. 4, provided that "*It shall be the duty*," of a County Council receiving, &c. The change in language is designed to remove the duty, and leave the power to act as one of simple discretion.

(*d*) The action may be either by directing the expenditure of money, or the doing of statute labour, or both, as may seem necessary "to make the said lines of road equal to other local roads." See sec. 518.

(*e*) See note *c* above.

said lines of road equal to other roads. (*f*) 36 V. c. 48, s. 434.

Commissioners to enforce order of county council as to such roads.

519. It shall be the duty of the County Council to appoint a Commissioner or Commissioners to execute and enforce their orders or by-laws relative to such roads. If the representatives of any or all of the Townships interested intimate to the Council or to the Commissioner or Commissioners so appointed, their intention to execute the work themselves, then such Commissioner or Commissioners shall delay proceedings for a reasonable time; (*g*) but if the work is not proceeded with during the favourable season by the Township officers, then the commissioners shall undertake and finish it themselves. 36 V. c. 48, s. 435.

Proviso.

Sums determined upon to be paid by townships.

520. Any sum of money so determined upon by the County Council as the portion to be paid by the respective Townships, shall be paid by the County Treasurer on the order of the Commissioner or Commissioners, and the amount retained out of any money in his hands belonging to such Township; but if there are not at any time before the striking of a County rate any such moneys belonging to such Township in the Treasurer's hands, an additional rate shall be levied by the County Council against such Township sufficient to cover such advances. (*h*) 36 V. c. 48, s. 436.

(*f*) The powers of the County Council are, to—

1. Determine the amount which each Township Council interested shall be required to apply, &c.

2. Direct the expenditure of a certain proportion of statute labour.

3. Or *both*.

Any different form of determination would be unauthorized and void.

(*g*) The mere order or direction of the County Council, without powers to enforce it against the Townships interested, would be of little avail. Power is therefore given to County Councils to appoint a Commissioner or Commissioners "to execute and enforce their orders or By-laws relative to such roads." This is, as it were, *in terrorem*; for it is also provided that if the representatives (probably meaning Reeves or Deputy Reeves) of any or all of the Townships interested shall intimate to the Council or to the Commissioner or Commissioners their intention to execute the work themselves, then the Commissioner or Commissioners may delay their proceeding. But the delay is only to be for "a reasonable time." If the work be not proceeded with during "the favourable season" by the Township officers, then the Commissioners shall undertake it, and finish it themselves.

(*h*) Where Commissioners do the work, some provision is necessary

521. Wherever the several Townships interested in the whole or part of any County boundary line road are unable mutually to agree as to their joint action in opening or maintaining such line road, or portion thereof, one or more of such Township Councils may apply to the Wardens of the bordering Counties to determine jointly the amount which each Township shall be required to expend either in money or statute labour, or both, and the mode of expenditure on such road ; (*i*) the County Judge of the County in which the Township first making the application is situate shall in all cases be the third arbitrator. (*j*) 36 V. c. 48, s. 437.

When the several townships interested cannot agree.

Wardens to be arbitrators.

County Judge also.

522. It shall be the duty of the Wardens of the Counties interested to meet within twenty-one days from the time of receiving such application for the determination of the matter in dispute. The Warden of the County in which the Township first making the application is situated, shall be the convenor of the meeting ; and it shall be his duty to notify the Warden of the other County and County Judge of the time and place of meeting, within eight days of the time of his receiving such application. (*k*) 36 V. c. 48, s. 438.

Meeting of wardens.

Who to convene, etc.

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ner payment. It is therefore provided that the money shall be paid by the County Treasurer, "on the order of the Commissioner or Commissioners." When so paid, the money is to be retained by the County Treasurer out of any money in his hands belonging to the township. If none, then the County Council may levy against such township a rate "sufficient to cover such advances."

(i) The County Council is, as it were, made the arbitrator between Townships in the same County. See note *a* to sec. 515. But where the Townships are of different Counties, the Wardens of the Counties are by this subsection made the arbiters. Their power as such arbiters is to determine upon the amount which each Township shall be required to expend, either in money or statute labour, or both, *and* the mode of expenditure. See note *f* to sec. 518.

(j) It is apparently made the duty of the County Judge to act. See note *l* to sec. 523. But if his duties proper were to demand the whole of his time, no one could blame him for refusing to discharge such an extra-judicial duty as that sought to be imposed upon him by this section.

(k) In order that time may not be unnecessarily lost, it is made the duty of the Wardens to meet "within twenty-one days" from the time of receiving the application. See note *a* to sec. 177. The initiative rests upon the Warden of the County in which the Township that first made the application is situate. He is the convener of the meeting. It is made his duty to notify the Warden of the other County *and* the County Judge of the time and place of meeting. This he must do "within eight days" of the time of his receiving the application.

What the wardens and county judge shall determine, etc.

523. At such meeting the Wardens and County Judge, or any two of them, (*l*) shall determine (*m*) on the share to be borne by the respective Townships, of the amount required on the part or parts to be opened or repaired by each or both, and shall appoint a Commissioner or Commissioners to superintend such work, and it shall be the duty of the Township Treasurer to pay the orders of such Commissioners to the extent of the sum apportioned to each; and Pathmasters controlling the statute labour on the lots adjoining such line, on the portion of such line to be opened or repaired, shall obey the orders of such Commissioner or Commissioners in performing the statute labour unexpended. 36 V. c. 48, s. 439.

DIVISION IV.—POWERS OF COUNTY COUNCILS IN RELATION TO ROADS AND BRIDGES.

Respecting the Closing of Road Allowances, Sec. 524 (1).
" *the Opening and altering Roads, Sec.* 524 (2).
" *Trees obstructing Highways, Sec.* 524 (3).
" *Double Tracks in Snow Roads, Sec.* 524 (4).
" *Aid to Townships. Sec.* 524 (5).
" *the repair of County roads in local Municipalities, Sec.* 524 (6).

(*l*) By sec. 521 it is provided that the County Judge is to be the third arbitrator, "when such Wardens are unable to agree." And yet it is provided by section 522 that the convening Warden shall (before any opportunity to agree or disagree) notify "the other Warden and the County Judge" of the time and place of meeting; and here it is provided that "the Wardens *and* County Judge, or any two of them," shall determine, &c.; as if the County Judge were to be third arbitrator, whether the Wardens disagreed or not. In these respects there is an apparent inconsistency between the sections mentioned.

(*m*) The duties of the arbitrators are:

1. To *determine* on the share to be borne by the respective Townships of the amount required on the part or parts to be opened or repaired by each or both.

2. To *appoint* a Commissioner or Commissioners to superintend such work.

It is the duty of the Township Treasurer to pay the orders of the Commissioners to the extent of the sum apportioned to each Township.

Besides, path-masters, controlling statute labour on lots adjoining the line, on the portion of the line to be opened or repaired, must obey the order of the Commissioner or Commissioners in performing the statute labour unexpended.

524. The Council of every County shall have power (*n*) to pass by-laws for the following purposes :— By-laws for—

Closing Road Allowances.

1. For stopping up, or stopping up and sale, of any original allowance for roads or parts thereof within the County, (*o*) which is subject to the sole jurisdiction and control of the Council, and not being within the limits of any Village, Town or City within or adjoining the County ; (*p*) but the by-law for this purpose shall be subject to the five hundred and sixth section of this Act. (*q*) 36 V. c. 48, s. 440 (1). Disposing of original allowance for roads in certain cases.

Opening and Altering Roads.

2. For opening, making, preserving, improving, repairing, widening, altering, diverting and stopping up roads, streets, squares, alleys, lanes, bridges or other public communications, running or being within one or more Townships, or between two or more Townships of the County ; or any bridge required to be built or made across any river over one hundred feet in width within any incorporated Village in the County connecting any public highway leading through the County, and which is in continuation of a County road, or between the County and any adjoining County or City or separated Town, or on the bo.nds of any Town or incorporated Village, within the bounc aries of the County, as the interests of the inhabitants of the County, in the opinion of the Council, required to be so opened, made, preserved and improved ; (*r*) and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the Opening, etc., roads, etc., within or between several municipalities.

(*n*) See note *f* to sec. 494.

(*o*) The stopping up of a highway is one thing, and the sale of it another. The sale is in no way essential to the effective stopping up of the highway. The power is to pass By-laws for stopping up, *or* stopping up *and* sale, &c. See note *m* to sec. 509.

(*p*) The powers conferred, so far as Counties are concerned, are limited to an original allowance for roads or parts thereof within the County, and only to such as are subject to the sole jurisdiction and Control of the County Council, and not being within the limits of any Village, Town or City within or adjoining the County.

(*q*) i. e. as to notice. See sec. 506 and notes thereto.

(*r*) The powers of the County Council under this section are, to pass By-laws for :

said purposes, subject to the restrictions herein contained. (*s*) 36 V. c. 48, s. 440 (2). *See* 37 V. c. 16, s. 17.

Trees obstructing Highways.

May direct the trees to be cleared on each side of highways.

3. For directing that, on each and either side of a highway under the jurisdiction of the Council (*t*) passing through a wood, the trees (unless such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the by-law, (*u*) or, in his default, by the County Surveyor or

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1. Opening;
2. Making;
3. Preserving;
4. Improving;
5. Repairing;
6. Widening;
7. Altering;
8. Diverting;
9. Stopping up;

} Roads, streets, squares, alleys, lanes, bridges or other public communications—

1. Within one or more Townships.
2. Between two or more Townships of the County.
3. Any bridge across rivers over 100 feet in width within any Incorporated Village in the County, connecting any public highway leading through the County, and which is a continuation of a County road or between the County and any adjoining County or City, separated Town, or on the bounds of any Town or Incorporated Village within the boundaries of the County, as the interests of the inhabitants of the County in the opinion of the Council, require to be so opened, made, preserved and improved.
4. For entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in the Act contained.

See as to these powers generally, note *a* to sub. 1 of sec. 509.

(*s*) See note *b* to same section.

(*t*) Powers precisely similar to those by this clause conferred on Counties are also by this Act conferred on *Townships*. Sec. 525, sub. 3. This subsection is to be read only as to roads over which County Councils have exclusive jurisdiction. So sec. 525, sub. 3, is to be read only as to roads vested in the Townships. By this construction conflict of jurisdiction is prevented.

(*u*) This authorizes a serious interference with private rights, and yet makes no express provision for compensation. The general rule rule is that when the property of a private person is interfered with for a public benefit, compensation shall be made. See sec. 456 and notes; see also note *b* to sub. 1 of sec. 509. It has been held that

other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the Overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the by-law into effect; (*v*) and the Council may further pay such expenses out of County funds. 36 V. c. 48, s. 440 (3).

Double Tracks in Snow Roads.

Double tracks in snow roads.

4. For providing for the making and keeping open of double tracks in snow roads, according to the provisions of *The Act respecting Double Tracks in Snow Roads.* (*w*) 36 V. c. 46, s. 1. Rev. Stat. c. 185.

Aiding Townships, &c.

For aiding the making of roads and bridges.

5. For granting to any Town, Township or incorporated Village in the County, aid by loan or otherwise towards opening or making any new road or bridge in the Town, Township or Village, in cases where the Council deems the County at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the Council in at once assuming the same as a County work, (*x*)

Guaranteeing debentures of local municipalities.

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the statutable duty of opening a road on which trees grew was no answer to an action for injury caused to the plaintiff's land by the felling of trees, accompanied by the allegation that in so opening the road a portion of the trees on being cut and felled necessarily reached to and fell upon the plaintiff's land, but doing the said land no unnecessary and no material damage. *Rowe* v. *Rochester*, 22 U. C. C. P. 319. See further, *Gilchrist* v. *Carden*, 26 U. C. C. P. 1.

(*v*) If the proprietor himself cut the trees they become his property. They are his property as owner of the land. See note *f* to sec. 509. But if he make default, the By-law may authorize the trees either to be used for Municipal purposes or sold to defray the expenses of carrying the By-law into effect. See latter part of note *s* to sub. 10 of sec. 461. Further expense, if any, to be paid out of County funds.

(*w*) See the Act in question, Rev. Stat. Ont. c. 185.

(*x*) The ordinary powers of a County Council, are, so far as roads and bridges are concerned, to deal only with County roads and bridges. See note *u* to sec. 18, and note *b* to sec. 277.

These are—

1. Such roads and bridges as lie within any Township, Town or Village of the County, which the County Council by By-law assumes with the assent of the local Municipality as a County road or bridge.

2. Bridges across streams separating two Townships in the County.

and also for guaranteeing the debentures of any Municipality within the County, as the Council may deem expedient. (*y*) 36 V. c. 48, s. 440 (4).

Repair of County Roads in local Municipalities.

Opening road in local municipalities.

6. For requiring that the whole or any part of any County road within any local Municipality shall be opened, improved and maintained by such local Municipality. (*z*) 36 V. c. 48, s. 440 (5).

DIVISION V.—POWERS OF TOWNSHIP COUNCILS IN RELATION TO ROADS AND BRIDGES.

Aiding Counties. *Sec.* 525 (1).
Closing Road Allowances. *Sec.* 525 (2).
Trees obstructing Highways. *Sec.* 525 (3)
Footpaths. *Sec.* 525 (4).
Sale of Mineral Rights. *Sec.* 526.
Sale of Roads in Villages and Hamlets. *Sec.* 527, 528.

By-laws for—

525. The Council of every Township may (*a*) pass by-laws—

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3. Bridges crossing streams or rivers over 100 feet in width, within the limits of any Incorporated Village in the County, and connecting any highway leading through the County.

4. Bridges forming or crossing boundary lines between two Municipalities. See sec. 492.

But inasmuch as there may be new roads or bridges contemplated by local Municipalities, in which the County at large may be sufficiently interested to justify assistance, but not sufficiently interested to justify their assumption, power is given to the County Council to grant to the Local Municipality aid, by loan or otherwise, towards the opening of the same.

(*y*) County Councils have no power to make grants in aid of the ordinary roads and bridges of particular local Municipalities. *In re Strachan and Frontenac*, 41 U. C. Q. B. 175. The power to guarantee the debentures of any Municipality within the County does not appear to be restricted for the purpose of aiding local works in which the County is interested, but is left apparently to the exercise of the discretion of the County Council in cases in which they think it expedient to do so.

(*z*) This is a provision rendered necessary in all probability by the decision in *In re Rose and Stormont*, 22 U. C. Q. B. 531. See note *f* to sec. 494. But the necessity for such a provision cannot be said to have arisen from any language used by the Judges in that case. On the contrary the language used is opposed to the policy of such a provision.

(*a*) "*May* pass By-laws," &c. See note *f* to sec. 494.

Aiding Counties.

Aiding adjoining county in making roads, etc., and granting aid to county for roads assumed by county.

1. For granting to any adjoining County aid in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication lying between the Township and any other Municipality, (*b*) and for granting like aid to the County in which the Township lies in respect of any highway, road, street, bridge, or communication within the Township assumed by the County as a County work, or agreed to be so assumed on condition of such grant; (*c*) 36 V. c. 48, s. 441 (1).

Closing Road Allowances.

Stopping up and sale of original road allowance.

2. For the stopping up and sale of any original allowance for road or any part thereof within the Municipality, and for fixing and declaring therein the terms upon which the same is to be sold and conveyed; (*d*)

But no such by-law shall have any force —

Proviso.

(*a*) Unless passed in accordance with the five hundred and sixth section of this Act, (*e*) nor

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(*b*) The powers of a Township Council under this section are for passing By-laws to aid any adjoining County in—

1. Making;
2. Opening;
3. Maintaining;
4. Widening;
5. Raising;
6. Lowering;
7. Or otherwise improving;

} Any highway, road, street, bridge or communication lying *between* the Township and any other Municipality.

See generally as to these powers, note *p* to sec. 506.

The description of aid "by loan or otherwise" is not specified here as in sub. 5 sec. 524.

(*c*) The power is not to aid the County in respect of *any* local highway, road, &c., assumed by the County as a County work, but only when in the case of a highway assumed "on condition of such grant;" in other words, when the promise to make the grant was one of the inducements to the County to assume, and, as it were, the condition on which it was assumed.

(*d*) The "stopping up" is one thing and "the sale" another. There can be no sale till the allowance for road be stopped up. But there may be an effectual stopping up of the allowance although there be no sale. See note *a* to sec. 509.

(*e*) See sec. 506 and notes.

(*b*) Until confirmed by a by-law of the Council of the County in which the Township is situate, at an ordinary session of the County Council, held not sooner than three months nor later than one year next after the passing thereof; (*f*) 36 V. c. 48, s. 441 (2).

Trees obstructing Highways.

Ordering trees to be cut down on each side of a road.

3. For directing that, on each or either side of a highway under the jurisdiction of the Council (*g*) passing through a wood, the trees (unless such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the by-law, (*h*) or, on his default, by the Overseer of Highways, or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the Overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the by-law into effect; (*i*) and the Council may grant out of Township funds any money that may be necessary to pay for the cutting down and removing such trees; 36 V. c. 48, s. 441 (3).

Footpaths.

Footpaths.

4. For setting apart so much of any highway as the Council may deem necessary for the purposes of a foot

(*f*) The By-law of the Township is not to have any force until confirmed in the manner and at the time mentioned. If not confirmed at all, or if confirmed at a session of the Council other than the one specified, it would be, for all purposes, inoperative. If not legally confirmed, it would not affect any person's interest. If confirmed by a By-law of the County Council, and illegal, it may be moved against. It would, it seems, be premature to move against the By-law of the Township before confirmation by the County Council. *In re Choate and Hope*, 16 U. C. Q. B. 424, 428. The statute 20 Vict. cap. 69, required such a By-law to be confirmed by the County Council within a year from the passing of the By-law. Before confirmation, the 20 Vict. cap. 69 was repealed by statute 22 Vict. cap. 99, saving all things done thereunder, and by it no confirmation of such a By-law was made requisite. The Court intimated that the confirmation of the By-law was still necessary to its validity. *Winter* v. *Keown*, 22 U. C. Q. B. 341.

(*g*) See note *t* to sub. 3 of sec. 540.

(*h*) See note *u* to sub. 3 of sec. 540.

(*i*) See note *v* to sub. 3 of sec. 540.

path, (*k*) and for imposing penalties on persons travelling thereon on horseback or in vehicles. 36 V. c. 48, s. 441 (4).

Townships and Counties Selling Minerals.

Sale of mineral rights under roads.

526. The Corporation of any Township or County, wherever minerals are found, may sell, by public auction or otherwise, the right to take minerals found upon or under any roads over which said Township or County may have jurisdiction, if considered expedient so to do. (*m*)

(*k*) Footpaths or side walks constitute a portion of a highway proper for the use of pedestrians, and necessary to be kept in repair by the Municipal Corporation. See notes to sec. 491. Nothing would be more likely to render such walks unfit and unsafe for the purposes of their design than to allow persons to travel thereon on horseback or in vehicles. Hence the express power to prevent the latter mode of travel by imposition of penalties. It is apprehended that Corporations of Townships, like other local Municipal Corporations, would have an implied power to do all that is here authorized.

(*m*) The freehold of a road, notwithstanding the dedication of the right of way to the public, remains in the owner of the soil. If the road were laid out by the Crown, the soil and freehold would remain still the property of the Crown. See note *g* to sec. 487. So if laid out by a private individual, the soil and freehold would still be the property of that individual. See note *k* to sec. 489. The Queen, by her prerogative, hath, in the absence of legislative provision to the contrary, all mines of gold and silver, to make money. 1 Plowd. 336; *Woolley* v. *The Attorney General of Victoria*, L. R. 2 Ap. Div. 163. But by statute 1 W. & M. cap. 30, no mine of copper or tin shall be adjudged a royal mine, though silver be extracted. So by statute 5 W. & M. cap. 6, persons having mines of copper, tin, lead, &c., shall enjoy the same although claimed to be royal mines. Alum mines belong to the persons on whose land they are, 3 Inst. 185; see also 21 Jac. I. cap. 3, secs. 11, 12; see further, Rev. Stat. Ont. c. 29. It has been usual in this country for the Crown, when granting lands, to reserve gold and silver mines. Where no such reservation is made, and the mine discovered is not one that can be called a royal mine, the right to the minerals would pass to the owner of the soil. This section, if construed to apply to roads laid out by private individuals, would be an invasion of private rights, without any express provision for compensation. See sec. 456 and notes thereto. Minerals, so far as the Municipalities are concerned, are by this section placed on the same footing as growing timber. As to either, the Municipal Corporation may now pass By-laws for sale. There is good reason why, in the case of standing timber, the removal of which is necessary to the enjoyment of the public easement, such a power should exist. See note *f* to sub. 4 of sec. 509. But that reason has no application whatever to the sale of minerals found *under* roads. See *Johns et al.* v. *Beck*, 24 U. C. C. P. 219.

No sale till after notice.

2. No such sale shall take place until after due notice of such intended by-law has been posted up, in six of the most public places in the immediate neighbourhood of such road, for at least one month previous to the time fixed for considering such by-law. (*n*)

Sale not to interfere with public travel.

3. The deed of conveyance to the purchaser or purchasers, under said by-law, shall contain a proviso protecting the road for public travel, and preventing any uses of the granted rights interfering with public travel. (*o*) 36 V. c. 48, s. 442.

Sale of Roads in Villages or Hamlets.

When roads in police villages and certain hamlets may be stopped up, sold, etc., by township councils.

527. In case the Trustees of any Police Village, or fifteen of the inhabitant householders of any other incorporated Village or hamlet consisting of not less than twenty dwelling houses standing within an area of two hundred acres, petition the Council of the Township in which the Village or hamlet is situate, and in case the petition of such unincorporated Village or hamlet, not being a Police Village, is accompanied by a certificate from the Registrar of the County within which the Township lies, that a plan of the Village or hamlet has been duly deposited in his office according to the registry laws, (*p*) the Council

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(*n*) See note *r* to sub. 1 of sec. 506.

(*o*) The right of the public to the use of the highway as a highway is paramount to any right to remove minerals. The latter right therefore must be so exercised as not to interfere with the former. The Municipal Corporation is liable to be sued by any person sustaining damages by reason of defect in the highway, and may, in some cases, without any contract, have its remedy over against the person who caused the defect. See note *r* to sec. 491.

(*p*) The power of the Township Council to act under this section only arises—

1. In case the Trustees of any Police Village, or fifteen of the inhabitant householders of any other Unincorporated Village or Hamlet consisting of not less than twenty dwelling houses within an area of 200 acres, petition.

2. *And* in case the petition of such Unincorporated Village or Hamlet, not being a Police Village, is accompanied by a certificate from the Registrar of the County within which the Township lies, that a plan of the Village or Hamlet has been duly deposited in his office according to the Registry laws.

Whenever any land or original Town or Township lot has been surveyed or subdivided into town or village lots or other lots, so differing from the manner in which such land or lot was surveyed or granted by the Crown that the same cannot or is not, by the des-

may (*q*) pass a by-law to stop up, sell and convey, or otherwise deal with any original allowance for road lying within the limits of the Village or hamlet, as the same shall be laid down on the plan, but subject to all the restrictions contained in this Act with reference to the sale of original allowances. (*r*) 36 V. c. 48, s. 443.

When village is partly in each of two townships.

528. The last section shall apply to a Village or hamlet situate in two Townships, whether such Townships are in the same or different Counties, (*s*) and in such case the Council of each of the Townships shall have the power thereby conferred, (*t*) as to any original allowance for road lying within that part of the Village or hamlet which according to the registered plan, is situate within such Township. (*u*) 36 V. 48, s. 444.

TITLE III.—POWERS OF MUNICIPAL COUNCILS AS TO DRAINAGE AND OTHER IMPROVEMENTS PAID BY LOCAL RATE.

DIV. I.—TOWNSHIPS, CITIES, TOWNS AND VILLAGES.
DIV. II.—CITIES, TOWNS AND VILLAGES.
DIV. III.—COUNTIES.

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cription given of it, easily and plainly to be identified, the person, Corporation or Company making such survey or subdivision, must, within three months from the date of the survey or subdivision, lodge with the Registrar a plan or map of the same, on a scale of not less than one inch to every four chains, showing the number of the Township or Town lots, and range or concession; the number or letters of Town or Village lots, and names of streets, with the astronomical or magnetic bearing of the same, and other similar information. See R. S. O. c. 111, sec. 82.

(*q*) *May*—permissive. See note *f* to sec. 494.

(*r*) See sec. 509, sub. 8.

(*s*) The last section in terms applies only to a Village or Hamlet situate in one and the same Township as well as in one and the same County but as villages are often formed at the corners of different Townships, which may or may not be in different Counties, it is by this section made to extend to "a Village or Hamlet situate in *two* Townships, whether such Townships are in the same County or in different Counties." The extension is scarcely sufficient, for there are Villages formed of parts of *more* than two Townships.

(*t*) See note *f* to sec. 494.

(*u*) See note *p* to sec. 527.

DIV. I.—TOWNSHIPS, CITIES, TOWNS AND VILLAGES.

Local drainage by-laws, and fund for. *Secs.* 529, 530.
Complaints respecting assessments, how tried. *Sec.* 529 (8–13.)
Quashing By-laws, limitations respecting. *Sec.* 531-533.
Extension of works to other Municipalities. *Sec.* 534.
Mode of apportioning cost. *Secs.* 535-541.
Who to keep in repair. *Secs.* 542-544.
Damage done by works. *Sec.* 545.
Drainage by private persons. *Sec.* 546.
Earth may be spread on road. *Secs.* 547, 548.
Construction of ditch on town line between two Municipalities. *Secs.* 549, 550.

Municipal councils may pass by-laws for deepening streams, etc., drainage, etc.

529. In case the majority in number of the persons, as shown by the last revised assessment roll, to be the owners (whether resident or non-resident) of the property to be benefited in any part of any Township, City, Town or incorporated Village, petition the Council for the deepening of any stream, creek, or water-course, or for draining of the property (describing it), (*a*) the Council may procure an examination to be made by an Engineer or Provincial Land Surveyor of the stream, creek, or water-course proposed to be deepened, or of the locality proposed to be drained, and may procure

Examination by engineer.

(*a*) Drainage acts are constitutional. *Norfleet* v. *Cromwell*, 16 Am. 787, and Municipal Corporations are not responsible in damages for the legitimate exercise of the powers conferred on them as to drainage. *Darby* v. *Crowland*, 38 U. C. Q. B. 338. There are several proceedings necessary before the passing of any By-law under this section. The first proceeding necessary is a petition from "the majority in number of the persons, as shown by the last revised assessment roll to be the owners (whether resident or non-resident) the property to be benefited in *any part* of any Township," &c. It has not yet been decided *what majority* is sufficient to procure the action of the Council. "Four concessions in a Township may be interested in different degrees in a work which would drain all the lands in those concessions; but it might be of more importance to the owners of the lands in *one* of those concessions than to all the owners of the lands in the other three to procure the construction of the work. As at present advised, we do not see that a majority of the resident owners in the one concession would not comply with the terms of the Act." *Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 381, 395, The objection that the petition was not signed by the requisite majority is not one that can be entertained by the Court on an application to quash the By-law; at all events, in the absence of fraud or corrupt conduct on the part of those who passed the By-law. *In re Michie and Toronto*, 11 U. C. C. P. 379; *In re Montgomery and Raleigh*, 21 U. C. C. P. 381.

plans and estimates to be made of the work by such Engineer or Surveyor, and an assessment to be made by such Engineer or Surveyor of the real property to be benefited by such deepening or drainage, stating as nearly as may be, in the opinion of such Engineer or Surveyor, the proportion of benefit to be derived by such deepening or drainage by every road and lot, or portion of lot; (*b*) and if the Council is of opinion that the deepening of such stream, creek or water-course, or the draining of the locality described, or a portion thereof, would be desirable, the Council may pass by-laws— (*c*) Plans and estimates.

1. For providing for the deepening of the stream, creek or water-course, or the draining of the locality; (*d*) For deepening streams and drainage.

(*b*) On receipt of the requisite petition, the Council may, in its discretion, refuse to proceed further. See note *f* to sec. 494. But if the Council decide to act on it, the Council may procure—

1. An examination to be made by an Engineer or Provincial Land-Surveyor of the streams, &c., proposed to be deepened or of the locality proposed to be drained.

2. Plans and estimates to be made of the work by such Engineer or Surveyor.

3. An assessment to be made by such Engineer or Surveyor of the real property to be benefited, &c., stating as nearly as may be (in the opinion of the Engineer or Surveyor) the proportion of benefit to be derived by such deepening or drainage by *every road and lot, or portion of lot.*

The contention that *all* the lands which will be benefited by the proposed work have not been assessed, or that for any other reason the several assessments made upon the respective lots, or any of them are overcharges, does not constitute ground for moving to quash the By-law. All those matters are matters subject to appeal, and it is there such a contention should be tried and investigated. *Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 393.

(*c*) The Council is left, upon receipt of the Engineer's report and other preliminaries, to judge whether or not "the deepening of the stream, &c., or the draining of the locality described or a portion thereof would be desirable," &c. If its opinion be in the affirmative, it may pass the By-law; but if of a negative opinion, there is no power to compel the Council to do so. See note *f* to sec. 494.

(*d*) The purposes for which such a By-law may be passed are for the deepening of any stream, creek or water-course, or the draining of the locality. The effect of deepening a particular stream, creek or water-course may be more effectually to drain the locality; but there may be localities requiring drainage in the immediate vicinity of which there is no stream, creek or water course. In either event it is contemplated that a By-law may be asked and passed. See note *u* to sec. 484, as to streams, creeks and water-courses.

For borrowing requisite funds, etc.

2. For borrowing on the credit of the Municipality the funds necessary for the work, although the same extends beyond the limits of the Municipality (subject in that case to be reimbursed as hereinafter mentioned), and for issuing the debentures of the Municipality to the requisite amount, in sums of not less than one hundred dollars each, and payable within fifteen years from date, with interest at a rate of not less than five per centum per annum ; (*e*)

For levying rate for payment.

3. For assessing and levying in the same manner as taxes are levied, upon the real property to be benefited by the deeping or draining, a special rate sufficient for the payment of the principal and interest of the debentures, and for so assessing and levying the same, as other taxes are levied, by an assessment and rate on the real property so benefited (including roads held by Joint Stock Companies or private individuals), as nearly as may be to the benefit derived by each lot or portion of lot and road in the locality : (*f*)

(*e*) The amount borrowed is to be payable within fifteen years from the date of the By-law, and yet no provision is made for requiring the By-law on the face of it to show the date of its passing. It is necessary to the validity of an ordinary By-law to raise money on the credit of the Municipality, that it should name a day in the financial year in which the same is passed when the By-law shall take effect. Sec. 330, sub. 1. This section, however, does not require that such a day should be named in the By-law. *Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 397. But even in the case of an ordinary money By-law, the Court of Common Pleas refused, after the issue of debentures, to quash the By-law on the ground of the omission. *In re Michie and Toronto*, 11 U. C. C. P. 379. Draper, C. J., said—"I have felt a good deal of doubt whether the Legislature did not intend that in the body of every By-law shall be stated a day upon which it is to take effect. The date on which a By-law is passed does not necessarily form a part thereof, though it may be the practice for some officer of the Corporation to mark the day of its passing thereupon. And I think the Legislature meant that it should not be necessary to refer to anything extrinsic to the By-law, for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the By-law under which it was issued were legal, and might on that account require to see when the By-law took effect."

(*f*) A By-law enacted that the drain should be made in accordance with the survey and levels taken by the Engineer ; that there should be raised, levied and collected off the lots and parts of lots in the Township to be benefited by making such drain, the sum of $2696; that the sum of $2696 should be divided into three equal annual payments, bearing interest at the rate of eight per cent. per annum, first payment to be made in 1871, and to continue in each year till the whole

(*a*) Any person whose property has been assessed for such deepening or drainage may pay the amount of such assessment, less the interest, at any time before the debentures are issued, in which case the amount of debentures shall be proportionably reduced; (*g*) and Proviso.

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should be paid, for the purpose of paying one part of the cost of said drainage, and the cost incidental thereto assessed upon the lands aforesaid; and the Collector should in each year place the same upon the Collector's roll against each lot or part of lot "as set forth in the annexed schedule," to be collected and paid over to the Treasurer, as other taxes were collected and paid over, to form a sinking fund to meet the payment of debentures. It then provided for payment by the Treasurer of the Municipality of the sum of $306, assessed on roads and road allowances. It then provided for the issue of debentures for $2696, at a rate of interest not exceeding eight per cent. per annum, in sums of not less than $100 each, payable in three years from 15th December, 1870: and, lastly, that if the amount to be collected from such assessment should, by reason of the lands being non-resident, or otherwise, fall short of the sum required to meet the debentures or interest as they became due, the Treasurer should pay such deficiency out of the general funds, and reimburse those funds when the assessment should be levied out of the land. The schedule, which was annexed to and formed part of the By-law, was entitled "Schedule showing the benefits to be derived by each lot from the drainage to be performed under this By-law." The objection raised against the By-law was, that it did not properly provide for a special rate sufficient to include a sinking fund for the payment of the debentures therein mentioned, but provided for the levying and raising of certain instalments with interest, and did not state or provide from what date such interest was to be charged. But the By-law was sustained as against the objection. *In re Montgomery and Raleigh*, 21 U. C. C. P. 381. "Upon a careful consideration of the section, we do think the objection is not insurmountable." *Per* Gwynne, J., *Ib*, 395. The learned Judge, after using the language quoted, made a critical examination of the section, leading to a particular construction, but which examination is too long for insertion here, and then concluded, "This section of the By-law is, we think, open to this construction, and being so construed seems to be free from the objection taken." Notwithstanding, it is recommended that such a By-law be not made a precedent under this Act. It is inserted here, not as a guide, but as a warning against its use, or the use of any By-law at all like it. The Legislature has very wisely provided a form of By-law which shall (*mutatis mutandis*) be used. See sec. 530.

(*g*) This is, in effect, an authority for the payment of a debt in advance; and as an inducement there is a rebate of interest. But it is to be observed that the privilege can only be exercised "before the debentures are issued." After the issue of the debentures the debt for the whole amount is contracted, and it rests with the purchaser, who thereby becomes the creditor of the Municipality, to say whether he will accept payment of any of the debentures before maturity, and if so, on what terms as to rebate of interest or otherwise.

Proviso.

(*b*) Any agreement on the part of any tenant to pay the rates or taxes of the demised property shall not apply to or include the charges or assessments for draining under this section, unless such agreement in express terms mentions or refers to such charges or assessments, and as payable in respect of drainage works; but in cases of contracts of purchase or of leases giving the lessee a right of purchase, the said charges or assessments shall be added to the price, and shall be paid (as the case may be) by the purchaser, or by the lessee in case he exercises such right of purchase; (*h*)

For providing how assessment be paid.

4. For regulating the times and manner in which the assessment shall be paid; (*i*)

For ascertaining the property liable to the rate.

5. For determining what real property will be benefited by the deeping or draining, and the proportion in which the assessment should be made on the various portions of lands so benefited, (*k*) and subject in every case of complaint, by the owner or person interested in any property assessed, whether of overcharge or undercharge of any other property assessed, or that property that should be assessed has been wrongfully omitted to be assessed, to proceedings for trial of such complaint and appeal therefrom, in like manner, as nearly as may be, as on proceedings for the trial of complaints

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(*h*) The purpose of the By-law is to improve the freehold. The money to be raised under the By-law is not so much a tax as the consideration for the improved drainage. This being so, the obligation to pay is thrown upon the owner of the freehold, and not upon the tenant, who has merely covenanted or agreed in the ordinary form to pay taxes. One exception, however, is where by the lease, he has expressly agreed to pay charges in respect to drainage works. Another is where the lease contains a contract of purchase, in which case such charges shall be added to the price to be paid by the purshaser. If it were not for this express exemption, it might be held that ordinary tenants under a covenant to pay taxes would be bound to pay the drainage rate. See *In re Michie and Toronto*, 11 U. C. C. P. 379.

(*i*) Not only the times but the manner in which the assessment shall be paid may be regulated by the By-law.

(*k*) It was held not to be necessary for the By-law to specify the *mode* of ascertaining and determining the property to be benefited. *In re Montgomery and Raleigh*, 21 U. C. C. P. 381. Held also, that a schedule annexed to the By-law, showing the benefit to be derived by each lot from the drainage to be performed under the By-law, which schedule was declared to be part of the By-law, sufficiently indicated that the lands so assessed were assessed as the only lands within the Municipality regarded as benefited by the proposed work. See note *f* to sub. 3 of this section.

to the Court of Revision under "*The Assessment Act.*" (*l*) 36 V. c. 48, s. 447; 37 V. c. 20, s. 1; 39 V. c. 34, s. 8. Rev. Stat. c. 180, ss. 56, 57.

6. The Council shall have the like power, and the provisions of this section shall apply in cases where the drainage can be effectually accomplished only by embanking, pumping or other mechanical operations, but in such cases the Council shall not proceed except upon the petition of two-thirds of the owners above mentioned in this section. 40 V. c. 26, s. 1. Petitions for draining lands.

7. In cases provided for by the next preceding sub-section, the Council may pass by-laws for assessing and defraying the annual cost of maintaining the necessary works upon the lands and roads to be benefited thereby, according to the provisions of this Act; and may do all things necessary, and pass all requisite and proper by-laws, and enter into all proper contracts for maintaining and giving full effect to said works; and all the provisions of this and the following sections to section five hundred and fifty-eight inclusive, shall be applicable, so far as possible to the draining of lands under sub-section six of this section; except that the provisions of section five hundred and forty-three shall not apply to any of the works mentioned in said sub-section six, except during the pleasure of the Council of the Municipality in which the works are situate. 40 V. c. 26, ss. 2 & 3. Injury to low lying land. Sections 529-558 to apply. Section 543 only to apply during the will of the Council.

8. Trial of such complaints shall be had in the first instance by and before the Court of Revision of the Municipality in which the lands or roads lie, which Court the Council shall, from time to time as occasion may require, hold on some day not earlier than twenty nor later than thirty days from the day on which the by-law was first published, notice of which shall be published with the by-law during the first three weeks of its publication. (*m*) Court of Revision to have primary jurisdiction.

(*l*) See notes to secs. 56 to 66, of The Assessment Act.

(*m*) In the case of *In re Montgomery et al. and the Township of Raleigh*, 21 U. C. C. P. 393, decided under the provisions of 32 Vict. c. 43. Gwynne, J., said: "The object of the Act, as it appears to me, is to make the appeal to the Council, if not appealed from to the County Judge and the decision of the County Court Judge, if the appeal should be carried to him, as final and conclusive as the decision of the Court of Revision and of the County Court Judge respectively are under the Assessment Act, which is an Act that may be said to be in *pari materia* with the Municipal Institutions Act, of which 32 Vict. cap. 43 (the former Drainage Amendment Act) is but a part. Such a mode of decision upon the several matters being provided by the Act, seems to conclude the idea that these matters can be opened upon a

Powers of.

Rev. Stat. c. 180, ss. 47-55.

9. Such Court shall be constituted in the same manner and have the same power as Courts of Revision under "*The Assessment Act*," (*n*)

Transmission of assessment roll.

10. In case of any such complaint, the Clerk with whom the roll is deposited shall transmit to the Court of Revision a certified copy of so much of the said roll as relates to such Municipality.

Appeal to county judge.

11. The appeal from the Court of Revision shall be to the Judge, or Junior or acting Judge, of the County Court of the County within which such Municipality is situate.

Powers of Judge on appeal.

Rev. Stat. c. 180, ss. 59-65.

12. In case of appeal to the Judge, Junior or acting Judge of the County Court, he shall have the same powers and duties, and the Clerk of the Municipality shall have the same powers and duties, as nearly as may be, as they have respectively upon appeals from the Court of Revision under "*The Assessment Act*." (*o*)

Variation of assessment on complaint or appeal.

13. In case, on any such complaint or appeal, the assessment is varied in respect of the property which is the subject of the complaint or appeal, the Court or Judge, as the case may be, shall vary *pro rata* the assessment of the said property, and of the other lands and roads benefited as aforesaid, without further notice to the persons interested therein, so that the aggregate amount assessed shall be the same as if there had been no appeal; and the Judge, or in case there is no appeal to the Judge, the Court of Revision shall return the roll to the Municipal Clerk from whom it was received, and the Assessors shall prepare and attest a roll in accordance with their original assessment as altered by such revision. 36 V. c. 48, s. 447; 40 V. c. 8, s. 57.

Form of by-law.

530. Such by-law shall, *mutatis mutandis*, be in the form or to the effect following: (*p*)

A BY-LAW to provide for draining parts of (*or*, for the deepening of in, *as the case may be*) the Township of

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motion to quash the By-law, and we are of opinion that they cannot." The appeal is now before the Court of Revision, the decision of which may be appealed from to the Judge or Junior or acting Judge of the County court of the County in which such Municipality is situate.

(*n*) See notes to secs. 47 to 55, inclusive, of The Assessment Act.

(*o*) See notes to secs. 59 to 66, inclusive, of The Assessment Act.

(*p*) The words are *shall* be (not *may* be) in the *form* or to the *effect* following. See note *s* to sec. 320.

and for borrowing, on the credit of the Municipality, the sum of for completing the same. (*q*)

Provisionally adopted the day of , A.D. (*r*)

Whereas a majority in number of the owners, as shown by the last revised assessment roll, of the property hereinafter set forth, to be benefited by the drainage (*or* deepening, *as the case may be*), have petitioned the Council of the said Township of , praying that (*s*) (*here set out the purport of the petition, describing generally the property to be benefited,*) (*t*)

And whereas, thereupon the said Council procured an examination to be made by , being a person competent for such purpose, of the said locality proposed to be drained (*or* the said stream, creek or water-course proposed to be deepened, *as the case may be*), and has also procured plans and estimates of the work to be made by the said , and an assessment to be made by him of the real property to be benefited by such drainage (*or* deepening, *as the case may be*), stating, as nearly as he can, the proportion of benefit which, in his opinion, will be derived in consequence of such drainage (*or* deepening, *as the case may be*), by every road and lot or portion of lot, the said assessment so made, and the report of the said in respect thereof, and of the said drainage (*or* deepening, *as the case may be*) being as follows: (*here set out the report and assessment of the Engineer or Surveyor employed.*) (*u*)

And whereas the said Council are of opinion that the drainage of the locality described (*or*, the deepening of such stream, creek or water-course, *as the case may be*) is desirable: (*v*)

Be it therefore enacted by the said Municipal Council of the said Township of , pursuant to the provisions of chapter one hundred and seventy-four of "*The Revised Statutes of Ontario*"—

1st. That the said report, plans and estimates be adopted, and the said drain (*or* deepening, *as the case may be*) and the works connected therewith be made and constructed in accordance therewith.

2nd. That the Reeve of the said Township may borrow on the credit of the Corporation of the said Township of (*w*) the sum of , being the funds necessary for the work, and may issue debentures of the Corporation to that amount, in sums of not less than one hundred dollars each, and payable within years from the date thereof, with interest at the rate of per centum per annum, that is to say, in (*insert the manner of payment, whether in annual payments or otherwise*), such debentures to be payable at , and to have attached to them coupons for the payment of interest. (*x*)

3rd. That for the purpose of paying the sum of (*four hundred and seventy-five dollars*), being the amount charged against the

(*q*) See note *d* to sub. 1 of sec. 529.

(*r*) See note *e* to sub. 2 of sec. 529.

(*s*) See note *t* to sub. 6 of sec. 330.

(*t*) See note *a* to sec. 529.

(*u*) See note *b* to sec. 529.

(*v*) See note *c* to sec. 529.

(*w*) See note *e* to sub. 2 of sec. 529.

(*x*) See sub. 6 of sec. 330, and notes thereto.

said lands so to be benefited as aforesaid, other than lands (*or* roads, *or* lands and roads) belonging to the Municipality, and to cover interest thereon for (*ten*) years, at the rate of (*five*) per cent. per annum, the following special rates, over and above all other rates, shall be assessed and levied (in the same manner and at the same time as taxes are levied) upon the undermentioned lots and parts of lots; and the amount of the said special rates and interest assessed as aforesaid against each lot or part of lot respectively shall be divided into equal parts, and one such part shall be assessed and levied as aforesaid, in each year, for years after the final passing of this by-law, during which the said debentures have to run. (*y*)

Concession.	Lot or Part of Lot.	Acres.	Value of Improvement.	To cover Interest for (10) years at (5) per cent.	Total Special Rate.	Annual Assessment during each year for (10) years.
			$ cts.			
10	5	200	75 00			
"	S ½ 6	100	50 00			
"	N ½ 6	50	30 00			
"	S W ¼ 8	100	80 00			
"	9	200	150 00			
"	S ½ and N ½ 10	150	90 00			
Chargeable to Municipality for roads (*or* lands, *or* roads and lands).....			475 00			
			120 00			
			595 00			

(*y*) See note *f* to sub. 3 of sec. 529.

4th. For the purpose of paying the sum of *one hundred and twenty dollars*, being the total amount assessed as aforesaid against the said roads (*or* lands, *or* roads and lands) of the said Municipality, and to cover interest thereon for (*ten*) years at the rate of (*five*) per cent. per annum, a special rate of ..... in the dollar shall, over and above all other rates, be levied (in the same manner and at the same time as taxes are levied) upon the whole ratable property in the said Township of ..... in each year for the period of ..... years, after the date of the final passing of this by-law, during which the said debentures have to run.

Amendment of by-law.

2. In the event of the assessment being altered by the Court of Revision or Judge, the by-law shall, before being finally passed, be amended so as to correspond with such alteration by the Court of Revision or Judge (as the case may be). 36 V. c. 48, s. 448.

Before final passing by-law to be published.

Also notice as to when and how proceedings to quash to be taken.

Copy of by-law and notice to be posted up.

531. Before the final passing of the by-law it shall be published once or oftener in every week for four weeks in some newspaper in the Municipality, or, if no newspaper is published therein, then in some newspaper published in the nearest Municipality in which a newspaper is published, together with a notice that any one intending to apply to have such by-law, or any part thereof, quashed, must, within ten days after the final passing thereof, serve a notice in writing upon the Reeve or other head officer, and upon the Clerk of the Municipality, of his intention to make application for that purpose to one of Her Majesty's Superior Courts of Law at Toronto, during the Term next ensuing the final passing of the by-law, (*a*) and the Council shall, at least three weeks before the final passing of the by-law, post up conspicuously a copy thereof, and of the said notices, at four or more of the most public places of the Municipality. (*b*) 36 V. c. 48, s. 449.

If no application to quash made in time specified, by-law to be valid, notwithstanding defects.

532. In case no such notice of intention to make application to quash a by-law is served within the time limited for that purpose in the preceding section, the by-law shall, notwithstanding any want of substance or form, either in the

(*a*) This is more than is required in the case of the quashing of any other description of By-law. All that is in general necessary is that the application to quash should be made within one year after the passing of the By-law. Sec. 323. In the case of a By-law promulgated, no application can be entertained after the term next after promulgation. Sec. 324. But in neither case is it necessary to serve a notice of intention to make the application.

(*b*) See note *r* to sec. 506, sub. 1.

by-law itself or in the time and manner of passing the same, be a valid by-law. (c) 36 V. c. 48, s. 450.

Power to amend by-law when no sufficient means provided for completion of the work.

2. In case any by-law already passed, or which may be hereafter passed by the Council of any Municipality, for the construction of drainage works by assessment upon the real property to be benefited thereby, and which has been acted upon by the construction of such works in whole or in part, does not provide sufficient means, or provides more than sufficient means for the completion of the works, or for the redemption of the debentures authorized to be issued thereunder as the same become payable, the said Council may, from time to time, amend the by-law in order fully to carry out the intention thereof, and of the petition on which the same was founded. (d) 37 V. c. 20, s. 2; 40 V. c. 7, *Sched.* A. (183).

Debentures not to be invalid though not in accordance with by-law.

533. No debenture issued or to be issued under any by-law aforesaid shall be held invalid on account of the same not being expressed in strict accordance with such by-law, provided that the debentures are for sums not in the whole exceeding the amount authorized by the by-law. 37 V. c. 20, s. 3.

(c) In the case of an ordinary By-law, if the application to quash be not made within the time in that behalf limited, see note *a* to sec. 531, the Court will not entertain it. But the validity of the By-law is subject to be incidentally questioned in any suit or proceeding that may afterwards arise in reference to it. See note *e* to sub. 2 of sec. 551. Here it is provided that if no notice of intention to make an application to quash the By-law, such as made necessary by the preceding section, be served within the time limited for that purpose, the By-law shall, notwithstanding "any want of *substance* or *form*, either in the By-law itself or in the time or manner of passing" it, be "a *valid By-law.*" In other words, that which by reason of some substantial defect, is utterly void when passed, afterwards becomes a valid By-law in consequence of the neglect of some person interested, within ten days after the passing of the By-law to give notice of his intention to make application to quash the By-law. This is certainly a vigorous application of the maxim, "*Vigilantibus et non dormientibus jura subveniunt.*" The section has not even the qualifying words "*So far* as the same ordains, prescribes or directs anything *within the proper competence of the Council,*" used in sec. 321. See note *u* to that section. But it remains to be decided whether the omission of those words, either designedly or accidentally, is to be held to confer a power *sub modo* to pass a By-law clearly beyond the competence of the Council.

(d) The power to act under this section does not arise unless the original By-law "has been acted upon by the construction of the works in whole or in part."

When work may be extended beyond limits of municipality.

534. Whereve it is necessary to continue the deepening or drainage aforesaid beyond the limits of any Municipality, the Engineer or Surveyor employed by the Council of such Municipality may continue the survey and levels into the adjoining Municipality, (*e*) until he finds fall enough to carry the water beyond the limits of the Municipality in which the deepening or drainage was commenced. 36 V. c. 48, s. 451.

When lands, etc., in adjoining municipality may be charged, though works not carried into such municipality.

535. Where the deepening and drainage do not extend beyond the limits of the Municipality in which they are commenced, but, in the opinion of the Engineer or Surveyor aforesaid, benefit lands in an adjoining Municipality or greatly improve any road lying within any Municipality, or between two or more Municipalities, (*f*) then the Engineer or Surveyor aforesaid shall charge the lands to be so benefited are improved, with such proportion of the costs of the work and the Corporation, person or company whose road or roads as he may deem just; and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such Municipality or company. (*g*) 36 V. c. 48, s. 452.

(*e*) Apparently, the Engineer or Surveyor appointed by the Council is, in the first instance, to judge of the necessity of continuing the deepening or drainage beyond the limits of the Municipality. If he think it necessary he may continue the survey and levels into the adjoining Municipality, "*until* he finds fall enough to carry the water beyond the limits of the Municipality in which the deepening or drainage was commenced." No Municipality, and no officer of any Municipality, has power, in the interest of the public, to drain water on to the land of any proprietor, and lodge it there against the will of the proprietor. See note *a* to sub. 1 of sec. 509.

(*f*) The deepening or drainage may be either confined to the particular Municipality in which commenced, or extended to and through an adjoining Municipality. See the last note. But even in the former case the deepening or drainage may be so contiguous to the adjoining Municipality as to benefit lands therein, or greatly to improve roads lying therein, or between two or more Municipalities belonging to any Corporation, person or company. And the policy of the Act being that land benefited by deepening or drainage should contribute to the cost thereof, this policy is to be carried out, as it were, regardless of Municipal boundaries.

(*g*) The Engineer or Surveyor is in the first instance made the judge of the amount to be paid. It may be any sum that "*he* may deem *just*." Provision is hereafter made for appealing from his decision. Sec. 540. The amount, whatever it may be when ultimately determined, is to be paid out of the general funds of such Municipality or Company.

Report as to which municipality to bear expense.

536. The Engineer or Surveyor aforesaid shall determine and report to the Council by which he was employed, whether the deepening or drainage shall be constructed and maintained solely at the expense of such Municipality, or whether it shall be constructed and maintained at the expense of both Municipalities, and in what proportion. (*h*) 36 V. c. 48, s. 453.

Plans, etc.

537. The Engineer or Surveyor aforesaid, (*i*) where necessary, (*j*) shall make plans and specifications of the deepening or drainage to be constructed, and charge the lands to be benefited by the work as provided herein. (*k*) 36 V. c. 48, s. 454.

Council of municipality wherein work begun to notify municipality to be benefited.

538. The Council of the Municipality in which the deepening or drainage is to be commenced, shall serve the head of the Council of the Municipality into which the same is to be continued, or whose lands or roads are to be benefited without the deepening or drainage being continued, (*l*) with a copy of the report, plans and specifications of the Engineer or Surveyor aforesaid, when necessary, so far as they affect such last mentioned Municipality; (*m*) and unless the same

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(*h*) It may be proper under certain circumstances to subject the particular Municipality in which the deepening or drainage is commenced to the entire cost thereof, see note *f* to sec. 535; or it may be proper to subject the adjoining Municipality or some portion thereof, or some roads therein, to a proportionate part of the cost. *Ib.* It is for the Engineer or Surveyor in the first instance to determine the matter. He is required to report his determination to the Council that employed him. If he find that the work should be done at the expense of both Municipalities, he is also to report "in *what* proportion" each should contribute. If necessary to make the report intelligible that it should be accompanied by plans or specifications, such plans and specifications must accompany the report. See secs. 529 and 537.

(*i*) *i. e.*, the Engineer or Surveyor appointed by the Council to examine the creek, stream or water-course proposed to be deepened, or the locality proposed to be drained. See note *b* to sec. 529.

(*j*) See note *h supra*.

(*k*) See note *f* to sec. 535.

(*l*) See note *h supra*.

(*m*) Two things are to be observed:

1. What is to be served.
2. Upon whom service is to be effected.

1. The service is to be of a copy of the report, plans and specifica-

is appealed from as hereinafter provided, it shall be binding on the Council of such Municipality. (*n*) 36 V. c. 48, s. 455.

Municipality so notified shall proceed to raise necessary amounts.

539. The Council of such last mentioned Municipality shall, within four months from the delivery to the head of the corporation of the report of the Engineer or Surveyor, as provided in the next preceeding section, pass a by-law or by-laws to raise such sum as may be named in the report, (*p*) or in case of an appeal, for such sum as may be determined by the arbitrators, in the same manner and with such other provisions as would have been proper if a majority of the owners of the lands to be taxed had petitioned as provided in the five hundred and twenty-ninth section of this Act. (*q*) 36 V. c. 48, s. 456.

But such municipality may appeal.

540. The Council of the Municipality into which the deepening or drainage is to be continued, or whose lands, road or roads are to be benefited without the deepening or drainage being carried within its limits, may, within twenty days from the day in which the reports was served on the head of the Municipality, (*s*) appeal therefrom; (*t*) in which case they shall serve the head of the Corporation from which they received the report, with a written notice of appeal; such notice shall state the ground of appeal, the

Proceedings thereon.

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tions of the Engineer or Surveyor, so far as they affect the adjoining Municipality. This is to be done when necessary.

2. The service is to be on the head of the Municipality. This is sufficient. It is not like the service of the notice under sec. 531, which must be on the head of the Municipality *and* the Clerk.

(*n*) See note *m* to sec. 529, and note *t infra*.

(*p*) See note *g* to sec. 535.

(*q*) The obligation to pay for deepening or drainage may arise either when a majority of owners in the particular Municipality petition under section 529, and a By-law is thereupon passed, or when such a petition and such a By-law is passed in an adjoining Municipality, and under the operation of which land in the particular Municipality is likely to be benefited thereby, and has been so charged by the Engineer or Surveyor. This section provides for the latter alternative.

(*s*) As to computation of time, see note *a* to sec. 177.

(*t*) The appeal can only be had within the time and in the manner herein directed. The right of appeal is given, as it were, only on certain conditions. The right can only be exercised within twenty days from the day on which the report was served on the head of the Municipality. The mode of its exercise is by service within that time of a written notice of appeal.

name of an Engineer or other person as their arbitrator, (*u*) and shall call upon such Corporation to appoint an arbitrator in the matter on their behalf, within ten days after the service of such notice. (*v*) 36 V. c. 48, s. 457.

Arbitrators shall be appointed, etc.

541. The arbitrators shall be appointed by the parties in manner hereinbefore provided by the sections of this Act with reference to arbitration, and shall proceed as therein directed; (*w*) but in no case shall the Engineer or Surveyor employed to make surveys, plans and specifications be appointed or act as arbitrator. (*x*) 36 V. c. 48, s. 458.

Each municipality to contribute to maintaining such deepening or drainage in proportions fixed by engineer.

542. After such deepening or drainage is fully made and completed, it shall be the duty of each Municipality, in the proportion determined by the Engineer or arbitrators (*as the case may be*), or until otherwise determined by the Engineer or arbitrators, under the same formalities, as nearly as may be, as provided in the preceding sections, to preserve, maintain and keep in repair the same within its own limits, either at the expense of the Municipality, or parties more immediately interested, or at the joint expense of such parties and the Municipality, as to the Council, upon the report of the Engineer or Surveyor, may seem just. (*a*)

Provisions for case of neglect, etc.

2. Any such Municipality neglecting or refusing so to do, upon reasonable notice in writing being given by any party interested therein, shall be compellable by *mandamus* to be

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Such notice must state—

1. The ground of the appeal;

2. The name of the Engineer or other person appointed arbitrator for the Municipality appealing; *and*

3. Call upon the other Municipality within ten days after service to appoint an arbitrator on their behalf. See sec. 56 sub. 2, of the Assessment Act, and notes thereto.

(*u*) See notes *a* and *b* to sec 367, and note *d* to sec. 369.

(*v*) As to computation of time see note *a* to sec. 177.

(*w*) See sec. 367, *et seq.*

(*x*) See note c to sec. 378.

(*a*) A provision for the construction of a drain would be ineffective unless some provision were made for the maintenance of the drain when constructed. It is here, in general terms, made the duty of each Municipality "to preserve, maintain and keep in repair" so much of the drain as is within its own limits. This may be either at the expense of the Municipality, or parties more immediately interested, or at the joint expense of both.

issued by any Court of competent jurisdiction, to make from time to time the necessary repairs to preserve and maintain the same; (*b*) and shall be liable to pecuniary damage to any person who or whose property is injuriously affected by reason of such neglect or refusal. (*c*) 36 V. c. 48, s. 459.

Liability for damage.

543. In any case wherein after such deepening or drainage is fully made and completed, the same has not been continued into any other Municipality than that in which the same was commenced, or wherein the lands or roads of any such other Municipality are not benefited by such deepening or drainage, (*d*) it shall be the duty of the Municipality making such deepening or drainage, to preserve, maintain and keep in repair the same at the expense of the lots, parts of lots and roads, as the case may be, as agreed upon and shown in the by-law when finally passed. (*e*)

When works not extended beyond limits of municipality commencing same, etc., or do not benefit any other municipality works to be maintained by municipality commencing same.

2. In any case where similar drainage has been constructed out of the general funds of the Municipality previous to the tenth day of February, 1876, the Council may without petition, on the report of an Engineer or Surveyor, pass a by-law for preserving, maintaining and keeping in repair the same at the expense of the lots, parts of lots and roads, as the case may be, benefited by such drainage, and may assess such lots, parts of lots and roads so benefited, for the expense thereof, in the same manner, by the same proceedings, and subject to the same right of appeal as is provided with regard to drainage made and completed under the provisions of this Act. (*f*)

When drainage already completed has been paid for out of funds of municipality repair may be charged on property benefited.

3. The Council may, from time to time, change such assessment on the report of an Engineer or Surveyor ap-

And assessment charged.

(*b*) *Mandamus* is not the appropriate remedy to compel a Municipal Corporation to keep a highway in repair. Indictment is the Common Law mode of procedure in such a case. See note *p* to sec. 491. But in the case of a drain the reason for the preference of an indictment fails. Hence the remedy by *mandamus* is, under this section, the express remedy. It cannot be invoked unless there be a neglect or refusal on the part of the opposing Municipality, after reasonable notice in writing given by any party interested therein.

(*c*) See note *p* to sec. 491.

(*d*) See note *h* to sec. 536.

(*e*) See sec. 530.

(*f*) This enactment is only applicable in the case of drainage constructed out of the general funds of the Municipality previous to 10th February, 1876.

pointed by them to examine and report on such drain, deepening and repairs, subject to the like rights of appeal as the persons charged would have in the case of an original assessment. (*g*) 36 V. c. 48, s. 460; 39 V. c. 34, s. 7.

Case of a drain being used by another municipality.

544. If a drain already constructed, or hereafter constructed, by a Municipality, is used as an outlet, or otherwise (*h*) by another Municipality, Company or individual, such Municipality, company or individual using the same as an outlet or otherwise, may be assessed for the construction and maintainance thereof in such proportion and amount as may be ascertained by the Engineer, Surveyor or arbitrators under the formalities provided in the preceding sections. 36 V. c. 48, s. 461.

Disputes as to damage done by works to be referred to arbitration.

545. If any dispute arises between individuals, or between individuals and a Municipality, or Company, or between a Company and Municipality, or between Municipalities, as to damages alleged to have been done to the property of any Municipality, individual or Company, in the construction of drainage works, (*i*) or consequent thereon, (*j*) then the Muni-

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(*g*) The power is "from time to time" to change the assessment. But this can only be done on the report of *an* Engineer or Surveyor appointed to examine and report on the drain, deepening or repairs. Notice of such change should of course be given to the parties concerned, so that they may, if dissatisfied or aggrieved, appeal therefrom.

(*h*) The construction of a drain costs money; where such a drain is constructed by a Municipal Corporation, those whose land is benefited thereby are called upon to pay towards the costs of construction and maintainance. Sec. 529. If such a drain be used by another Municipality, company or individual as an outlet, or otherwise, it is only just that such Municipality, company or individual should be assessed a proportionate part for construction and maintenance. The proportionate part is, in the first instance, to be ascertained by the Engineer or Surveyor, subject to appeal, as provided in the preceding sections. It only remains to be noticed that this section is, on the face of it, applicable "to a drain *already* constructed," as well as to drains hereafter to be constructed.

(*i*) The ordinary mode of redress for damages alleged to have been done to property in the construction of public works, or arising therefrom, in the absence of Legislative provision to the contrary, is an action. But where the Legislature has provided a special mode of determining such matters, that mode and no other is the one to be followed. See *Vestry of St. Pancras* v. *Battersbury*, 2 C. B. N. S. 477.

(*j*) It has been recently held that a party owning a house in which he carried on an inn, was not entitled to be compensated for

cipality, Company or individual complaining may refer the matter to arbitration, as provided in this Act; (*k*) and the award so made shall be binding on all parties. (*l*) 36 V. c. 48, s. 462.

Drains into adjoining lots or across highways.

546. In case any person finds it necessary to continue an under-drain into an adjoining lot or lots, or across or along any public highway, for the purpose of an outlet thereto, and in case the owner of such adjoining lot or lots, or the Council of the Municipality, refuses to continue such drain to an outlet, or to join in the cost of the continuation of such drain, then the firstly mentioned person shall be at liberty to continue his said drain to an outlet through such adjoining lot or lots, or across or along such highway; (*m*) and in case of any dispute as to the proportion of cost to be borne by the owner of any adjoining lot or Municipality, the same shall be determined by the fence-viewers in the same manner as disputes within "*The Line Fences Act*," excepting as to the amount of such award which shall be finally decided by the fence-viewers, and their award shall be final. (*n*) 37 V. c. 16, s. 20.

Rev. Stat. c. 198.

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the indirect injury to his trade resulting from the diversion of traffic caused by an unauthorized act of lowering the roadway, but only for direct structural injury occasioned by the unauthorized interference with his cellar. *Bigg* v. *London*, L. R. 15 Eq. 376; but see *Ricket* v. *Metropolitan Railway Company*, L. R. 2 H. L. 175; *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. C. 418; *Beckett* v. *Midland Railway Company*, L. R. 3 C. P. 82; *McCarthy* v. *Metropolitan Board of Works*, L. R. 7 C. P. 508; *S. C.* L. R. 8 C. P. 191.

(*k*) See sec. 367, *et seq.*

(*l*) See note *e* to sec. 380.

(*m*) No man or no Municipality has a right, in the absence of legislation to the contrary, without the consent of the owner of adjoining property, to enter upon such property for the purpose of continuing an under drain, or for any similar purpose. The power is to some extent conferred. It is to continue the drain "to an outlet" "through such adjoining lot or lots, or across or along such highway." Care must be taken by the person exercising the power not to make such adjoining land or such adjoining highway a receptacle for water drained off his land. See note *b* to sub. 1 of sec. 509.

(*n*) The award of fence viewers is held conclusive as to matters within their jurisdiction. *Stedman* v. *Wasley*, R. & J. Digest 1518. *Short* v. *Parmer*, 24 U. C. Q. B. 633. The Court has no power summarily to set aside their award. *In re Cameron and Kerr*, 25 U. C. Q. B. 533. But if the award be from any cause bad, it will not

Power to contract to spread earth, etc., on making ditch for drainage, ss. 529 to 558.

547. Where, under the provisions of the sections five hundred and twenty-nine to five hundred and fifty-eight, both inclusive, of this Act, a ditch is being constructed for drainage purposes along a road allowance, contracts may be made by the Municipal Council so constructing for spreading the earth taken from the ditch on the road; (*o*) and if the road or any part thereof is timbered, or if stumps are in the way, the timber may be removed; and not less than twelve feet of the centre of the road shall be grubbed before the earth is spread upon it. 39 V. c. 34, s. 3.

Payment by municipality.

548. The removal of the timber, grubbing and spreading of the earth, together with such portion of the cost of the ditch as the Engineer or Provincial Land Surveyor may deem just and proper, shall be charged to the Municipality and paid out of its general funds. (*q*) 39 V. c. 34, s. 4.

Construction of ditch on town line between municipalities.

549. Where it is necessary to construct such a ditch along a town line between two or more Municipalities, the Municipal Council of either of the adjoining Municipalities may, on petition, as provided for in section five hundred and twenty-nine of this Act, (*r*) cause the ditch to be constructed on either side of the road allowance between the Municipalities and make the road in manner as provided in the two preceding sections of this Act, and shall charge the lands and roads benefited in the adjoining Municipality or Municipalities with such proportion of the cost of constructing the said ditch as the Engineer or Surveyor aforesaid deems just and

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be a defence for anything done under it. *Malone* v. *Faulkner*, 11 U. C. Q. B. 116; *Murray* v. *Dawson*, 17 U. C. C. P. 588; *S. C.*, 19 U. C. C. P. 314; *Dawson* v. *Murray*, 29 U. C. Q. B. 464; see further sec. 58 of The Assessment Act and notes thereto.

(*o*) It has been held that a Municipal Corporation who laid out a street over the land of a private individual and appraised the damages, may, in reducing such street to the proper grade, carry the soil therefrom and deposit it on a street on another part of the same Municipality. *City of New Haven* v. *Saryent*, 9 Am. 360.

(*q*) The Engineer or Provincial Land Surveyor has a large discretion conferred upon him. Whatever he claims "just and proper" in respect of the expenses of the removal of the timber grubbing and spreading of the earth is to be charged to the Municipality and paid out of its general funds. This of course intends a decision by the officer indicated acting in perfect good faith. See note *b* to s. 551.

(*r*) See notes to s. 529.

proper; (*e*) and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such Municipality or Municipalities. 39 V. c. 34, s. 5.

Sec. 529-558 to apply.

550. The provisions of section five hundred and twenty-nine to five hundred and fifty-eight, both inclusive of this Act shall apply as far as applicable to any such ditch. (*t*) 39 V. c. 34, s. 6.

DIVISION II.—LOCAL IMPROVEMENTS IN CITIES, TOWNS AND VILLAGES.

Local Improvements. *Secs.* 551-554.
Sweeping, Watering and Lighting Streets. *Sec.* 555.
Acquisition of Lands beyond the limits for public purposes. *Sec.* 556.

City, town, and village councils may make by-laws for—

Ascertaining the real property to be benefited by a local improvement, etc.

551. The Council of every City, Town, and incorporated Village may (*a*) pass by-laws for the following purposes:

1. For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed as hereinafter mentioned upon the real property immediately benefited thereby; and of ascertaining and determining the proportions in which the assessment is to be made on the various portions of real estate so benefited; (*b*) subject in every case to an appeal to the Judge of the County Court, in the same manner and on the same terms, as nearly

Appeal.

(*e*) See note *q* to s. 548.

(*t*) The ditch meant is one along a town line between two or more Municipalities such as provided for by sec. 549.

(*a*) *May*—discretionary. See note *f* to sec. 494.

(*b*) The powers conferred are to pass By-laws for the following purposes:

1. For providing the means of *ascertaining* and *determining* what real property will be immediately benefited, &c.
2. For *ascertaining* and *determining* the proportions in which the assessment is to be made, &c.

Subject in every case to an appeal to the Judge of the County Court.

Neither of the Superior Courts of Law will entertain an application to set aside a By-law on a matter of fact, which, according to this Act, or a By-law passed under it, should be ascertained and determined by an officer of the Corporation, in the absence of fraud or corrupt conduct being imputed to such officer. See *In re Michie and*

as may be, as an appeal from the Court of Revision in the case of an ordinary assessment; (c) 36 V. c. 48, s. 464 (1).

Assessing and levying upon real property benefited by certain public works undertaken on a petition, etc.

2. For assessing and levying upon the real property to be immediately benefited by the making, enlarging or prolonging of any common sewer, or the opening, widening, prolonging, or altering, macadamizing, grading, levelling, paving or planking of any street, lane or alley, public way or place, or of any sidewalk, or any bridge forming part of a highway therein, (d) on the petition of at least two-thirds in number of the owners of such real property, representing one-half the value of such real property, (e) a special rate, sufficient to include a sinking fund, for the re-payment of debentures which such Councils are hereby authorized to issue in such cases respect-

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Toronto, 11 U. C. C. P. 379; see also *In re Montgomery and Raleigh*, 21 U. C. C. P. 381; *Wright* v. *Chicago*, 2 Withrow 176; *Elliott* v. *Chicago*, *Ib.* 181; *Jenks* v. *Chicago*, *Ib.* 183. Houses may be benefited by local improvements, such as paving, &c., although not immediately and directly fronting on the street paved. *Baddeley* v. *Gingell*, 1 Ex. 319; *School Board for London* v. *The Vestry of St. Mary, Islington*, L. R. 1 Q. B. Div. 65; *Wakefield Local Board of Health* v. *Lee*, L. R. 1 Ex. Div. 336; see also *Whitchurch* v. *Fulham Board of Works*, L. R. 1 Q. B. 233; *Vestry of Mile End* v. *Guardians of Whitechapel Union*, L. R. 1 Q. B. Div. 680.

(c) If it were not for this provision the action of the Municipal Council acting within its jurisdiction could not be reversed. See *Nesbitt* v. *Greenwich Board of Works*, L. R. 10 Q. B. 465.

(d) The local improvements contemplated are—

1. Making,
2. Enlarging,
3. Prolonging,

} *any* common sewer.

1. Opening,
2. Widening,
3. Prolonging,
4. Altering,
5. Macadamizing,
6. Grading,
7. Levelling,
8. Paving,
9. Planking,

} *any* street, lane, alley, public way, place, sidewalk, or any bridge forming part of a highway therein.

(e) The power to pass the By-law is here made dependent on the fact of there being a petition of at least two-thirds in number and one-half in value of the real property to be immediately benefited. Besides, it is expressly declared that no such local improvement shall be undertaken by the Council, otherwise than on the petition of two-thirds in number and one half in value of the owners of the real property to be directly benefited thereby. Sec. 552. The want of a petition signed by the requisite number and value, unless there be legislation to the contrary, invalidates the proceeding, see note *k* to

ively, on the security of such rates respectively, to provide funds for such improvements; and for so assessing and levying the same, by an annual rate in the dollar on the real property so benefited, according to the value thereof, exclusive of improvements; (*f*) 36 V. c. 48, s. 464 (2). Annual rate.

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sec. 552, and, in general, makes void the assessment. *Henderson* v. *Baltimore*, 8 Md. 352; *Carron* v. *Martin*, 2 Dutch (N. J.) 594; *Camden* v. *Mulford*, 2 Dutch (N. J.) 49; *State* v. *Elizabeth*, 1 Vroom. (N. J.) 176; *Kyle* v. *Malin*, 8 Ind. 34; *State* v. *Hand*, 2 Vroom. (N. J.) 547; *State* v. *Orange*, 32 N. J. 49; *Baltimore* v. *Eschbach*, 18 Md. 276; *Wells* v. *Burnham*, 20 Wis. 112; *Covington* v. *Casey*, 3 Bush. (Ky.) 698; *Lexington* v. *Headley*, 5 Bush. (Ky.) 508; *Burnett* v. *Sacramento*, 12 Cal. 76; *McGuinn* v. *Peri*, 16 La. An. 393; *Litchfield* v. *Vernon*, 41 N. Y. 123; *St. Louis* v. *Clemens*, 36 Mo. 467; *Louisville* v. *Hyatt*, 2 B. Mon. (Ky.) 177; *Haynes* v. *Copeland*, 18 U. C. C. P. 150. And a Court of Equity would grant an injunction against enforcing such a rate. *Holland* v. *Baltimore*, 11 Md. 186; *Bouldin* v. *Baltimore*, 15 Md. 18. Those who sign and present the petition may be estopped from afterwards questioning the sufficiency of the petition as regards numbers. *Burlington* v. *Gilbert*, 31 Iowa 356; *S. C.* 7 Am. 143; but see *Petition of Sharp*, 15 Am. 415. The doing of the work by the Municipal Council or the adoption of it by the Council does not *per se* oblige the proprietors to pay for it. *Reilly* v. *Philadelphia*, 60 Pa. St. 467, distinguished from *City* v. *Wistar*, 11 Casey (Pa.) 427; and *City* v. *Burgin*, 14 Wright (Pa.) 439. The Corporation may, notwithstanding, by the terms of the contract, render itself liable to the contractor for the whole amount. *New Albany* v. *Sweeney*, 13 Ind. 245; *Lucas* v. *San Francisco*, 7 Cal. 463; *Lovell* v. *St. Paul*, 10 Minn. 290. The Corporation may so contract as to make the contractor look to the assessment for his pay; and although the assessment be void, he would not in such a case have any right to sue the City for the contract price. *Leavenworth* v. *Rankin*, 2 Kansas 357; *Swift* v. *Williamsburg*, 24 Barb. (N. Y.) 427; *Goodrich* v. *Detroit*, 12 Mich. 279; *Johnson* v. *Common Council*, 16 Ind. 227; *New Albany* v. *Sweeny*, 13 Ind. 245. See further, *Kearney* v. *Covington*, 1 Met. (Ky.) 339; *Smith* v. *Milwaukee*, 18 Wis. 63; *Finney* v. *Oshkosh*, *Ib.*, 309; *Chicago* v. *People*, 48 Ill. 416; *Ruppert* v. *Baltimore*, 23 Md. 184; *Hunt* v. *Utica*, 18 N. Y. 442. If the Corporation agree with the contractor to collect the assessments, a failure to do so would render the Corporation liable. *Morgan* v. *Dubuque*, 28 Iowa 575. See also, *Beard* v. *Brooklyn*, 31 Barb. (N. Y.) 142; *Cumming* v. *Mayor of Brooklyn*, 11 Paige (N. Y.) 596; *Baker* v. *Utica*,, 19 N. Y. 326; *Green* v. *Mayor of New York*, 5 Abb. Pr. Rep. (N. Y.) 503; *Reock* v. *Newark*, 33 N. J. Law 129; *Argenti* v. *San Francisco*, 16 Cal. 255. All depends upon the nature and form of the contract. *Foote* v. *Milwaukee*, 18 Wis. 270; *Bond* v. *Newark*, 19 N. J. Eq. 376; *Palmer* v. *Stump*, 29 Ind. 329; *McSpedon* v *New York*, 7 Bosw. (N. Y.) 601; *Reilly* v. *Philadelphia*, 60 Pa. St. 467; *Creighton* v *Toledo*, 18 Ohio St. 447; *Buffalo* v. *Holloway*, 7 N. Y. 493; *Storrs* v. *Utica*, 17 N. Y. 104; *McGuire* v. *Smock*, 13 Am. 355. See further, note *l* to sec. 552, and note *i* to sec. 555.

(*f*) As the rate is to be an annual rate in the dollar, and to be

Regulating time and manner of levying assessments, etc.

3. For regulating the time or times and manner in which the assessments to be levied under this section are to be paid, (*g*) and for arranging the terms on which parties assessed for local improvements may commute for the pay-

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according to the value of the real property benefited, an arbitrary rate of $1 per foot would be clearly bad. *Ex parte Aldwell and Toronto*, 7 U. C. C. P. 104. A frontage rate is not bad in itself, but bad when the statute requires the imposition of an annual rate. *Per* A. Wilson, J., in *Haynes* v. *Copeland*, 18 U. C. C. P. 150. Churches and other property exempted from general taxation may be exempted from this local rate. *Ib.* It is not necessary to impose a separate rate on the property on each street. *Ib.*

(*g*) The By-law of a Municipal Corporation, passed in 1865, for the purpose of authorizing the levying of a rate for certain local improvements, in the shape of the pavement of sidewalks, after reciting a previous resolution of the Council accepting a tender for the work and authorizing the passage of a By-law to levy a certain rate per foot frontage on the owners of real estate on the parts of several streets named, provided that the required sum should be raised by local taxation "upon the proprietors of the several lots of land adjoining said sidewalks immediately benefited thereby; except that part on James street opposite the Market Place, and those parts on Church street opposite the several churches and school houses," that the persons named in the first column of the schedule annexed to the By-law were proprietors of land adjoining the sidewalks and were immediately benefited thereby; that the whole of the said property so benefited was by the assessment rate of 1865 rated at $12,554, enacted that there should be raised from the said proprietors twenty-two and a half cents in the dollar, and that the collector for 1865 should collect the same in the usual way. It then repealed a By-law of 1864, authorizing the levying of the frontage rate. The work in question had been begun, finished and paid for in 1864, with the exception of $659, which were paid before the passage of the By-law of 1865. There was the further fact, that the whole of plaintiff's property at the corners of two streets was assessed, whereas the flagging extended only over a portion of it. Held, that the By-law contained nothing objectionable on its face; but assuming it defective in providing for the debt of the previous year, it was merely providing in 1865 for a debt contracted and provided for by the By-law of 1864, but provided for imperfectly, and that the mere repeal of a defective, doubtful or invalid rate imposed within the jurisdiction of the Council, for another free from all objection, is not a violation of the rule against prospective rates. Held also, that it was no objection to the By-law that certain proprietors were rated for the special rate who were not on the general assessment roll, nor that the assessed value of 1864 was taken instead of that of 1865, as this did not appear on the face of the By-law, and could be raised in an action of replevin. Held also, that the whole of plaintiff's property as assessed was liable, though the flagging extended over a portion only. *Haynes* v. *Copeland*, 18 U. C. C. P. 150; see further, *The Great Western Railway Co.* v. *West Bromwich Commissioners*, 1 E. & E. 806; *Blackburn* v. *Parkinson*, *Ib.* 71; *Pound* v.

ment of their proportionate shares of the costs thereof in principal sums; (*h*) 36 V. c. 48, s. 464 (3).

4. For effecting any such improvement as aforesaid with funds provided by parties desirous of having the same effected. (*i*) 36 V. c. 48, s. 464 (4). If funds furnished by parties.

552. No such local improvement as aforesaid shall be undertaken by the Council (unless as provided in the next section), except under a by-law passed in pursuance of the fourth sub-section of the preceding section, otherwise than on the petition of two-thirds in number of the owners of the real property to be directly benefited thereby, (*j*) representing at least one-half in value of such real property; the number of such owners and the value of such real property having been first ascertained, and finally determinined in the manner and by the means provided by by-law in that behalf; (*k*) and if the contemplated improvement is the construction of a common sewer having a sectional area of more than four Conditions precedent to undertaking any such public works.

Plumstead Board of Works, L. R. 7 Q. B. 183; *Plumstead Board of Works* v. *British Land Co.*, L. R. 10 Q. B 16; *Dryden* v. *Overseers of Putney* R. L. 1 Ex. Div. 223; and note *d* to sec. 2 of The Assessment Act.

(*h*) The Court in one case intimated that the owner or occupier of property drained by a common sewer might legally be allowed to commute by payment of a fixed sum. *In re McCutchon and Toronto*, 22 U. C. Q. B. 613.

(*i*) Where funds are provided by parties desirous of having the local improvement, of course there will be no necessity for levying or assessing the rate contemplated by the previous sub-sections.

(*j*) See note *e* to sec. 551.

(*k*) Where a By-law provided that the number of owners and the value of the real property was to be ascertained by the City Clerk, and be appended to the petition, a certificate that the total number of persons assessed for property to be directly benefited was twenty-three,—that sixteen names were signed to the petition, that the total value of the assessed property was $520,182, and that the amount represented by the signers of the petition was $413,496, the Court, on an application to quash a By-law for local improvements, refused to go behind this certificate. *In re Michie and Toronto*, 11 U. C. C. P. 379; see also, *In re Montgomery and Raleigh*, 21 U. C. C. P. 331. "It is not objected that he (the Clerk) acted corruptly and fraudulently, and though as I gather from the unanswered statements in the relator's affidavits, the City Clerk has fallen into an error,—an error easily accounted for, as his conclusions were drawn from the assessment roll only,—yet I think we cannot on that account annul the whole proceeding. . . . I am not to be understood as determining that he should have confined his inquiry to the assessment

Further conditions as to sewers.

feet, one-third of the cost thereof shall also first be provided for by the Council, by by-law for borrowing money, which every such Council is hereby authorized to pass for such purpose, or otherwise. (*l*) 36 V. c. 48, s. 465.

In certain cases petitions may be dispensed with.

553. In cases where the Council of any City, Town or incorporated Village decides to contribute at least half of the cost of such local improvement, it shall be lawful for the said Council to assess and levy, in manner hereinbefore provided by the five hundred and fifty-first and five hundred and fifty-second sections of this Act, from the owners of real property to be directly benefited thereby, the remaining portion of such cost without petition therefor, (*m*) unless the majority of such owners representing at least one-half in value of such property, petition the Council against such assessment, within one month after the publication of a notice of such proposed assessment in at least two newspapers published in such City, Town or incorporated Village, if there are two newspapers published therein, and if there are not, then in two news-

Unless assessment petitioned against.

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roll, when he was required to ascertain and finally determine the matter of number and value; but I think that, having acted as we must assume *bonâ fide*, the Legislature intended his determination to be final, as the foundation for the By-law authorizing the improvement and imposing the special rate. *Re Michie and Toronto*, 11 U. C. C. P. 385, *per* Draper, C.J.; see further, note *e* to sec. 551.

(*l*) A Municipal Corporation contracted with a paver to do certain work at a fixed price, of which the Corporation was to pay one-third and the owners two-thirds. It was, however, judicially determined that the owners were in law liable to pay only one-third. Held, that the paver had the right to recover two-thirds against the Corporation. *Tournier* v. *Municipality Number One*, 5 La. An. 298; see further *Cronan* v. *Municipality Number One*, *Ib.* 537; *Maher* v. *Chicago*, 38 Ill. 266; *Chicago* v. *The People*, 48 Ill. 416; *Reilly* v. *Philadelphia*, 60 Pa. St. 467; *Michel* v. *Police Jury*, 9 La. An. 67; see also, note *e* to sec. 551.

(*m*) Where a City was authorized by one section of the Act, on the petition of two-thirds of the owners of abutting property, to make certain improvements in a street, and by a subsequent section power was conferred upon the Council to order such improvements by a two-thirds vote of the Council, it was held that, although proceedings relative to the improvements were commenced by petition from the property holders, yet, having been ordered by a two-thirds vote of the Council, they were valid, although two-thirds of the property holders did not unite in the petition, for that the two-thirds vote of the Council made the proceedings valid, notwithstanding any prior defects. *Indianapolis* v. *Mansur*, 15 Ind. 112; see further *Lafayette* v. *Fowler*, 34 Ind. 140; see further *McCormack* v. *Patchin*, 14 Am. 440.

papers published nearest the proposed work. (*n*) 36 V. c. 48, s. 466.

(*n*) It has been held that where a Municipal Corporation exercises its power to make local improvements and charge the cost thereof on the lands directly benefited thereby, that the owners of such lands, if accessible by reasonable diligence, are entitled to reasonable notice of the meeting of the Commissioners for assessing the cost, and this although the charter be silent on the subject. *State* v. *Jersey*, 4 Zabr (N. J.) 662. See also *Cowen* v. *West Troy*, 43 Barb. (N. Y.) 48; *Brewster* v. *Newark*, 3 Stockt. Ch. (N.J.) 114; *State* v. *Hudson*, 5 Dutch (N.J.) 475; *State* v. *Perth Amboy*, *Ib.* 259; *Myrick* v. *Lacrosse*, 17 Wis. 442; *Rathburn* v. *Acker*, 18 Barb. (N. Y.) 393; *Risley* v. *St. Louis*, 34 Mo. 404; *Palmyra* v. *Morton*, 25 Mo. 593; *Washington* v. *Mayor*, 3 Swan. (Tenn.) 177; *Whyte* v. *Mayor, &c.*, 2 Swan. (Tenn.) 364; *Ottawa* v. *Railroad Co.*, 25 Ill. 43; *Jenks* v. *Chicago*, 48 Ill. 268; *Himmelman* v. *Oliver*, 34 Cal. 246. Where the By-law of a Municipal Corporation provided that the Clerk of the Council should cause a notice to be left at the place of abode of each of the parties assessed for such improvement, that the assessment was made and the amount thereof, and that a By-law would be passed in accordance therewith unless appealed from as provided by law, the Court, on the application of a person interested, who swore that he had no notice of the By-law until some time after it was passed, and that he first became aware of the particulars of it and of the proceedings on which it was based in February belore the application to quash, refused to quash the By-law. *In re Michie* v. *Toronto*, 11 U. C. C. P. 379. *Per cur.* "The sixth objection is sustained in fact, as I understand the statements. But the provision requiring notice of intention to pass the By-law to be given or sent to parties affected by it, is not statutory, nor is the validity of the By-law made dependent on provisions contained only in By-laws. And although the relator states in his affidavit that he had no notice of the By-law 'until some time after it was passed,' and that he first became aware of the particulars of it and of the proceedings on which it was based in February last, yet it is difficult to suppose that he was not aware long before that date that the stone sidewalk was being laid down, or that the work was of that character which was usually paid for by special local rate. This was enough to put any one on enquiry. Then he seems, from his own expression, to have become aware of the By-law some time before he became aware of its precise contents; but the knowledge of the first was notice of the second, and he then might have learned everything necessary to support a much earlier application to quash the By-law." *Per* Draper, C. J., *Ib.* 385. Notice to "repave" held not sufficient where the assessment was for paving, *State* v. *Jersey City*, 3 Dutch (N. J.) 536. Notice of time and place for hearing objections to proposed improvement. *State* v. *Jersey City*, 1 Dutch (N. J.) 309; *State* v. *Jersey City*, 2 Dutch (N. J.) 464; *State* v. *Jersey City*, 4 Zabr. (N. J.) 662; *State* v. *Newark*, 1 Dutch (N. J.) 399; *State* v. *Elizabeth*, 2 Vroom (N. J.) 547. Requisites of such a notice, *Tufts* v. *Charlestown*, 98 Mass. 583; *Ottawa* v. *Macey*, 20 Ill. 413; *Simmons* v. *Gardiner*, 6 Rh. Is. 255; *Baltimore* v. *Boulain*, 23 Md. 328. This section provides for the publication of a notice of the proposed assessment in at least two newspapers published in the City, Town

Certain sections not to apply to certain works.

554. Nothing contained in the three next preceding sections of this Act shall be construed to apply to any work of ordinary repair or maintainance; and every common sewer made, enlarged or prolonged, and every street, lane, alley, public way or place, and sidewalk therein, once made, opened, widened, prolonged, altered, macadamized, paved or planked under the said sections of this Act, shall thereafter be kept in a good and sufficient state of repair at the expense of the City, Town, or Village generally. (*p*) 36 V. c. 48, s. 467.

Sweeping, Lighting and Watering Streets.

Lighting, watering, and sweeping streets.

555. The Council of every City, Town and incorporated Village may (*q*) pass by-laws for raising, upon the petition of at least two-thirds of the freeholders and householders resident in any street, square, alley or lane, representing in value one-half of the assessed real property therein, (*r*) such sums as may be necessary for sweeping, watering or lighting the street, square, alley or lane, by means of a special rate on the real property therein according to the frontage thereof; (*rr*) but the Council may charge the general corpor-

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or Incorporated Village, if there be two; if there be not, then in two newspapers published nearest the proposed work. Where the Legislature has made the giving of notice necessary, and provided a mode for giving such notice, that mode should be strictly followed. *Simmons* v. *Gardiner*, 6 Rh. Is. 255; *Scammon* v. *Chicago*, 40 Ill. 146; *Risley* v. *St. Louis*, 34 Mo. 404; *Hildreth* v. *Lowell*, 11 Gray (Mass.) 345; *Williams* v. *Detroit*, 2 Mich. 560; *State* v. *Elizabeth*, 1 Vroom. (N.J.) 365; *Durant* v. *Jersey City*, 1 Dutch (N. J.) 309; *Norwich* v. *Hubbard*, 22 Conn. 587; *State* v. *Jersey City*, 4 Zabr. (N. J.) 662; *Dubuque* v. *Wooten*, 28 Iowa 571; *Palmyra* v. *Morton*, 25 Mo. 593. Failure, after notice, to object to an assessment before a City Council, when it had the power to revise and correct or annul it, and direct a new assessment, was held to be a waiver of notice. *Ottawa* v. *Railroad Co.*, 25 Ill. 43; see also *State* v. *Jersey City*, 2 Dutch (N. J.) 444.

(*p*) See note *p* to s. 491.

(*q*) *May* discretionary; see note *f* to sec. 494.

(*r*) See note *e* to sec. 551.

(*rr*) The power is upon the petition of at least two-thirds of the freeholders and householders resident in *any* street, square, alley or lane, representing in value one-half of the assessed real property therein to raise by means of a special rate on the real property therein according to the frontage thereof, such sums as may be necessary for—

1. Sweeping,
2. Watering or } *the* street, square, alley or lane.
3. Lighting

ate funds with the expenditure incurred in such making or repairing, or in such sweeping, watering or lighting as aforesaid. (*e*)

2. The Council may also, by by-law, define certain areas or sections within the Municipality in which the streets should be watered, and may impose a special rate upon the assessed real property therein, according to the frontage thereof, in order to pay any expenses incurred in watering such streets. (*f*) 36 V. c. 48, s. 468; 37 V. c. 16, s. 21.

It is very plain that what the Legislature authorizes is, that the power of the Council to impose a rate for the purposes indicated is to be exercised *only* by *By-law*, and that such By-law should in every case be passed subsequent to and consequent upon the presentation of the required petition praying the particular By-law to be passed, and after the fullest opportunity had be given to every ratepayer to be affected by the By-law to object to its being passed. *Per* Gwynne, J., in *Morell* v. *Toronto*, 22 U. C. C. P. 323, 326; see further, note *t* to sec. 551. The petition may be that of *a portion* only of a street, asking the Corporation to sweep, water or light that portion. *In re Platt and Toronto*, 33 U. C. Q. B. 53; see also, *Scovill* v. *Cleveland*, 1 Ohio, St. 133; *Railroad Company* v. *Connelly*, 10 Ohio, St. 159. *Creighton* v. *Scott*, 14 Ohio, St. 438; *St. Louis* v. *Clemens*, 49 Mo. 552. But an application to sweep, water or light a *whole* street can only be legally granted when made by two-thirds of the property owners on the whole street. So if the Corporation, upon a petition of the property owners of *part* of a street, sweep, water or light the *whole* (otherwise than in the exercise of their general powers; see notes *s* and *t* below), the By-law would be void. *Swann* v. *Cumberland*, 8 Gill (Md.) 150; *McGonigle* v. *Alleghany*, 44 Pa. St. 118. The By-law will be open to objection if it do not state the amount to be raised and levied. *In re Platt and Toronto*, 33 U. C. Q. B. 57. But where the application to quash the By-law on such an objection was not made till all the work authorized had been done, and the only effect of quashing it would have been the passage of another By-law to remedy the defect, the Court, in the exercise of its discretionary power, refused to quash the By-law. *Ib.* It is not necessary in such a By-law to name the day when it shall take effect. *Ib.*

(*e*) A municipality may, but is not bound to, light a highway; see *Randall* v. *Eastern Railroad Company*, 8 Am. 327. It is in the discretion of the Council, under this section either to charge the general corporate funds with the expenditure, or to charge only the freeholders and householders whose land fronts on the street, &c. The latter course cannot be legally adopted unless there be the petition made necessary by the former part of this section.

(*f*) This part of the section relates only to the watering of streets. It would seem that no petition is necessary to the exercise of the power here conferred. That power is to define certain areas or sections within the Municipality in which streets should be watered,

Power to Cities, Towns, and incorporated Villages to acquire lands outside their limits.

556. The Council of any City, Town, or incorporated Village may from time to time as occasion may require, acquire and hold by purchase or otherwise, for the public use of the Municipality, land situate outside the limits of such City, Town or incorporated Village; but such lands so acquired, shall not form part of the Municipality of such City, Town or incorporated Village, but shall continue and remain as of the Municipality where situate. (*u*) 40 V. c. 25, s. 1. *See also Secs.* 461 (7), *and* 467 (8).

DIVISION III.—COUNTY BY-LAWS FOR ROAD IMPROVEMENTS.

Special rates by County Councils for local improvements in Townships. Secs. 557, 558.

Local rates for special improvements.

557. The Council of every County shall have power to pass by-laws (*v*) for levying by assessment on all ratable pro-

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and to impose a special rate upon the assessed real property therein, according to the frontage thereof, to pay the expenses incurred.

(*u*) Without express legislative authority municipal councils have no power to acquire lands beyond their local limits. See note *u* to sec. 18. The council of every city, town, or incorporated village (as well townships,) may *pass by-laws* for accepting or purchasing land for public cemetries, as well within as without the municipality, but not within any city, town, or incorporated village, and for laying out, improving, and managing the same; but no land shall be accepted or purchased for such purpose except by a by-law declaring in express terms that the land is appropriated for a public cemetry, and for no other purpose. Sec 461, sub. 7. And *cities* and *towns* may *pass by-laws* for acquiring any estate in landed property within or without the city or town, for an industrial farm or for a public park, garden or walk, or for a place for exhibitions, and for the disposal thereof when no longer required for the purpose, and for accepting and taking charge of landed property within or without the city or town dedicated for a public park, garden or walk for the use of the inhabitants of the city or town. Sec. 467, sub. 8. It will be observed that these sections both require the municipalities therein mentioned to act by by-law. In the section under consideration, no mention is made of a by-law being necessary, but it would be as well in all cases, when acting under it, to do so by by-law. The limits of the municipality under this section cannot be extended, as the lands acquired "shall not form part of the municipality of such city, town, or incorporated village, but shall continue and remain as of the municipality where situate." It differs in this respect from sec. 461, sub. 7, which enacts that lands acquired under that subsection "although without the municipality, shall become part thereof, and shall cease to be a part of the municipality to which it formerly belonged."

(*v*) See note *f* to sec. 494.

perty within any particular part of one or parts of two Townships to be described by metes and bounds in the by-law, in addition to all other rates, a sum sufficient to defray the expenses of making, repairing or improving any road, bridge, or other public work, lying within one Township or between parts of such two Townships, and by which the inhabitants of such parts will be more especially benefited, (*w*) but this section shall not apply to any road, bridge or other public works within the limits of any Town or incorporated Village. (*x*) 36 V. c. 48, s. 469.

Proceedings to obtain by-law for such improvements.

558. No by-law under the last preceding section shall be passed, except—

1. Upon a petition signed by at least two-thirds of the electors who are rated for at least one half of the value of the property within those parts of such Townships which are to be affected by the by-law; (*y*) nor

Notice,

2. Unless a printed notice of the petition, with the names of the signers thereto, describing the limits within which the by-law is to have force, has been given for at least one month, by putting up the same in four different places within such parts of the Township, and at the places for holding the sittings of the Council of each Township, whether it be within such parts or not, and also by inserting the same weekly for at least three consecutive weeks in some newspaper (if any there be), published in the County Town, or if there is no such newspaper, then in the two newspapers published nearest the proposed work. (*z*) 36 V. c. 48, s. 470.

posted up,

and published for three weeks.

(*w*) The power to levy rates is in general on all the ratable property in the particular Township. The exception here is in the case of making, repairing, or improving any road, bridge, or other public work, where the inhabitants of a particular part of the Township, or parts of two Townships, will be more especially benefited. The local rate must be levied by By-law, subject to the provisions contained in the next section.

(*x*) Roads, bridges or other public works *within* the limits of any Town or Incorporated Village are vested in the local Corporation. Sec. 489.

(*y*) See note *e* to sec. 551.

(*z*) See note *n* to sec. 553.

TITLE IV.—POWERS OF MUNICIPAL COUNCILS AS TO RAILWAYS.

Aiding by taking stock, loan, guarantee or bonus. Sec. 559.

Head of Council to be a Director ex-officio. Sec. 560.

Townships may permit Railways to pass along highways, &c. Sec. 561.

By-laws may be made for—

559. The Council of every Township, County, City, Town, and incorporated Village (*a*) may pass by laws—

(*a*) Applies to all Municipal Corporations. The powers conferred are in general discretionary, not obligatory. See note *f* to sec. 494. These powers are, under certain limitations, to aid Railway Companies. The constitutional right of the Legislature to authorize Municipal bodies to aid trading Corporations, such as railways, and to tax the people for aid, is in the United States a subject of grave judicial conflict. Strong ground was taken by Chief Justice Dillon against the power in a very able and exhaustive judgment delivered by him in *Hanson* v. *Vernon*, 27 Iowa 28; *S. C.* 1 Am. 215. Referring to *Dubuque County* v. *Dubuque and Pacific Railway Co.*, 4 G. Greene (Iowa) 1, where the majority of the Court held otherwise, he said, "Disaster, the child of extravagance and debt, and dishonour, the unbidden companion of bankruptcy, are the bitter but legitimate consequence of that decision, and 'the end is not yet.' In every other State in which a similar decision was made, similar consequences ensued." He admits the constitutional right of eminent domain, but says, though in some respects kindred, it and the taxing power are essentially different. Similar ground was taken against the constitutionality of such acts in *Whiting* v. *Sheboygan and Fond du Lac Railway Co.*, 25 Wis. 167; 3 Am. 30; and *The People ex rel. The Detroit & Howell Railway Co.* v. *Salem*, 20 Mich. 452; 4 Am. 400. On the other hand, equally strong ground is taken and equally able judgments have been delivered in favour of the constitutionality of such acts, in *Sharpless* v. *Philadelphia*, 21 Pa. St. 147; *Ex parte Selma and Gulf Railroad Co.*, 45 Ala. 696; 6 Am. 722; and *Stewart* v. *Supervisors of Polk County*, 1 Am. 238. In the last mentioned case, Mr. Justice Miller says, "The question of the constitutional power of the Legislature to authorize Municipal Corporations to aid by local tax in the construction of railroads, within the territory of such Municipal Corporations, has been before the highest judicial tribunal of at least twenty-one of the States, and the Supreme Court of the United States, and in every instance the power has been confirmed until quite recently in the Supreme Courts of Michigan and Wisconsin, and in this Court in *Hanson* v. *Vernon*." He concludes his judgment by saying, "We find that upon principle and reason there is the same authority for the exercise of the sovereign power of taxation in aid of the construction of railroads that there is for the exercise of the right of eminent domain, and that this view is sustained by an overwhelming weight of authority." See further, *Walker* v. *City of Cincinnati*, 8 Am. 24; *Commissioners of Leavenworth County* v. *Miller*, 12 Am. 425; *Chicayo, Danville and Vincennes Railway Company* v. *Smith*, 14 Am. 99. But on one point the Judges in the United States are all agreed with unusual unanimity,

1. For subscribing for any number of shares in the capital stock of, or for lending to or guaranteeing the payment of any sum of money borrowed by an incorporated Railway Company to which the eighteenth section of the statute fourteenth and fifteenth Victoria, chapter fifty-one, or sections seventy-five to seventy-eight inclusive of chapter sixty-six of the Consolidated Statutes of Canada, or the equivalent sections of "*The Railway Act of Ontario*," have been or may be made applicable by any special Act; (*b*) 36 V. c. 48, s. 471 (1).

Taking stock in certain railways or guaranteeing debentures.

14, 15 Vic. c. 51, s. 18.

C. S. C. c. 66, ss. 75–78.

Rev. Stat. c. 165, s. 31.

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and that is, that Municipal Corporations have *no implied power* to aid Railway Companies. *Aurora* v. *West*, 22 Ind. 88; *Starin* v. *Genoa*, 23 N. Y. 439; *Gould* v *Sterling*, *Ib.* 439; *Barnes* v. *Atcheson*, 2 Kansas 454; *Acheson* v. *Butcher*, 3 Kansas 104; *Bank* v. *Rome*, 18 N. Y. 38; *Bridgeport* v. *Housatonic Railway Co.*, 15 Conn. 475; *Marsh* v. *Fulton*, 10 Wall. (U. S.) 676; *Nichol* v *Nashville*, 9 Hump. (Ten.) 252; *St Louis* v. *Alexander*, 23 Mo. 483; *Jones* v. *Mayor*, &c., 25 Ga. 610; *Duanesburgh* v. *Jenkins*, 40 Barb. (N. Y.) 574; *French* v. *Teschemaker*, 24 Cal. 518; *People* v. *Mitchell*, 35 N. Y. 551; *Thompson* v. *Lee County*, 3 Wall. (U. S.) 327; *Railroad Co.* v. *Evansville*, 15 Ind. 395; *Aurora* v. *West*, 9 Ind. 74; *Lafayette* v. *Cox*, 5 Port. (Ind.) 38. The power supposing it to be perfectly constitutional, is of that extra municipal character that no intendment will be made in favour of the exercise of it in a doubtful case. *Bate* v. *Ottawa*, 23 U. C. C. P. 32. Where a Municipal Corporation passed a resolution granting $1000 to an individual in consideration of his having advanced that amount in aid of a railway, the resolution was quashed. *Ib.*

(*b*) The aid may be—

1. By *subscription* for any number of shares in the capital stock of the Company.

2. By *lending* money to the Company.

3. By *guaranteeing* the payment of any sum of money borrowed by the Company.

The subscription for stock may be conditional, *Higgins* v. *Whitby*, 20 U. C. Q. B. 296; and if the amount subscribed be paid either directly to the Company, or to the contractors of the Company at their request, the liability of the Municipality is thereby extinguished. *Woodruff* v. *Peterborough*, 22 U. C. Q. B. 274.

It would seem that a By-law authorizing subscription for stock, especially if it authorize the issue of debentures, is the contracting of a debt not payable in the same municipal year, so as to demand the formalities required by sec. 330 of this Act. *In re Billings and Gloucester*, 10 U. C. Q. B. 273. The Legislature may, it seems, at any time before the subscription is paid, annul the proceeding, and authorize the Municipal Corporation to withdraw its subscription, and release its right to stock. *People* v. *Coon*, 25 Cal. 635. So it would seem that defective subscriptions for stock may be ratified by the Legislature in all cases where the Legislature could originally have conferred the power. *Keithsburg* v. *Frick*, 34 Ill. 405; *Copes*

For guaranteeing the payment of debentures, etc.

2. For endorsing or guaranteeing the payment of any debenture to be issued by the Company for the money by them borrowed, and for assessing and levying from time to time, upon the whole ratable property of the Municipality, a sufficient sum to discharge the debt or engagement so contracted; (*c*) 36 V. c. 48, s. 471 (2).

For issuing debentures, etc.

3. For issuing, for the like purpose, debentures payable at such times, and for such sums respectively, not less than twenty dollars, and bearing or not bearing interest as the Municipal Council thinks meet; (*d*) 36 V. c. 48, s. 471 (3).

Bonuses.

4. For granting bonuses to any Railway Company in aid of such Railway, and for issuing debentures in the same manner as is in the preceding sub-section provided for raising money to meet such bonuses; (*e*) 36 V. c. 48, s. 471 (4).

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v. *Charleston*, 10 Rich. Law (S. C.) 491; *McMillen* v. *Bayley*, 6 Iowa, 304, 394; *Gelpeke* v. *Dubuque*, 1 Wall. (U. S.) 220; *People* v. *Mitchell*, 35 N. Y. 551; *Thompson* v. *Lee County*, 3 Wall. (U. S.) 327; *Bass* v. *Columbus*, 30 Ga. 845; *City* v. *Lamson*, 9 Wall. (U. S.) 477.

(*c*) A Municipal Council may, under this clause, *endorse* or *guarantee* a debenture issued by the Railway Companies intended, and may assess and levy a sufficient sum to discharge the *debt* or *engagement*. An endorsement under the clause would seem to be deemed "a debt," while a guarantee is termed an "engagement."

(*d*) No Council is allowed, unless specially authorized so to do, to give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars. Sec. 394. By this clause a special authority is given for the issue of debentures in aid of Railway Companies, in sums "not less than twenty dollars."

(*e*) A By-law of a County Council in aid of a railway to the extent of $20,000, by way of bonus, which had not been submitted to the ratepayers was quashed. *Ex rel Clement* v. *Wentworth*, 22 U. C. C. P. 300. It would seem that the general intention of the Legislature is that all assistance granted to a Railway Company should be with the assent of the electors before granted, and that the making of direct advances from moneys actually in hand to aid a railway is not contemplated. *Per* Hagarty, C. J., in *In re Bate and Ottawa*, 23 U. C. C. P. 35. "If we assume for this argument that the Council may grant a bonus to a railway, consisting of unappropriated moneys in hand we still think the Legislature meant, and have so expressed their meaning, that the bonus must be to the Railway Company, and not to some individual to repay him for advances to, or services rendered to such Company." *Ib.*, 36. A By-law granting $1,000 to an individual in consideration of his having, at the instance of the Corporation, advanced that amount in aid of a Railway Company, was therefore quashed. *Ib.* Where a Municipality has legally a right to pass a By-law granting aid to a Railway Company, it would be pre-

5. For directing the manner and form of signing or endorsing any debenture so issued, endorsed or guaranteed, and of countersigning the same, and by what officer or person the same shall be so signed, endorsed or countersigned respectively: (*f*)

Form of debenture.

But no Municipal Corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid, unless the By-law before the final passing thereof receives the assent of the electors of the Municipality in manner provided by this Act. (*g*) 36 V. c. 48, s. 471 (5). *See also Rev. Stat.* c. 165, s. 31 (3).

Subscriptions, etc., to be confirmed by assent of electors.

560. In case any Municipal Council subscribes for and holds stock in a Railway Company under section five hundred and fifty-nine to the amount of twenty thousand dollars or upwards, (*h*) the head of the Council shall be *ex-officio* one of the directors of the Company, in addition to the number of Directors authorized by the special Act, and shall have the same rights, powers and duties as the other Directors of the Company. 36 V. c. 48, s. 475. *See also Rev. Stat.* c. 165, s. 31 (4).

In certain cases, head of council to be *ex-officio* a director.

561. The Council of every Township may pass By-laws for authorizing any Railway Company, in case such authority is necessary, to make a branch railway on property of the Corporation, or on highways, (*i*) under such conditions as the Council sees fit, and subject to the restrictions contained in

By-laws authorizing branch railways, tram and other railways along highways.

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nature to apply to restrain the submission of the By-law to the ratepayers, as they may disapprove of it. *Vickers* v. *Shunia*, 22 Grant 410; but where there is no power to pass the By-law, the attempt to pass it may be restrained. *Helm* v. *Port Hope*. 22 Grant 273.

(*f*) The powers are, to direct—

1. The *manner* and *form* of signing or endorsing any debenture so issued, endorsed or guaranteed, and of countersigning the same;

2. By what officer or person the same shall be so signed, endorsed or countersigned respectively.

(*g*) These words are: "But no Municipal Corporation shall subscribe," &c. *Per* Gwynne, J., in *Ex rel Clement* v. *Wentworth*, 22 U. C. C. P. 304; see further, *Attorney-General* v. *Mayor of Leeds*, L. R. 5 Ch. 583.

(*h*) A Municipality which has subscribed for stock in a railway company, and thereby become a stockholder in the company, has the same rights as to the management of the affairs of the company as any ordinary stockholder. *Harublewes* v. *Dudin*, 2 Withrow, 86.

(*i*) See sub-s. 54 of sec. 466.

Rev. Stat. c. 165.

"*The Railway Act of Ontario*," and any other Acts affecting such railway; and may also pass By-laws to authorize companies or individuals to construct tramways and other railways along any highway on such terms and conditions as the Council sees fit. (*j*) 36 V. c. 48, s. 476.

PART VIII.

Police Villages.

Div. I.—Formation of.
Div. II.—Trustees, and Election of.
Div. III.—Duties of Police Trustees.

Division I.—Formation of.

Existing Villages continued. Sec. 562.
New—how formed. Sec. 563.

Existing police villages continued.

562. Until otherwise provided by competent authority, every existing Police Village (*a*) shall continue to be a Police Village, with the bonndaries now established. 36 V. c. 48, s. 477.

New police villages.

563. On the petition of any of the inhabitants of an unincorporated Village, the Council or Councils of the County or Counties within which the Village is situate (*b*)

(*j*) See sub-sec. 54 of sec. 466.

(*a*) There is in general no difficulty in defining the boundaries of an Incorporated City, Town, or Village, because the statute, proclamation, or other authority incorporating such a Municipality usually prescribes the boundaries. See *Irwin* v. *Bradford*, 22 U. C. C. P. 18. But in the case of a Town or Village not so incorporated, or not having limits otherwise assigned to it, there must of necessity be uncertainty as to the boundaries. A Police Village may be set apart by a County Council with such limits as are deemed expedient. Sec. 563. The boundaries of a Village or Hamlet fluctuate from day to day with the growth of houses, but the effect of this section will be to restrict the boundaries, notwithstanding the growth, until such boundaries be otherwise established. The boundaries declared are the boundaries *now* established. See *The Queen* v. *Cottle*, 16 Q. B. 412; *Milton-next-Sittingborne Commissioners* v. *Faversham*, 10 B. & S. 548, note; see further, note *c* to sec. 563.

(*b*) The words "Unincorporated Village," as here used, may be looked on as the word "Town" or "Village" used in several English

may, by by-law, erect the same into a Police Village, and

Acts of Parliament to indicate a collection of houses. It is a matter of some difficulty to give a definition of "Town" or "Village," when not incorporated, so as to cover all cases. In Co. Litt. it is said, that "a place cannot be a Town in law unless it hath, or, in times past hath had, a church, and celebration of Divine service, sacraments, and burials." (115 b.) If the words "Blacksmith's shop, tavern, and store," were substituted for the words "a church," &c., the definition of Coke would not be far short of a hamlet or little village as commonly understood in this country. In *Regina* v. *Fisher*, 8 C. & P. 612, Patteson, J., said, "It is very difficult to define what is a Town in ordinary meaning. It varies from day to day by the erection of new houses." In *Elliott* v. *South Deron Railway Co.*, 2 Ex. 729, Parke, B., said, "It would appear that the word Town is not to be understood in its strict legal interpretation as a Township having a church or a constable, but a place containing a number of houses congregated together—an inhabited spot where the occupation is continuous." Alderson, B. (in the same case), said, "What the walls of towns were in ancient times, that is a boundary, continuous buildings are now. By continuous buildings I do not mean buildings which touch each other, but buildings so reasonably near that the inhabitants may be considered as dwelling together. Within the ambit surrounded by such houses is town, and when the railway passes through that ambit it passes through town." *Ib.* 730. In the same case Parke, B., also said, "Probably a garden attached to a house and occupied along with it should be reckoned as part of the house, in considering whether the houses are continuous." *Ib.* 731. In *The Queen* v. *Cottle*, 16 Q. B. 412, 416, Russell Gurney charged the jury that a town is generally "a congregation of houses," and that the jury were to say whether the spot in question was surrounded by houses so reasonably near that "the inhabitants might be fairly said to dwell together." Referring to this charge, Lord Campbell (in the same case) said that the learned Recorder had with much felicity comprised, in a few words, all that was material in the language of the Barons of the Exchequer, as to the definition of a town, in *Elliott* v. *South Deron Railway Co.* *Ib.* 420. His definition was also approved of in *Milton-next-Sittingborne Commissioners* v. *Faversham*, 10 B. & S. 548; and *London and South Western Railway Co.*, L. R. 4 H. L. 610. In the last mentioned case it was held that lands near Teddington, in Middlesex, situated close to the railway station, but not continuously built upon, were held not to be lands within the town. "That definition amounts to this: that where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living as it were in the same town or place, continuously there—for the purposes of the Railway Acts, and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition, the place may be said to be a town. *Per* Lord Hatherley, *Ib.* 615. In another case, Vice-Chancellor Stuart said: "Four or five surveyors and the solicitor of the Company appear to have sworn that they consider Teddington a town; but none of them state anything in support of that opinion except that there are in Teddington a number of shops, such as milliners, grocers, bakers, butchers and the like;

assign thereto such limits as may seem expedient. (c) 36 V. c. 48, s. 478.

DIVISION II.—TRUSTEES, AND ELECTION THEREOF.

Existing Trustees continued. Sec. 564.
Trustees three in number. Sec. 565.
Qualification required for. Secs. 566, 567.
Electors, who are. Secs. 568.
Election, where to be held. Secs. 569, 570.
Returning Officer, how appointed. Sec. 570.
No Election in a Tavern. Sec. 571.
Nomination, how conducted. Secs. 572-574.
Polling, how conducted. Secs. 575-579.
Powers of Returning Officer. Sec. 580.
Tenure of Office. Sec. 581.
Voters' Lists, &c., to be returned. Sec. 582.
Vacancies, how filled. Sec 583.
Inspecting Trustee, how appointed. Sec. 584.

Present trustees continued.

564. The Trustees of every Police Village existing when this Act takes effect, (d) shall be deemed the Trustees respectively of every such Village as continued under this Act. (e) 36 V. c. 48, s. 479.

Number of trustees.

565. The Trustees of every Police Village shall be three in number. (f). 36 V. c. 48, s. 480.

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and from such reasoning they arrive at the conclusion that Teddington is a town. The fallacy of this conclusion, however, is made quite apparent from the maps and plans which have been referred to in the case; and from which no man of any ordinary sense and discernment can fail to see that Teddington is anything more than what *is usually and properly called a village.*" *Blackmore* v. *London and South Western Railway Co.*, 19 L. T. N. S. 5.

(c) The power is by By-law to erect the same into a Police Village, *and* assign thereto "such limits as may seem expedient." It is a legislative power. The Council should, in the same By-law, name the place in the Village for holding the first election, and the returning officer thereof. Sec. 569.

(d) While the members of the executive and legislative body of an Incorporated Municipality are called Councillors, see note *k* to sec. 8, the members of such a body in the case of a Police Village are called Trustees. The general powers, however, of each body are much alike. See sec. 585, *et seq.*

(e) See note *a* to sec. 562.

(f) It is presumed that two (the majority) would be a quorum. See note *n* to sec. 217; see also sec. 570.

Qualification of trustees.

566. The persons qualified to be elected Police Trustees shall be such persons as reside within the Police Village or within two miles thereof, (*g*) and are eligible to be elected Township Councillors, and are qualified in respect of property for which they are rated in such Police Village to the amount required so to qualify them. (*h*) 36 V. c. 48, s. 481.

Deficiency in number of qualified persons.

567. If there are not six persons qualified under the preceding section, any person entitled to vote at the election may be elected. (*i*) 36 V. c. 48, s. 482.

Qualification of electors.

568. Any Township elector, rated on the last assessment roll for such property in a Police Village as entitles him to vote in respect thereof at the municipal election for the Township, shall be entitled to vote at the election for Police Trustees. (*k*) 36 V. c. 48, s. 483.

Place for holding first election, etc.

569. The Council by which a Police Village is established shall, by the by-law establishing the same, (*l*) name the place in the Village for holding the first election of Police Trustees, and the Returning Officer therefor. (*m*) 36 V. c. 48, s. 484.

Place for holding subsequent elections, etc.

570. In a Police Village, after the first election, the Trustees thereof, or any two of them, (*n*) shall, from time to time, by writing under their hands, appoint the Returning Officer, and the place or places within such Village for holding nominations and elections. (*p*) 36 V. c. 48, s. 485.

No elections to be in taverns.

571. No election of Police Trustees shall be held in a

(*g*) In the absence of express provision, persons resident without the limits of the Village would not be qualified. *Regina ex rel. Bardell* v. *Rochester*, 7 U. C. L. J. 101; *Regina ex rel. Fleming* v. *Smith*, *ib.* 66.

(*h*) See sec. 70, and notes thereto.

(*i*) See note *m* to sec. 73.

(*k*) See sec. 76, and notes thereto.

(*l*) See sec. 563.

(*m*) See sec. 87, and notes thereto.

(*n*) See note *n* to sec. 217.

(*p*) The County Council must name the place for holding the first election, and the Returning Officer thereof. Sec. 569. Both must, as to subsequent elections, be appointed under this section by the Trustees or any two of them.

tavern, or in a house of public entertainment licensed to sell spirituous liquors. (*q*) 36 V. c. 48, s. 486.

Nomination meeting.

572. A meeting of the Electors shall take place for the nomination (*r*) of candidates for the offices of Police Trustees, in each Police Village, at noon on the last Monday in December, annually, (*s*) at such place (*t*) therein as is from time to time fixed by the Trustees.

Provision for Christmas Day.

2. When the last Monday in December happens to be Christmas day, the meeting shall be held on the preceding Friday. (*u*) 36 V. c. 48, s. 487; 39 V. c. 7, s. 20.

Who to preside.

573. The Returning Officer (or, in his absence, a Chairman to be chosen) shall preside at such meeting, (*v*) of which the Police Trustees shall give at least six days' notice. (*w*) 36 V. c. 48, s. 488.

If no more candidates than officers.

574. If only three candidates are proposed and seconded, the Returning Officer or Chairman shall, after a lapse of one hour, declare such candidates duly elected. (*x*) 36 V. c. 48, s. 489.

If more and poll demanded.

575. If more than the necessary number of candidates are proposed, the Returning Officer or Chairman shall adjourn the proceedings until the first Monday in January, when a

Election.

poll or polls shall be opened for the election, at nine o'clock in the morning, and shall continue open until five o'clock in the afternoon, and no longer. (*y*) 36 V. c. 48, s. 490.

Notice of persons proposed to be posted.

576. The Returning Officer or Chairman of the meeting shall on the day following that of the nomination, post up in the office of the Clerk of the Township, if it is situated in such Police Village, and if not, then in some other public place in such Police Village, the names of the persons nominated at such meeting; and shall, if a poll is necessary,

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(*q*) See sec. 93, and notes thereto.

(*r*) See note *q* to sec. 104.

(*s*) See note *s* to same.

(*t*) See note *r* to same.

(*u*) See sec. 108.

(*v*) See note *t* to sec. 105.

(*w*) See note *a* to sec. 111.

(*x*) See note *c* to sec. 112.

(*y*) See note *d* to same.

demand in writing from the Clerk of the Township, or Clerks of the Townships, a list of the names of the persons appearing by the assessment roll to be entitled to vote in the said Police Village, such as is required to be furnished under the next section. (*z*) 36 V. c. 48, s. 491; 40 V. c. 7, *Sched.* A (184). List of voters to be obtained.

577. The Clerk of the Township, or Clerks of the Townships in which any Police Village is situated, shall, at latest on the day previous to the day for opening the poll, (*a*) deliver to the Returning Officer of such Police Village a list of the names according to the form by law prescribed in the case of other municipal elections, of the persons entitled to to vote at Township municipal elections, in respect of real property situate, or income received in the said Police Village, or in the portion thereof in the Municipality of such Clerk, and shall attest the said list by his solemn declaration in writing under his hand. 36 V. c. 48, s. 492; 40 V. c. 7 *Sched.* A (185). Clerk of township to furnish alphabetical list of voters. List to be attested by declaration.

578. The various sections of this Act relating to the proceedings at the nomination and election of Township Councillors, including those relating to the questions to be put and oaths to be administered to electors, and as to the appointment of a Chairman or Returning Officer, in case the person appointed is absent, and also the provisions respecting controverted elections and for the prevention of corrupt practices, shall apply and be acted on, unless where a different provision is herein made, in the election of Police Trustees. (*b*) 36 V. c 48, s. 498; 40 V. c. 7, *Sched.* A (186). Except where otherwise provided, same proceedings, etc., to be had as at elections, etc., of councillors, etc.

579. In case a casting vote is required to determine an election, the Returning Officer, whether otherwise qualified or not, shall give a casting vote for one or more of such candidates, so as to decide the election, and except in such case the Returning Officer shall not vote at any such election. (*c*) 36 V. c. 48, s. 495. Casting vote in case of ties.

(*z*) The omission of the Returning Officer or Chairman to do as directed by this section would not *per se* invalidate the election. *The Queen ex rel. Walker* v. *Mitchell*, 4 U. C. P. R. 218.

(*a*) See note *g* to sec. 240.

(*b*) This is in accordance with the general rule that a particular provision, subsequent to a general provision on the same subject, shall control the latter. See note *c* to sec. 1.

(*c*) Where a Returning Officer, after closing the poll, received an affidavit from a Voter that his vote had, by mistake, been entered for

Powers of returning officer.

580. The Returning Officer shall have the like powers for the preservation of the peace as are given to Returning Officers and Deputy Returning Officers at municipal elections. (*d*) 36 V. c. 48, s. 499.

Term of office.

581. The persons elected shall hold office until their successors are elected or appointed and sworn into office and hold their first meeting. (*e*) 36 V. c. 48, s. 496.

Returning officer to return ballot papers, etc., to clerk of township, verified under oath.

582. Every Returning Officer shall, on the day after the close of the poll, return the ballot papers, voters' list and other documents relating to the election, to the Clerk of the Township in which the Village is situated, or in case the Village lies in several Townships, then to the Clerk of the County, verified under oath before such Clerk, or before any Justice of the Peace for the County or Union of Counties in which the Village lies, as to the due and correct taking of the votes. (*f*) 36 V. c. 48, s. 497.

Filling vacancies.

583. In case of any vacancy in the office of a Police Trustee, by death or otherwise, the remaining Trustee or Trustees shall, by writing to be filed with such Clerk as aforesaid, appoint a Trustee or Trustees to supply the vacancy.(*g*) 36 V. c. 48, s. 500.

Appointment of inspecting trustees.

584. The Trustees of every Police Village, or any two of such Trustees, shall, by writing under their hands to be filed with the Clerk of the Township, or in case the Village lies in several Townships, with the Clerk of the County, appoint one of their number to be Inspecting Trustee. (*h*) 36 V. c. 48, s. 501.

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relator, on which he allowed the entry of the vote on the Poll Book, and the votes then being equal, gave his casting vote, the election was set aside. *Regina ex rel. Acheson* v. *Donaghue et al.*, 5 U. C. Q. B. 454; see further, *The Queen ex rel. Mitchell* v. *Rankin*, 2 C. L. Chamb. R. 161.

(*d*) See sec. note *v* to sec. 97.

(*e*) See sec. 178 and notes thereto.

(*f*) The Poll Book should not only be returned on the day after the close of the poll, but be returned verified. The return is to be made, as directed, either to the Clerk of the Township or of the County, according to circumstances.

(*g*) This is contrary to the ordinary rule. In the event of a vacancy in a Council, the Council orders a new election. See sec. 170, and notes thereto. Here the new Trustee is to be appointed, not elected. See note *d* to sec. 178.

(*h*) The duties of the Inspecting Trustee are more especially to attend to the duties of the office, and enforce the regulations of the Police Village. See sec. 589; sec. 592 sub. 15; sec. 593.

DIVISION III.—DUTIES OF POLICE TRUSTEES.

Oaths of office and qu[illegible]tion. *Sec.* 585.
First meeting of. *Sec.* 586.
Expenses of, how provided for. *Secs.* 587–590.
Trustees to be Health Officers. *Sec.* 591.
Regulations to be enforced by Trustees. *Sec.* 592.
Penalties for breach, how recovered. *Sec.* 593.
Neglect of duty by Trustees, how punishable. *Sec.* 594.
Limitation of suits for penalties. *Sec.* 595.

Oaths of office and qualification

585. Every Police Trustee shall take oaths of office and qualification in the same manner and within the time prescribed for Township Councillors, under like penalties in case of default. (*i*) 36 V. c. 48, s. 502.

When first meeting to be held.

586. The Trustees of every Police Village shall hold their first meeting at noon on the third Monday of the same January in which they are elected, or on some day thereafter at noon. (*j*) 36 V. c. 48, s. 503.

Expenditure, how provided for.

587. The Trustees, at any time previous to the first day of June, may require the Council of the Township or Townships in which the Police Village is situated to cause to be levied along with the other rates, upon the property liable to assessment in such Village, such sums as they may estimate to be required to cover the expenditures for that year in respect of matters coming within their duties, and to cover any balance for expenditure incurred during the year then last past, (*k*) such sum not to exceed one cent in the dollar on the assessed value of such property. (*l*) 36 V. c. 48, s. 504.

Where village in two or more townships.

588. In case the Village is situated in two or more Townships, the Trustees shall require a proportionate amount from each, according to the value of the property of the Village in each Township, as shown by the last equalized assessment rolls. (*m*) 36 V. c. 48, s. 505.

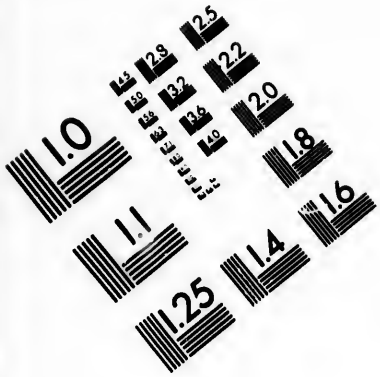
(*i*) See sec. 272, and notes.

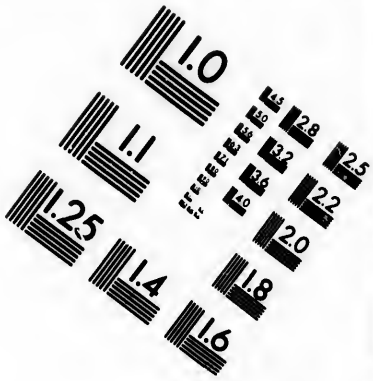
(*j*) See sec. 215, and notes.

(*k*) The Police Village, for purposes of taxation, is a portion of the Township or Townships in which situate. Hence, when the Police Trustees require moneys to enable them properly to discharge their official duties, they can only obtain it by application to the township Council or Councils. See secs. 588, 589. In this respect they are in the same situation as the Board of Police in cities. See note *v* to sec. 423.

(*l*) See note *e* to sec. 340.

(*m*) See note *k supra*.





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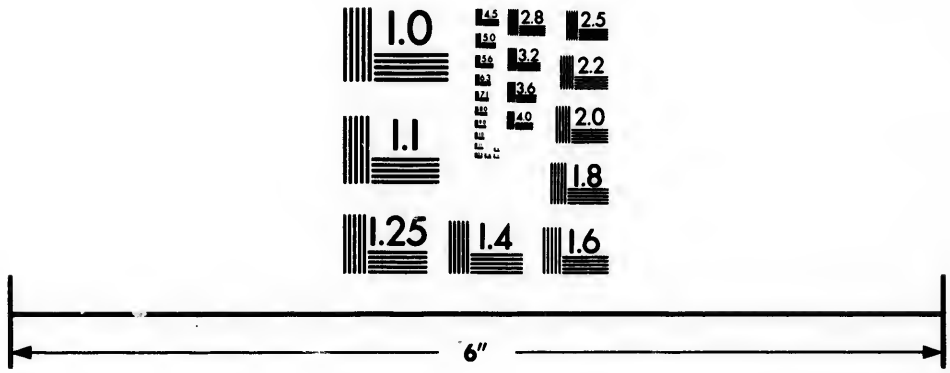

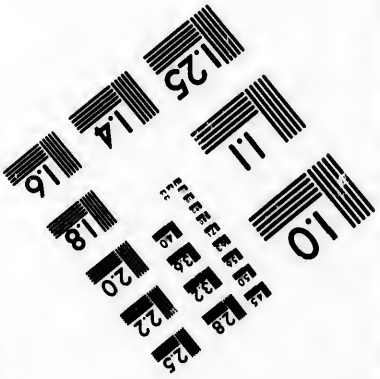

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23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

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Payment of orders given by trustees, etc.

589. The Township Treasurer shall from time to time, if he has moneys of the Municipality in his hands not otherwise appropriated, pay any order given in favour of any person by the Inspecting Trustee, or by any two of the Trustees, to the extent of the amount required to be levied as aforesaid, although the same may not have been then collected. (*n*) 36 V. c. 48, s. 506.

When orders may be given.

590. No Trustee shall give any such order in favour of any person except for work previously actually performed, or in payment some other executed contract. (*o*) 36 V. c. 48, s. 507.

Trustees to be health officers. Rev. Stat. c. 190.

591. The Trustees of every Police Village shall be Health Officers within the Police Village, under *The Act respecting the Public Health.* (*p*) 36 V. c. 48, s. 508.

Following regulations to be enforced.

592. The Trustees of every Police Village shall execute and enforce therein the regulations following (*a*) :—

Prevention of Fire.

For providing ladders, etc.

Penalty.

1. Every proprietor of a house more than one story high, shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, (*b*) under a penalty of one dollar for every omission; and a further penalty of two dollars for every week such omission continues. 36 V. c. 48, s. 509 (1).

Fire buckets. Penalty.

2. Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire, (*c*) under a penalty of one dollar for each bucket deficient. 36 V. c. 48, s. 509 (2).

(*n*) This is for an advance on the levy. It is the duty of the Township Treasurer, if he have unappropriated Township moneys in hand, to make the advance. The advance is to be made, not to the Police Trustees, but to any person having an order signed by the Inspecting Trustee or any two of the Trustees. The order cannot be properly given except for work actually done, or in payment of some other executed contract.

(*o*) See *Chatham* v. *Houston*, 27 U. C. Q. B. 550.

(*p*) See sec. 464, and notes thereto.

(*a*) The Regulations are made by the statute. The duty to enforce them is obligatory. See sec. 594.

(*b*) See sub. 35 of sec. 466.

(*c*) See sub. 37 of sec. 466.

As to furnaces, etc.

3. No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, (*d*) under a penalty not exceeding two dollars for non-compliance. 36 V. c. 48, s. 509 (3).

Penalty.

Stove pipes, etc.

4. No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the wood-work nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between any stove and any lathed partition or wood-work, (*e*) under a penalty of two dollars. 36 V. c. 48, s. 509 (4).

Penalty.

Lights in stables, etc.

5. No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp, unless well enclosed in a lantern, nor with a lighted pipe or cigar, nor with fire not properly secured, (*f*) under a penalty of one dollar. 36 V. c. 48, s. 509 (5).

Penalty.

Chimneys.

6. No person shall light or have a fire in a wooden house or outhouse, unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly secured, (*g*) under a penalty of one dollar. 36 V. c. 48, s. 509 (6).

Penalty.

Securing fire carred through streets, etc.

7. No person shall carry fire or cause fire to be carried into or through any street, lane, yard, garden or other place, without having such fire confined in some copper, iron or tin vessel, (*h*) under a penalty of one dollar for the first offence, and of two dollars for every subsequent offence. 36 V. c. 48, s. 509 (7).

Penalty.

Fire in streets.

8. No person shall light a fire in a street, lane or public place, (*i*) under a penalty of one dollar. 36 V. c. 41, s. 509 (8).

Hay, straw, etc.

9. No person shall place hay, straw or fodder, or cause the same to be placed, in a dwelling-house, (*j*) under a penalty

Penalty.

(*d*) See sub. 31 of sec. 466.

(*e*) See the same.

(*f*) See sub. 29 of sec. 466.

(*g*) See the same.

(*h*) See sub. 33 of sec. 466.

(*i*) *Public Place.* See note *r* to sub. 33 of sec. 461.

(*j*) See sub. 30 of sec. 466.

Penalty.

of one dollar for the first offence, and of five dollars for every week the hay, straw or fodder is suffered to remain there. 36 V. c. 48, s. 509 (9).

Ashes, etc.

Penalty.

10. No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders in any wooden vessel, box or thing not lined or doubled with sheet-iron, tin or copper, so as to prevent danger of fire from such ashes or cinders, (*k*) under a penalty of one dollar. 36 V. c. 48, s. 509 (10).

Lime.

Penalty.

11. No person shall place or deposit any quick or unslacked lime in contact with any wood of a house, outhouse or other building, under a penalty of one dollar, and a further penalty of two dollars a day until the lime has been removed, or secured to the satisfaction of the Inspecting Trustee, (*l*) so as to prevent any danger of fire. 36 V. c. 48, s. 509 (11).

Charcoal furnaces. Penalty.

12. No person shall erect a furnace for making charcoal of wood, (*m*) under a penalty of five dollars. 36 V. c. 48, s. 509 (12).

Gunpowder.

Gunpowder, how to be kept.

Penalty.

13. No person shall keep or have gunpowder for sale, except in boxes of copper, tin or lead, (*n*) under a penalty of five dollars for the first offence, and ten dollars for every subsequent offence. (*o*) 36 V. c. 48, s. 509 (13).

Not to be sold at night.

Penalty.

14. No person shall sell gunpowder, or permit gunpowder to be sold in his house, storehouse or shop, outhouse or other building, at night, (*p*) under a penalty of ten dollars for the first offence, and of twenty dollars for every subsequent offence. 36 V. c. 48, s. 509 (14).

(*k*) See sub. 33 of sec. 466.

(*l*) The continuance of the offence is here, as it were, made a new though not strictly a subsequent offence. The person offending is subject to a penalty of $2 a day after the first until the removal of the lime. See *Pilcher* v. *Stafford*, 4 B. & S. 775.

(*m*) See sub. 31 of sec. 466.

(*n*) See sub. 26 of sec. 466.

(*o*) There is a difference between a continuing offence and a subsequent offence. See note *l* above.

(*p*) See sub. 26 of sec. 466.

Nuisances.

Certain nuisances prohibited.

15. No person shall throw, or cause to be thrown, any filth or rubbish into a street, lane or public place, (*q*) under a penalty of one dollar, and a further penalty of two dollars for every week he neglects or refuses to remove the same after being notified to do so by the Inspecting Trustee, (*r*) or some other person authorized by him. 36 V. c. 48, s. 509 (15).

Who to sue for penalties.

And before whom.

Conviction and levy of penalty.

593. The Inspecting Trustee, or in his absence, or when he is the party complained of, one of the other Trustees, shall sue for all penalties incurred under the regulations of police herein established, (*s*) before a Justice of the Peace having jurisdiction in the Village and residing therein, or within five miles thereof; or if there be none such, then before any Justice of the Peace having jurisdiction in the Village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness, (*t*) and cause the penalty, with or without costs, as he may see fitting, to be levied by distress and sale of the goods of the offender, to be paid over to the Path-master or Path-masters of the division or divisions to which the Village belongs, or to such of the said Path-masters as the Trustees may direct; and such Path-master or Path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the Village, under the direction of the Trustees. (*u*) 36 V. c. 48, s. 510.

Penalty for breach of duty by trustees.

594. Any Police Trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the Village offering to adduce proof of an offence against the regulations of police herein established, or who wilfully neglects or omits to fulfil any other duty imposed on

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(*q*) See note *x* to sub. 42 of sec. 466.

(*r*) See note *l* to sub. 11 of this section.

(*s*) See sec. 592.

(*t*) *Credible witness.* See note *h* to sec. 401.

(*u*) The path-master, or some path-master, if more than one, is to receive the penalty. When he receives it, it is his duty to apply it to the repair and improvement of the streets, &c. See *x* note to sec. 407, as to the form of conviction.

him by this Act, (*w*) shall incur a penalty of five dollars. 36 V. c. 48, s. 511.

When prosecution to be commenced.

595. The penalties prescribed by the preceding section, or by that for the establishment of regulations of police, shall be sued for within ten days (*x*) after the offence has been committed or has ceased, and not subsequently. 36 V. c. 48, s. 512.

CONFIRMING AND SAVING CLAUSES.

Exceptions from repeal.

596. Nothing herein contained shall be taken or construed to affect or repeal so much of the schedules in either of the Municipal Corporation Acts of 1849 and 1850 as defines the limits or boundaries of any Cities or Towns, being schedule B. of the Act of 1849, numbers two, three, four, six, seven, eight, nine, ten and eleven, and Schedule C of the same Act, numbers one, two and three, and Schedule B. of the Act of 1850, numbers one, five, twelve, thirteen, fourteen and fifteen; and also so much of Schedule D. of the said Acts of 1849 and 1850 as relates to Amherstburg, and also so much of the two hundred and third section of the said Act of 1849, and so much of any other sections of either of the said Acts relating to any of the Schedules thereof as have been acted upon, or as are in force and remain to be acted upon at the time this Act takes effect, and all proclamations and special statutes by or under which Cities and other Municipalities have been erected, so far as respects the continuing the same and the boundaries thereof, shall continue in force. (*y*) 36 V. c. 48, s. 513.

Boundaries of cities and towns.

Amherstburg.

Proclamations.

Special Acts.

Rev. Stat. c. 175, not affected.

597. Nothing herein contained shall affect *The Act respecting the establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing, and Thunder Bay.* (*z*) 36 V. c. 48, s. 514.

(*w*) The duty to enforce the Regulations of a Police Village is obligatory, see sec. 592, and is here made penal. As to what is a *wilful* neglect or omission, see sec. 191 of The Assessment Act, and notes thereto.

(*x*) See note *a* to sec. 177.

(*y*) This section was especially preserved and continued by sec. 423 of the Act 29 & 30 Vict. cap. 51. That section is here quoted at length. Its existence is essential to the preservation of the territorial and Municipal organization of many Municipalities, and its meaning so obvious as not to demand any further notice.

(*z*) See R. S. O, cap. 175.

SCHEDULE "A."

(*Section* 119.)

FORM OF BALLOT PAPER.

(1. *In the case of Cities.*)

FORM FOR MAYOR.

Election for the Members of the Municipal Council of the City of , Ward No. , Polling Subdivision No. , day of January, 18 .		*FOR MAYOR.*
	1	**ALLAN.** Charles Allan, King Street, City of Toronto, Merchant.
	2	**BROWN.** William Brown, City of Toronto, Banker.

FORM FOR ALDERMEN.

Election for the Members of the Municipal Council of the City of , Ward No. , Polling Subdivision No. , day of January, 18 .		*FOR ALDERMEN.*
	1	**ARGO.** James Argo, City of Toronto, Gentleman.
	2	**BAKER.** Samuel Baker, City of Toronto, Baker.
	3	**DUNCAN.** Robert Duncan, City of Toronto, Printer.

(2. *In the case of Towns divided into Wards.*)

FORM FOR MAYOR, REEVE AND DEPUTY REEVE.

Election for the Members of the Municipal Council of the Town of , Ward No. .

Polling Subdivision No. .

day of January, 18 .

	FOR MAYOR,
1	**THOMPSON.** Jacob Thompson, of the Town of Barrie, Merchant.
2	**WALKER.** Robert Walker, of the Town of Barrie, Physician.
	FOR REEVE (if any).
1	**BROWN.** John Brown, of the Town of Barrie, Merchant.
2	**ROBINSON.** George Robinson, of the Town of Barrie, Merchant.
	FOR DEPUTY REEVE (if any).
1	**ARMOUR.** Jacob Armour, of the Town of Barrie, Pumpmaker.
2	**BOYD.** Zachary Boyd, of the Town of Barrie, Tinsmith.

FORM FOR COUNCILLORS.

Election for the Members of the Municipal Council of the Town of , Ward No. , Polling Subdivision No. day of January, 18 .		*FOR COUNCILLOR.*
	1	**BULL.** John Bull, of the Town of Barrie, Butcher.
	2	**JONES.** Morgan Jones, of the Town of Barrie, Grocer.
	3	**McALLISTER.** Allister McAllister, of the Town of Barrie, Tailor.
	4	**O'CONNELL.** Patrick O'Connell, of the Town of Barrie, Milkman.

(3. *In the case of Townships divided into Wards.*)

FORM FOR REEVE.

Election of Members of the Municipal Council of the Township of , in the County of , Ward No. , day of January, 18 .		*FOR REEVE.*
	1	**BARDELL, THOMAS,** Of the Township of Peel, Yeoman.
	2	**SNODGRASS, ALFRED,** Of the Township of Peel, Yeoman.

FORM FOR COUNCILLORS.

Election of Members of the Municipal Council of the Township of , in the County of
Ward No.
day of January, 18 .

	FOR COUNCILLOR.
1	**BULL.** John Bull, of the Township of York, Doctor of Medicine.
2	**JONES.** Morgan Jones, of the Township of York, Farmer.
3	**McALLISTER.** Allister McAllister, of the Township of York, Farmer.
4	**O'CONNELL.** Patrick O'Connell, of the Township of York, Lumber Merchant.
5	**RUAN.** Malachi Ruan, of the Township of York, Farmer.
6	**SCHULTZE.** Gottfried Schultze, of the Township of York, Farmer.
7	**WASHINGTON.** George Washington, of the Township of York, Gentleman.

(4. *In the case of Incorporated Villages and Townships not divided into Wards.*)

Election of Members of the Municipal Council of the Village (or Township) of , in the County of , Polling sub-Division No. , day of January, 18 .

	FOR REEVE.
1	**BROWN.** John Brown, of the Village of Yorkville, Merchant.
2	**ROBINSON.** George Robinson, of the Village of Yorkville, Physician.
	FOR DEPUTY REEVE (if any).
1	**ARMOUR.** Jacob Armour, of the Village of Yorkville, Pumpmaker.
2	**BOYD.** Zachary Boyd, of the Village of Yorkville, Tinsmith.
	FOR COUNCILLOR.
1	**BULL.** John Bull, of the Village of Yorkville, Butcher.
2	**JONES.** Morgan Jones, of the Village of Yorkville, Grocer.
3	**McALLISTER.** Allister McAllister, of the Village of Yorkville, Tailor.
4	**O'CONNELL.** Patrick O'Connell, of the Village of Yorkville, Milkman.

NOTE.—In any case where there are two or more Deputy Reeves, the ballot paper will make provision accordingly, naming them as first Deputy Reeve, second Deputy Reeve, &c.

39 V. c. 5, *Sched.* A.

SCHEDULE "B."

(*Sections* 122 *and* 141.)

DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right hand side, opposite the name or names of the candidate or candidates for whom he votes, thus ×

The voter will then fold up the ballot paper so as to show the name or initials of the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) signed on the back, and leaving the compartment will, without showing the front of the paper to any person, deliver such ballot so folded to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter votes for more candidates for any office than he is entitled to vote for, his ballot paper will be void so far as relates to that office, and will not be counted for any of the candidates for that office.

If the voter places any mark on the paper by which he may afterwards be identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the officer, he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

In the following forms of Ballot Paper, given for illustration, the Candidates are, for Mayor, JACOB THOMPSON *and* ROBERT WALKER; *for Reeve,* JOHN BROWN *and* GEORGE ROBINSON; *for Deputy Reeve,* JACOB ARMOUR *and* ZACHARY BOYD; *and for Councillors,* JOHN BULL, MORGAN JONES, ALLISTER MCALLISTER *and* PATRICK O'CONNELL; *and the elector has marked the first paper in favour of* JACOB THOMPSON *for Mayor,* GEORGE ROBINSON *for Reeve, and* ZACHARY BOYD *for Deputy Reeve, and has marked the second paper in favour of* JOHN BULL *and* PATRICK O'CONNELL *for Councillors:—*

Election for the Members of the Municipal Council of the Town of
Ward No.
, Polling Subdivision No.
day of January, 18

Election for the Members of the Municipal
Council of the Town of , Ward No.
, Polling Subdivision No.
day of January, 18

Election for the Members of the Municipal Council of the Town of , Ward No. , Polling Subdivision No. day of January, 18 .

	FOR MAYOR.	
1	**THOMPSON.** Jacob Thompson, of the Town of Barrie, Merchant.	X
2	**WALKER.** Robert Walker, of the Town of Barrie, Physician.	
	FOR REEVE (if any.)	
1	**BROWN.** John Brown, of the Town of Barrie, Merchant.	
2	**ROBINSON.** George Robinson, of the Town of Barrie, Merchant.	X
	FOR DEPUTY REEVE (if any.)	
1	**ARMOUR.** Jacob Armour, of the Town of Barrie, Pumpmaker.	
2	**BOYD.** Zachary Boyd, of the Town of Barrie, Tinsmith.	X

Election for the Members of the Municipal Council of the Town of , Ward No. , Polling Subdivision No. day of January, 18 .

	FOR COUNCILLOR.	
1	**BULL.** John Bull, of of the Town of Barrie, Butcher.	X
2	**JONES.** Morgan Jones, of the Town of Barrie, Grocer.	
3	**McALLISTER.** Allister McAllister, of the Town of Barrie, Tailor.	
4	**O'CONNELL.** Patrick O'Connell, of the Town of Barrie, Milkman.	X

75 38 V. c. 28, *Sched.* B.; 40 V. c. 7, *Sched.* A. (187).

SCHEDULE "C."

(*Sections* 125, 126, 128 *and* 296.)

FORM IN WHICH THE VOTERS' LIST TO BE FURNISHED TO DEPUTY RETURNING OFFICERS IS TO BE PREPARED.

Column for mark indicating that the voter has voted.	NAMES OF THE VOTERS.	Description of Property in respect of which the voter is entitled to vote.	Freeholder, Householder, Tenant or Farmer's Son.	Residence of voter.	Objections.	Sworn or affirmed.	Refusal to swear or affirm.	Mayor and Reeve.	Councillor.	REMARKS.

NOTE.—In Cities, the column above headed "Mayor and Reeve" will be headed "Mayor;" and the column above headed "Councillors" will be headed "Aldermen."
In Townships and Villages, the column above headed "Mayor and Reeve" will be headed "Reeve."
39 V. c. 5, *Sched.* B.; 40 V. c. 12, s. 17.

NOTE.—In Cities, the column above headed "Mayor and Reeve" will be headed "Mayor;" and the column above headed "Councillors" will be headed "Aldermen." In Townships and Villages, the column above headed "Mayor and Reeve" will be headed "Reeve." 39 V. c. 5, *Sched.* B.; 40 V. c. 12, s. 17.

SCHEDULE "D."

(*Section* 131.)

CERTIFICATE AS TO ASSESSMENT ROLL.

Election to the Municipal Council of the of , 18 .

I, A. B., Clerk of the Municipality of , in the County of , do hereby certify that the assessment roll for this Township (*or as the case may be*) of upon which the voters' list to be used at this election is based, was returned to me by the Assessor for said Township (*or as the case may be*) on the day of , 18 , and that the same was finally revised and corrected on the day of , 18 .

Dated this day of , 18 .

A. B.,
Clerk.

40 V. c. 12, *Sched.* B.

SCHEDULE "E."

(*Section* 144.)

FORM OF DECLARATION OF INABILITY TO READ, &C.

I, *A. B.*, of , being numbered on the voters' list, for polling subdivision No. , in the City (*or as the case may be*) of , and County of , being a legally qualified elector for the said City (*or as the case may be*) of , do hereby declare that I am unable to read (*or* that I am from physical incapacity unable to mark a voting paper, *as the case may be*),

A. B. (His × mark.)

The day of , A. D. 18 .

38 V. c. 28, *Sched.* D.

SCHEDULE "F."

(*Section* 144.)

FORM OF ATTESTATION CLAUSE TO BE WRITTEN UPON OR ANNEXED TO THE DECLARATION OF INABILITY TO READ, &C.

I, *C. D.*, the undersigned, being the Deputy Returning Officer for polling subdivision No , for the City (*or as the case may be*) of , do hereby certify that the above (*or as the case may be*) declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

(*Signed*) *C. D.*,
Deputy Returning Officer for Polling Sub-Division No. , in the City (*or as the case may be*) of .

Dated this day of , A. D. 18 .

38 V. c. 28, *Sched.* E.

SCHEDULE "G."

(*Sections* 150, 307 *and* 308.)

OATH OF DEPUTY RETURNING OFFICER AFTER THE CLOSING OF THE POLL.

I, *C. D.*, the undersigned Deputy Returning Officer for polling subdivision No. , of the City (*or as the case may be*) of , in the County of , do solemnly swear (*or if he is a person permitted by law to affirm,* do solemnly affirm) that to the best of my knowledge the annexed voters' list used in and for the said polling subdivision No. of the said City (*or as the case may be*), was so used in the manner prescribed by law and that the entries required by law to be made therein were correctly made.

(*Signed*) *C. D.*
Deputy Returning Officer.

Sworn (*or* affirmed) before me at , this day of A. D. 18 .

(*Signed*) *X. Y.*,
Justice of the Peace.
Or A. B.,
Clerk of Municipality of .

NOTE.—*The foregoing oath is to be annexed to the voters' list used at the election.*

38 V. c. 28, *Sched.* F.

SCHEDULE "H."

(*Section* 163.)

FORM OF STATUTORY DECLARATION OF SECRECY.

I, *A. B.*, solemnly promise and declare that I will not at this election of members of the Municipal Council of the City (*or as the case may be*) of , disclose to any person or persons the name of any person who has voted, and that I will not in any way whatsoever unlawfully attempt to ascertain the candidate or candidates for whom any elector shall vote or has voted, and will not in any way whatsoever aid in the unlawful discovery of the same; and I will keep secret all knowledge which may come to me of the person for whom any elector has voted.

Made and declared before me at , this day of A. D. 18 .

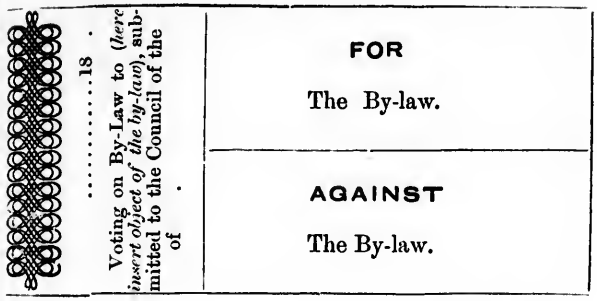
C. D.,
Justice of the Peace (*or* Clerk of the Municipality of).

38 V. c. 28, *Sched.* G.

SCHEDULE "J."

(*Section* 288.)

FORM OF BALLOT PAPER.



39 V. c. 35, *Sched.* A.

SCHEDULE "K."

(*Sections* 291 *and* 293.)

I, the undersigned *A. B.*, solemnly declare that I am a ratepayer of the Township (*or as the case may be*) of (*the Municipality the Council of which proposed the by-law*), and that I am desirous of promoting (*or* opposing, *as the case may be*) the passing of the by-law to (*here insert object of the by-law*), submitted to the Council of said Township (*or as the case may be*).

(*Signature*) A. B.

Made and declared before me this
day of , A.D.

C. D.,

Head of Municipality.

39 V. c. 35, *Sched.* B.

SCHEDULE "L."

(*Section* 300.)

DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross (thus X) on the right hand side, in the upper space if he votes for the passing of the by-law, and in the lower space if he votes against the passing of the by-law.

The voter will then fold up the ballot paper so as to show the name or initials of the Deputy Returning (*or* Returning Officer, *as the case may be*) signed on the back, and leaving the compartment will, without showing the front of the paper to any person, deliver such ballot so folded to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*), who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter places on the paper more than one mark, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the Deputy Returning Officer (*or* Returning Officer, *as the case may be*), he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

In the following form of Ballot Paper, given for illustration, the Elector has marked his ballot paper in favour of the passing of the By-law:—

Voting on By-law to (*here insert object of the by-law*) submitted to the Council of the ..... of	FOR The By-Law. X AGAINST The By-Law.

39 V. c. 35, *Sched.* C.

SCHEDULE "M."

(*Section* 312.)

FORM OF STATUTORY DECLARATION OF SECRECY.

I, *A. B.*, solemnly promise and declare that, at the voting on the By-law submitted to the electors by the Council of the Township (*or as the case may be*) of (and the voting on which has been appointed for this day), I will not attempt in any way whatsoever unlawfully to ascertain the manner in which any elector shall

vote or has voted, and will not in any way whatsoever aid in the unlawful discovery of the same; and I will keep secret all knowledge which may come to me, of the manner in which any elector has voted.

Made and declared before me at , this day of , A. D. 18 .

C. D.,
Justice of the Peace (*or* Clerk of the Municipality of).

39 V. c. 35, *Sched.* D.

An Act respecting the Assessment of Property.

R. S. O. Cap. 180.

Preliminary provisions, ss. 1-4.
Property Liable to Taxation, ss. 5-9.
Exemptions, s. 6.
Assessors—
Appointment of, ss. 10, 11.
Duties of, s. 12.
Mode of Assessing—
Real Property, ss. 13-27.
Personal Property, ss. 28-36.
General Provisions, ss. 37-43.
Special Provisions as to Counties, Cities and Separated Towns, ss. 44-46.
Appeals—
To Court of Revision, ss. 47-58.
To County Judge, ss. 59-66.
Non-Residents' Appeals, s. 67.
Equalization of Assessments, ss. 68-75.
Statute Labour, ss. 76-87.
Collection of Rates—
Collector's Roll, ss. 88-90.
Collectors, duties of, ss. 91, 105.
Annual Lists of Patented Lands, ss. 106, 107.
Arrears of Taxes—
Duties of Treasurers, Clerks and Assessors in relation to, ss. 108-126.
Sale of Lands for Taxes, ss. 127-139.
Certificate of Sale, Tax Deed, ss. 140-155.
Deeds on sales for taxes binding unless questioned within two years, s. 156.
Deeds to be valid if sale valid, though statute authorizing sale be repealed, &c., s. 157.
Rights of entry adverse to tax purchaser in possession not capable of being conveyed, s. 158.
Where sale void for uncertainty, right of purchaser to improvements, s. 159.
Option of purchaser to retain land on paying its value, s. 159 (2).
Value of land or improvements to be paid into Court of Chancery in certain cases, s. 160.
Right of other persons interested to pay in value if defendant does not, s. 161.
Lien in such cases, s. 161 (2).
How owner to obtain sums paid in ss. 162, 163.

Costs in certain cases, s. 164.
Lien of tax purchaser for purchase money where his title invalid, s. 165.
Contracts between tax purchaser and original owner continued, s. 166.
Act not to apply in certain cases, ss. 167, 168.
Interpretation, s. 169.
Non-Resident Land Fund, ss. 170-184.
Arrears of Taxes in Cities and Towns, ss. 185, 186.
Responsibility of Officers, ss. 187-214.
Miscellaneous Provisions, ss. 215-217.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY PROVISIONS.

Short title. **1.** This Act may be cited as "*The Assessment Act.*" (*a*)

Interpretation clause. **2.** In this Act (*b*)

"Gazette." (1) "Gazette" shall mean the "*Ontario Gazette*;"

"Township." (2) "Township" shall include a Union of Townships, while such union continues;

"County Council." (3) "County Council" shall include provisional County Council;

"Town." "Village." (4) "Town" and "Village" shall mean respectively incorporated Town and Village;

"Ward." (5) "Ward," unless so expressed, shall not apply to a Township Ward;

(*a*) The practice of describing Acts of Parliament by short titles, is of modern invention, but owing to its utility, is becoming each session of Parliament of more general application. "The Municipal Act" and "The Assessment Act" are to be read in *pari materia*, *per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 394, and so ought to be construed together. *The King* v. *Palmer*, 1 Leach, C. C. 352-355; *Doe d. Tennyson* v. *Yarborough*, 1 Bing. 24, and, as it were, one statute. *McWilliam* v. *McAdams*, 1 Macq. H. L. Cas. 120; see also, *Per* Campbell, C. ., in *Waterloo* v. *Dobson*, 27 L. J. Q. B. 55. It has been held that a repealed statute in *pari materia* with an existing one, may be referred to for the purpose of construing the latter. *Ex parte Copeland*, 2 DeG. M. & G. 914.

(*b*) See as to the proper construction of an Interpretation Clause, note *c* to sec. 1 of The Municipal Act.

(6) "Municipality" or "Local Municipality" shall not include a County unless there is something in the subject or context requiring a different construction. 32 V. c. 36, s. 2 "Municipality." "Local Municipality."

(7) "Land," "Real Property," and "Real Estate," respectively, shall include all 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 part of the reality, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty. (c) 32 V. c. 36, s. 3. "Land." "Real Property." "Real Estate."

(c) The Legislature have defined "Land," "Real Property," and "Real Estate," for purposes of taxation, as including the following:

1. All 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 part of the realty.
2. All trees or underwood growing *upon* the land.
3. All mines, minerals, quarries and fossils *in* and *under* the same, except mines belonging to Her Majesty."

The Legislature have not been more successful than many persons have been in giving an exact and correct meaning to the words used, for while providing that all buildings, &c., *upon* or *affixed to* the land, all trees, &c., *upon* the land, and all mines *in* and *under* it shall be included in the word *land*, &c., it has omitted the land or *soil* itself from the definition. *Per* Wilson, J., in *Niagara Falls Suspenson Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194-197. "Real Estate" does not always consist of that species of property which is very obviously land in any sense. Keys of the mansion, and title deeds of the freehold, and titles of honour are realty. *Ib.* The Suspension Bridge between Ontario and the State of New York, across the Niagara Falls at Clifton, is "land." *Ib.* see also, *Tepper* v. *Nichols*, 18 C. B. N. S. 121; *Wodmore* v. *Dear*, L. R. 7 C. P. 212. There is first about three quarters of an acre of land or soil on which the abutments, &c., rest; secondly, stone towers and toll-house, built into and upon the land: and, thirdly, there is the bridge itself, consisting of iron, wire and wood, suspended by and from the wire cables, which rest upon and pass over stone towers, and extend beyond them, and are attached to fastenings let into the soil. *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 197. The land, stone towers and toll-house are land, real estate, and real property within the provisions of the Assessment Act. *Ib.* The only question is, as to the bridge, which is suspended and secured in the way just mentioned. The bridge is 'affixed to the land' by its attachment to the cable, which is attached to posts or fastenings 'let into' the land, and it is so fixed as to form in law a part of the realty. . . . "That the one terminus of the bridge is out of the Province and in a foreign country cannot affect the quality of that part of the property which is in this Province, nor can it make any difference in this respect that the support of that terminus, and which support it

"Personal Estate." "Personal Property."

(8) "Personal Estate" and "Personal Property" shall include all goods, chattels, shares in incorporated companies, interest on mortgages, dividends from bank stock, money, notes, accounts and debts at their actual value, income and

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is necessary the erection should have to give it the character of a bridge, is beyond this Province; for however supported at that end, or whether supported there or not, or whether usable as a bridge or not, with or without that support, it would still as to that part within the Province be real estate, erected and attached as it is at the terminus in this Province." *Ib.* 199. It has been held that the proprietors of water works whose mains, pipes and other apparatus were laid down *in* and *under* the surface of land were liable to be rated under 11 Geo. III. cap. 12, as occupiers of land. *The Queen* v. *East London Water Works*, 18 Q. B. 705; *The Queen* v. *West Middlesex Water Co.* 28 L. J. M. C. 135; *The Queen* v. *Birmingham Water Works Co.*, 1 B. & S. 84; but see *In re Gas Co. and Ottawa*, 7 U. C. L. J. 104. *Chelsea Water Works Co*, v. *Bowley*, 17 Q. B. 358. So the proprietors of land occupied by a canal and towing path, having on and belonging to them, as incident thereto and necessary to the occupation and use thereof, certain posts for fastening vessels, stone bridges, culverts and a dry-dock. *The Queen* v. *Overseers of Neath*, L. R. 6 Q. B. 707; see further, *Regent's Canal Co.* v. *St. Pancras*, L. R. 3 Q. B. Div. 73. So the proprietors of a railway carried forward on arches and abutments *let into* and standing *in* land. *Higgins* v. *Harding*, L. R. 8 Q. B. 7. It has been held by the Court of Appeal in *Toronto Street Railway Co.* v. *Fleming*, 37 U. C. Q. B. 116; reversing the decision of the Court of Queen's Bench in 35 U. C. Q. B. 264, that the Toronto Street Railway Company is not assessable for those portions of the streets of the city of Toronto, occupied by them for the purposes of their railway, as either land or real property, within the meaning of the Assessment Act. The Legislature having defined what they meant by land, that meaning ought not to be extended so as to include a harbour or land covered with water. *Buffalo and Lake Huron Railway Co.* v. *Goderich*, 21 U. C. Q. B. 97. So in England, it has been held that a dock or basin, of which ninety-five acres were covered with water, was property other than land, within the meaning of 3 & 4 Will. IV. cap. 90, secs. 33, 34. *The Queen* v. *Peto*, 7 W. R. 586, *S. C.*, 5 Jur. N. S. 1209. The part covered with water may be held not to be taxable, and yet buildings and land not covered with water, used for the purpose of harbour may be taxed. By recent English statutes (30 & 31 Vict. cap. 113, sec. 17), it is declared that the occupier of any land covered with water "shall pay to the sewer rate in respect to his property one-fourth part only of the rate in the pound payable in respect of houses and other property." Held, as to a Company possessed of a canal, of filter beds supported on brick arches, and sometimes covered with water and at other times not, of land used for keeping sand for the filter beds, and of land having therein iron pipes, mains and service pipes, that the canal and filter beds were land covered with water, and assessable only at one-fourth the amount to be imposed on houses, &c., but that the land used for the purpose of keeping sand, and the land occupied by iron pipes, mains and service pipes were land that ought to be assessed at the full

all other property, except Land and Real Estate, and Real Property as above defined, and except property herein expressly exempted. (*d*) 32 V. c. 36, s. 4.

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value: *East London Water Works Co.* v. *Leyton Sewer Authority*, L. R. 6 Q. B. 669; see further, *Regina Midland Railway Co.*, 4 E. & B. 958; *Regina* v. *Neatch*, 6 Q. B. 707; *Peto* v. *West Ham*, 2 E. & E. 144; *Regina* v. *Southworth & Marshall*, 6 E. & B. 1008; *The Queen* v. *Midland Railway Co.* L. R. 10 Q. B. 389.

(*d*) The terms "Personal Estate" and "Personal Property," for purposes of taxation, are made to include the following:

1. All goods, chattels, shares in incorporated companies, interest on mortgages, dividends from bank stock, money, notes, accounts and debts at their actual value.
2. Income and all *other* property except land and real estate and real property as before defined, and except property herein expressly exempted. See further, note *c* to sec. 2 of this Act.

A steamboat is clearly personal property. *In re Hatt*, 7 U. C. L. J. 103. So the interest of lessees of a road company. *In re Hepburn*, *Ib.* 46. So shares in incorporated companies. *Ex parte Lancaster Canal Co.* 1 Deac. & Ch. 411; *Humble* v. *Mitchell*, 11 A. & E. 205; *Bradley* v. *Holdsworth*, 3 M. & W. 422; *Duncyft* v. *Albrecht*, 12 Sim. 189; *Tempest* v. *Kilner*, 3 C. B. 249; *Pierpont* v. *Brewer*, 15 M. & W. 201; *Freeman* v. *Appleyard*, 7 L. T. N. S. 282; *Meyers* v. *Perigal*, 2 DeG. M. & G. 599; *Sparling* v. *Parker*, 9 Beav. 450; *Walker* v. *Milne*, 11 Beav. 507; *Thornton* v. *Ellis*, 21 L. J. Ch. 714; *Entwistle* v. *Davis*, L. R. 4 Eq. 272; *Taylor* v. *Linley*, 2 De G. F. & J. 84. No distinction is to be made in respect of the shares of a company whose act contains no clause declaring that the shares should be personal estate. *Edwards* v. *Hall*, 6 De G. M. & G. 74; but see *Ware* v. *Cumberlege*, 20 Beav. 503. Bank stock, except as exempted, is included. *Madison* v. *Whitney*, 21 Ind. 261; *Evansville* v. *Hall*, 14 Ind. 27; *King* v. *Madison*, 17 Ind. 48; *Connerville* v. *Bank*, 16 Ind. 105; *State Bank* v. *Madison*, 3 Ind. 43; *Gordon* v. *Baltimore*, 5 Gill (Md.) 231; *Gordon* v. *Appeal Tax Court*, 3 How. (U. S.) 133; *Bank* v. *Chester*, 10 Rich. Law, (S. Car.) 104; *State* v. *Charleston*, 5 Rich. (S. Car.) 561; *Bulow* v. *Charleston*, 1 Nott & McC. (S. Car.) 527; *Cheraw Ins. Co.* v. *Justices*, 28 Ga. 121; *The Bank* v. *Mayor*, Dudley, (Ga.) 130; see also, *Mayor* v. *Hartridge*, 8 Ga. 23; *Nashville* v. *Thomas*, 5 Coldw. (Tenn.) 600; *O'Donnell* v. *Bailey*, 24 Miss. 386; see further, note *u* to sub. 17 to sec. 6 of this Act. Authority "to tax real and personal property" would not, unless expressed to the contrary in the statute, include money, notes, accounts, debts and choses in action. *Johnson* v. *Lexington*, 14 B. Mon. (Ky.) 648-661; *Louisville* v. *Henning*, 1 Bush. (Ky.) 381; *Bridges* v. *Griffin*, 33 Ga. 113; *People* v. *Hibernia Bank*, 21 Am. 704; but see *Jacksonville* v. *McConnel*, 12 Ill. 138; *Johnson* v. *Oregon City*, 2 Oregon, 327. Nor would it, unless so expressed, give power to tax income. *Savannah* v. *Hartridge*, 8 Ga. 23; but see *Lining* v. *Charleston*, 1 McCord, (S. Car.) 345. The intention of this Act is that all property situate within the Province, *not* being land, real estate or real property, and *not* being exempt under the Act, *including* choses in action and

"Property."

(9.) "Property" shall include both real and personal property as above defined. (*e*) 32 V. c. 36, s. 5.

Unoccupied lands to be called "Lands of Non-Residents," except, &c.

3. Unoccupied land shall be denominated "Lands of Non-Residents," unless the owner thereof has a legal domicile or place of business in the local Municipality where the same is situate, or gives notice in writing, setting forth his full name, place of residence and post office address, to the Clerk of the Municipality, on or before the thirtieth day of January in each year, that he owns such land, describing it, and requires his name to be entered on the assessment roll therefore, (*f*)

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income, shall be taxed as personal estate or personal property. See *State* v. *City Council*, 10 Rich. Law, (S. Car.) 240; *City Council* v. *St. Phillip's Church*, McMull. Eq. (S. Car.) 139; *State* v. *City Council*, 4 Strob. Law (S. Car.) 217; *State* v. *City Council*, 1 Mill. Ch. 40; *State* v. *City Council*, 5 Rich. Law (S. Car.) 561; *City Council* v. v. *Condy*, 4 Rich. Law (S. Car.) 254; *City Council* v. *State*, 2 Speers (S. Car.) 719. But apparently an exception exists in the case of land covered with water, such as harbours, docks, &c. See preceding note.

(*e*) All real property situate within the Province of Ontario, owned out of it, is liable to assessment in the same manner and subject to the like exemptions as other real property under this act. So all personal property within the Province in the possession or control of any agent or trustee for or on behalf of any owner thereof who is resident out of this Province, is liable to assessment in the same manner and subject to the like exemptions as in the case of the other personal property of a like nature under the act.

(*f*) The rule is, that "unoccupied land" *shall* be denominated "lands of non-residents." The exceptions created by this section, are two—

1. Where the owner has a legal domicile or place of business in the local Municipality where the land is situate.
2. Where, being resident out of the Municipality, he gives notice, in writing, setting forth his full name, place of residence, &c., *and* requires his name to be entered on the roll.

"What the Legislature meant was to make it the duty of the assessor to assess all lands in the name of the owner, where such owner resided *within* the Municipality, and was known by the assessor to be so resident, or where by diligent enquiry the assessor shall be able to discover that he is so resident. But the being *in fact* resident within the Municipality, or having a legal domicile or place of business there, is made an indispensable condition to the proprietor being assessed for the land upon the roll in his own name, unless, indeed, being a resident *out* of the Township, Village, &c., he shall have signified to the assessor that he owns such land, *and* desires to be assessed therefor." *Per* Robinson, C. J., in *Berlin* v. *Grange*, 1 E. & A. 279, 284. The assessor cannot legally of himself insert the name of a non-resident on the roll. There must, in such case, be

which notice may be in the form or to the effect of Schedule A to this Act; (*g*) and the Clerk of the Municipality shall, on or before the first day of February in each year, make up and deliver to the Assessor or Assessors a list of the persons requiring their names to be entered on the roll, and the lands owned by them. (*h*) 32 V. c. 36. s. 6.

Real estate of Railway Companies, &c.

4. The real estate of all Railway Companies shall be considered as lands of residents, although the Company has not an office in the Municipality; except in cases where a Company ceases to exercise its corporate powers, through insolvency or other cause. (*i*) 32 V. c. 36, s. 7.

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the previous notice and requirement from the non-resident himself. "In my opinion it follows that the assessor has not *in himself* authority to insert the defendant's name on the roll as owner of these unoccupied lands." *Ib. per* Draper, C. J., 289. "It is not to be imagined . . . that it was intended by the Legislature to give to the assessors the right, upon their own view of the ownership of lands, to put them down upon their roll as the property of an individual, resident in *another* and perhaps a *distant* part of the Province, and thus throw upon such individuals the costs of an appeal or perhaps of an action, like the present, in which the production of a copy of the roll is declared to be evidence of the debt." *Per* McLean, J., in *Berlin* v. *Grange*, 5 U. C. C. P. 224. Unless the name of a non-resident owner be legally placed on the roll, no action will lie against him for the taxes due in respect of his land. If the land be rated as unoccupied land, without the name of a non-resident owner, the land only is liable for the amount of taxes." It was at one time held that the assessment of occupied as unoccupied land, was a ground for avoiding a tax sale. See *Allan* v. *Fisher*, 13 U. C. C. P. 63; *Snyder* v. *Shibley*, 21 U. C. C. P. 518; *Street* v. *Fogall*, 32 U. C. Q. B. 119; but the contrary is now held. See *The Bank of Toronto* v. *Fonning*, 18 Grant 391; *Silverthorne* v. *Campbell*, 24 Grant, 17.

(*g*) *In the Form, &c.* See note *s* to sec. 320, of "The Municipal Act."

(*h*) See note *g* to sec. 240 of "The Municipal Act."

(*i*) Where the owner of lands is non-resident, his name cannot, as a general rule, be entered on the roll unless upon notice and a requirement from him to to that effect. See note *f* to sec. 3. A Railway Company, unless the Company has ceased to exercise its corporate powers through insolvency or other cause, is by this section made an exception. Railroad property, whether real or personal, in the absence of legislation to the contrary, is liable to taxation in the Municipalities where situate. *Railroad Co.* v. *Wright*, 2 Rh. Is. 459; *Railroad Co.* v. *Connelly*, 10 Ohio St. 154; *Railroad Co.* v. *Clute*, 4 Paige Ch. (N. Y.) 384; *Railroad Co.* v. *County of Morgan*, 14 Ill. 163; *Wheeler* v. *Railroad Co.*, 12 Barb. (N. Y.) 227; *Railroad Co.* v. *Spearman*, 12 Iowa 112; *Davenport* v. *Railroad Co.*, 16 Iowa, 348; *Railroad Co.* v. *Alexandria*, 17

PROPERTY LIABLE TO TAXATION.

All taxes to be levied equally upon the ratable property, when no other provision made.

5. All municipal, local or direct taxes or rates, shall, where no other express provision has been made in this respect, be levied equally upon the whole rateable property, real and personal, of the Municipality or other locality, according to the assessed value of such property, (*j*) and not upon any one or

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Gratt. (Va.) 176; *Railroad* v. *Co. Lafayette*, 22 Ind. 262: *Railroad Co.* v. *State*, 25 Ind. 177; *Applegate* v. *Earnst*, 3 Bush. (Ky.) 648; *Rome Railroad Co.* v. *Rome*, 14 Ga. 275; *Baltimore* v. *Railroad Co*; 4 Gill. (Md.) 288; *Richmond* v. *Daniel*, 14 Gratt. (Va.) 385. The Toronto Street Railway Company is not assessable for that portion of the streets occupied by them in the City of Toronto for the purposes of their railway, either as real or personal estate. *Toronto Street Railway Co.* v. *Fleming*, 37 U. C. Q. B. 116. In some cases it has been held that the Rolling Stock of Railway Companies are fixtures, so as not to pass under a mortgage of the realty. See *Palmer* v. *Forbes*, 23 Ill. 301; *Strickland* v. *Parker*, 54 Maine, 263; *Titus* v. *Mabee*, 25 Ill. 257; *Farmers' Loan and Trust Co.* v. *Hendrickson*, 25 Barb. (N.Y.) 484; *Farmers' Loan and Trust Co.* v. *The Commercial Bank*, 11 Wis. 207; *Phillips* v. *Winslow*, 18 B. Mon. (Ky.) 431; but in the absence of legislation to the contrary, rolling stock should be held to be personal property. *Randall* v. *Elwell*, 11 Am. Rep. 747; *Stevens* v. *Buffalo and New York City Railroad Company et al.*, 31 Barb. (N.Y.) 590; *Beardsley et al.* v. *Ontario Bank*, *Ib.* 619.

It is the duty of every Railway Company annually to transmit to the Clerk of every Municipality in which any part of the road or other real property of the Company is situate, a statement shewing:

1. The quantity of land occupied by the roadway, and the actual value thereof according to the average value of land in the locality, as rated on the assessment roll of the previous year.
2. The real property other than the roadway in actual use and occupation by the Company, and its value; and
3. The vacant land not in actual use by the Company, and the value thereof as if held for farming or gardening purposes.

It is then the duty of the Municipal Clerk to communicate the same to the assessor.

It thereupon becomes the duty of the assessor to deliver at or transmit by post to any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, shewing the amount for each description of property mentioned in the above statement of the Company. Sec. 26 of this Act.

(*j*) The intention is that whenever a Council determine to raise a certain sum for a certain purpose within the scope of their authority, the same shall be raised by assessment, to be laid equally upon the *whole ratable property*, according to the assessed value of such property, and not upon any one or more kinds of property. *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91. Where a Municipal Council,

more kinds of property in particular, or in different proportions. 32 V. c. 36, s. 8.

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instead of following the plain direction of the statute, by By-law imposed a tax on *wild lands* alone, the By-law was held to be illegal. So a general tax levied *exclusively* upon real property would be a discrimination in favour of personal property, and void. *Gilman* v. *Sheboygan*, 2 Black (U. S.) 510; *Knowlton* v. *Supervisors*, 9 Wis. 410; *Weeks* v. *Milwaukee*, 10 Wis. 242; *Lumsden* v. *Cross*, *Ib.* 282; *Zanesville* v. *Richards*, 5 Ohio St. 589; *Exchange Bank* v. *Hines*, 3 Ohio St. 1; *Attorney-General* v. *Plank Road Co.* 11 Wis. 42; *Muscatine* v. *Railroad Co.* 1 Dill. C. C. 536; *sed qu.* see remarks of Robinson, C. J., in *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91. So taxation exclusively of the land of non-residents, or taxation of the same at a higher rate or in a different manner from the land of residents. *City Council* v. *State*, 2 Speers, (S. Car.) 719; *Nashville* v. *Althrop*, 5 Coldw. (Ten.) 554; see further, *Bennett* v. *Birmingham*, 31 Pa. St. 15. It is illegal to attempt to compel the owners of farms lying within one mile on each side of a public highway to pay for grading, macadamizing and improving it, by an assessment upon their lands to the acre. *Washington Avenue*, 8 Am. 255. The declaration is not simply that *all Municipal taxes* shall be levied equally upon the whole ratable property, but that all Municipal *local* or direct taxes or *rates* shall be so. In the United States an attempt has been made to draw a distinction between "a tax" and "an assessment." *Railroad Co.* v. *Spearman*, 12 Iowa, 112; *Chicago* v. *Larned*, 34 Ill. 203; *Ottawa* v. *Spencer*, 40 Ill. 211. But it is not very palpable. *Baltimore* v. *Cemetery Co.* 7 Md. 517. It is, however, there almost uniformly held that a provision requiring uniformity of taxation does not, in the absence of express language, apply to rates for local improvements. *Draining Co. Case*, 11 La. An. 338; *Surgi* v. *Snetchman*, *Ib.* 387; *Yeatman* v. *Crandell*, *Ib.* 220; see also, *Weeks* v. *Milwaukee*, 10 Wis. 242; *Lumsden* v. *Cross*, *Ib.* 282; *State* v. *Portage*, 12 Wis. 562; *Bond* v. *Kenosha*, 17 Wis. 284; *Hill* v. *Higdon*, 5 Ohio St. 243; *Reeves* v. *Wood Co.* 8 Ohio St. 333; see, however, note *e* to sub. 3 of sec. 6 of this Act. The power of taxation is in general restricted to property *within* the Municipality. *Trigg* v. *Glasgow*, 2 Bush. (Ky.) 594; *St. Louis* v. *Ferry Co.* 11 Wall. (U. S.) 423. In the last mentioned case Mr. Justice Swayne said, "The purpose of the Legislature in conferring authority of this nature was not to tax property through the proprietor, but to tax the things themselves by reason of their being 'within the city,'" *Ib.* 430. There is no difficulty as regards land because of its fixed *situs*. See sec. 13 of this Act. But as regards personal estate, in its nature movable and liable to be moved from place to place, there is much difficulty. If personal property at the time of the assessment be actually within the Municipality, it may be assessed irrespective of the residence or domicile of the owner. *Finley* v. *Philadelphia*, 32 Pa. St. 381; *St. Louis* v. *The Ferry Company*, 11 Wall. 423; *Mills* v. *Thornton*, 26 Ill. 300; *Railroad Company* v. *Morgan County*, 14 Ill. 163, *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 228; *St. Louis* v. *Wiggins Ferry Co.* 40 Mo. 580; *New Albany* v. *Meeken*, 3 Ind. 481; *People* v. *Niles*, 35 Cal. 282; *Gardiner Co.* v. *Gardiner*, 5 Greenl. (Me.) 133; *Evansville* v. *Hall*, 14 Ind. 27; *Reiman* v. *Shepard*, 27 Ind 288; *Madison* v. *Whitney*, 21 Ind. 261;

What property liable to taxation.

6. All land and personal property in this Province shall be liable to taxation, (*a*) subject to the following exemptions, (*b*) that is to say :

Powell v. *Madison*, *Ib.* 335. The share of a part owner of a steamboat, in the absence of express legislation, held not to be taxable where the owner was resident. *New Albany* v. *Meekin*, 3 Ind. 481. Nor a steamboat belonging to a resident of the city, but registered elsewhere, and only touching at the city during her trips up and down the river. *Wilkey* v. *Pekin*, 19 Ill. 160. But the contrary was held in Alabama. *Buttle* v. *Mobile*, 9 Ala. 234 ; see further, *Oakland* v. *Whipple*, 39 Cal. 112 ; *Hayes* v. *Pacific Steamship Co.* 17 How. (U. S.) 596 ; *St. Joseph* v. *Railroad Co.* 39 Mo. 476 ; *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 224. There is no right to tax steamboats coming occasionally within the Municipality, where such steamboats are owned by foreigners or non-residents. *St. Louis* v. *Ferry Co.* 11 Wall. (U.S.) 423, but see *St. Louis* v. *Wiggins Ferry Co.* 40 Mo. 580. See further, sections 23, 24, 25, 26 and 27 of this Act, and notes thereto.

(*a*) The property liable to taxation is properly *in the Province*. Personal property, such as Bank Stock held out of the Province has therefore been held not liable to taxation. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126, *S. C.* 37 U. C. Q. B. 51. Bank Stock owned by a resident of Kingston in the Merchants' Bank, which had its head office at Montreal, was decided to be properly *out* of the Province, and so far not liable to taxation. *Ib.*

(*b*) The burden of taxation, when there is no express provision to the contrary, should fall equally upon the whole ratable property, real and personal, of the Municipality. See sec. 5 of this Act. This being so, provisions creating exemptions are to be strictly construed. *Speak* v. *Powell*, L. R. 9 Ex. 25 ; *Orr* v. *Baker*, 4 Ind. 86 ; *Gordon* v. *Baltimore*, 5 Gill. (Md.) 231 ; *State* v. *Town Council*, 12 Rich. Law (S. Car.) 339 ; *Municipality* v. *Bank*, 5 Rob. (La.) 151 ; *Municipality* v. *Railroad Co.*, 10 Rob. (La). 187 ; *Trustees* v. *McConnell*, 12 Ill 138 ; *People* v. *McCreery*, 34 Cal. 433 ; *Railroad Co.* v. *Alexandria*, 17 Gratt. (Va.) 171 ; *East Saginaw Manufacturing Co.* v. *East Saginaw*, 19 Mich. 259 ; *S. C.* 2 Am. 82 ; *Boston Seamans Friend Society* v. *Mayor &c., of Boston*, 17 Am. 153. Thus an exemption of certain property from taxation "by any law of the State" is not an exemption from a street assessment. *In re Mayor, &c., of New York*, 11 Johns. (N.Y.) 77 ; see also, *People* v. *Mayor, &c.* 4 N. Y. 419, 432 ; *Bleecher* v. *Ballou*, 3 Wend. (N. Y.) 263 ; *Sharp* v. *Spier*, 4 Hill (N. Y.) 76, 82 ; *Lafayette* v. *Male Orphan Asylum*, 4 La. An. 1 ; *Mayor, &c., New York* v. *Cashman*, 10 Johns. (N. Y.) 96 ; see also, *The Queen* v. *Mayor of Oldham*, L. R. 3 Q. B. 474 ; *Talargoch Lead Mining Co.* v. *Guardians of St. Asaph's Union*, *Ib.* 478 ; *The Queen* v. *St. George's Union*, L. R. 7 Q. B. 90. So an exemption from "any tax or public imposition whatsoever," held not to exempt from the rate necessary to pay for local improvements. *Baltimore* v. *Cemetery Co.* 7 Md. 517 ; see also, *Dolan* v. *Baltimore*, 6 Gill. (Md.) 394 ; *Pray* v. *Northern Liberties*, 31 Pa. St. 69 ; *Northern Liberties* v. *St. John's Church*, 13 Pa. St. 104 ; *Lockwood* v. *St. Louis*, 24 Mo. 20 ; *Garrett* v. *St. Louis*, 25 Mo. 505 ; *Egyptian*

Exemptions.

All property belonging to Her Majesty.

Indian lands unoccupied, or occupied officially.

(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. (c) 32 V. c. 36, s. 9 (1).

Leree Co. v. *Hardin*, 27 Mo. 495; *St. Louis Public Schools* v. *St. Louis*, 26 Mo. 468; *First Presbyterian Church* v. *Fort Wayne*, 10 Am. 35; *Sheehan* v. *The Good Samaritan Hospital*, 11 Am. 412; *The State* v. *Newark*, 13 Am. 464; but see *Emery* v. *Gas Co.*, 28 Cal. 345; *Taylor* v. *Palmer*, 31 Cal. 240; *Bright man* v. *Kirner*, 22 Wis. 54. So an exemption of a Railroad Company from any "further or other tax or imposition upon it" has been held not to exempt the Company for rates for local street improvements. *State* v. *Newark*, 3 Dutch, (N. J.) 185. So an exemption of a private corporation "from taxes, charges and impositions," has been held not to exempt from local street improvements. *In re Mayor, &c.*, 11 Johns. (N. Y.) 77; *Paterson* v. *Society*, 4 Zabr. (N. J.) 385; see also, *Pain* v. *Spratley*, 5 Kansas, 525; *Chicago* v. *Colby*, 20 Ill. 614; *Trustees* v. *Chicago*, 12 Ill. 403; *Ottawa* v. *Trustees*, 20 Ill. 423; see, however, note *e* to sub-s. 3 of sec. 6 of this Act. An illegal exemption does not necessarily avoid the By-law by destroying the equality of the charge. Nor is the illegal exemption of another from taxation any ground for an injunction against the Corporation, unless plaintiff is thereby so injured as to be compelled to pay substantially more than his proportion of the tax. *Page* v. *St. Louis*, 20 Mo. 136. An omission on the part of an assessor to assess certain property liable to taxation, whether arising from a misapprehension of law or mistake of fact, will not avoid the general assessment. *People* v. *McCreery*, 34 Cal. 43; see also, *Williams* v. *School District*, 21 Pick. (Mass.) 75; *Weeks* v. *Milwaukee*, 10 Wis. 242; *Kneeland* v. *Milwaukee*, 15 Wis. 454; *Dean* v. *Gleason*, 16 Wis. 1; *Hersey* v. *Supervisors*, *Ib.* 185; *Bond* v. *Kenosha*, 17 Wis. 284. It was at one time clearly held that the assessment of property exempt by law from assessment is so far a nullity as to render an appeal to the Court of Revision unnecessary, and the decision by that Court or the County Judge to the contrary of no binding effect. *Great Western Railway* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.*, 17 U. C. Q. B. 262; *Shaw* v. *Shaw*, 21 U. C. Q. B. 432; *Shaw* v. *Shaw*, 12 U. C. C. P. 456. But later authorities have doubted that position. *Toronto* v. *Great Western Railway Co.*, 25 U. C. Q. B. 570; *Scragg* v. *City of London*, 26 U. C. Q. B. 263, 271; *S. C.* on appeal, 28 U. C. Q. B. 457; *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194, 200. The most recent authority, and that a decision of the Court of Appeal, has sustained the question. *Nickle* v. *Douglas*, 37 U. C. Q. B. 51. See further sec. 56 of this Act, and notes thereto.

(c) The property exempt by this subsection is:

But if occupied not officially.

(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. (*d*) 32 V. c. 36, s. 9 (2).

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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 use, of the Province.

2. 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.

Property, whether freehold or leasehold, in the use or occupation of the Crown, or of any person or persons in his or their official capacity as servants of the Crown, is not assessable. *Shaw* v. *Shaw*, 12 U. C. C. P. 456; *The Secretary of War* v. *Toronto*, 22 U. C. Q. B. 551. So property held by the Crown and not granted, located or leased, so far as the interest of the Crown is concerned. *Street* v. *Kent*, 11 U. C. C. P. 255; see also *Street* v. *Simcoe*, 12 U. C. C. P. 284; *S. C.* 2 E. & A. 211; *Austin* v. *Simcoe*, 22 U. C. Q. B. 73. But the statute does not say that land which has once been legally charged with an assessment shall become discharged of it when and because it comes into the possession of the Crown. *The Secretary of War* v. *Toronto*, 22 U. C. Q. B. 551; and before the decision of the *Mersey Docks* v. *Cameron*, and *Jones* v. *The Mersey Docks*, 11 H. L. C. 443; an idea had got abroad that if the occupation were for public purposes or charitable purposes which prevented the occupation being benefical, the occupation was that of the Crown and not ratable. See *Sheppard* v. *Bradford*, 16 C. B. N. S. 369 for an example. But in *Jones* v. *The Mersey Docks*, which so far as it went settled the law, it was decided that the fact of the it being an occupation for public purposes did not exempt the occupier from the payment of poor rates; but that the occupier was rateable provided he derived revenue from the land, unless the occupation was one on behalf of the Crown—or what may be called an extension of the privilege of the Crown—an occupation for the purposes of the Government of the country. *Per* Blackburn, J., in *Regina* v. *West Derby*, L. R. 10 Q. B. 288. See further *Lord Colchester* v. *Kewney*, L. R. 1 Ex. 368. See further, *Lord Bute* v. *Grindall*, 1 T. R. 338; *Greig* v. *University of Edinburgh*, L. R. 1 H. L. Sc. 348; *Attorney-General* v. *Dakin*, L. R. 3 Ex. 288; *The Queen* v. *McCann*, L. R. 3 Q. B. 677; *The Mayor of Essendon* v. *Blackwood*, 36 L. T. N. S. 625; *The Mayor of London* v. *Stratton*, L. R. 7 H. L. C. 477.

(*d*) The exemption mentioned in the preceding sub-section as to property vested in or held by Her Majesty, &c. is here qualified by an enactment that the *occupant* shall be liable to assessment, provided he do not occupy in an official character, but the *property*, itself is not to be liable. *Per* Draper, C. J., in *Street* v. *Kent*, 11 U. C. C. P. 260. A race course held under demise from the Crown, is as regards the interest of the lessee, taxable. *Mayor of Essenden et al., and Blackwood*, L. R. 2 Ap. Div. 574. A person having the mere possession of a lot of land vested in the Crown, determinable at any

(3.) Every place of worship, and land used in connection therewith, church yard or burying ground. (*e*) 32 V. c. 36, s. 9 (3). *See also Rev. Stat.*, c. 170, s. 13. Places of worship, &c.

(4.) 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. (*f*) 32 V. c. 36, s. 9 (4). Public educational institutions.

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moment, has not such an estate as will qualify him for office under The Municipal Act, but is nevertheless rightly assessed under this Act. *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27.

(*e*) The question whether or not a place of public worship is exempt from taxation for local improvements was raised in *Haynes* v. *Copeland*, 18 U. C. C. P. 150, and apparently the Court decided in favour of the exemption. Wilson, J., said, "Then it is said that the exemption of the church and school property from this local tax avoids the By-law by destroying the equality of the charge. . . . The defendants contend that as church and school property are exempt from all taxation, such property is necessarily exempt from local improvement rates. The eighth section of the Assessment Act is the one which provides how, in the absence of any express provision to the contrary, 'all Municipal *local* or direct taxes or rates are to be levied.' Then section nine provides that 'all land and personal property shall be liable to taxation, subject to the following exemptions.' . . . So that local assessments were distinctly before the Legislature when these exemptions were framed, and among such exemptions are 'every place of worship, churchyard or burying-ground,' &c. There is no reason to suppose that the Legislature made any distinction in these exemptions between assessments for general and local purposes. *Ib.* 161, 162. In England it has been held that "a church" is neither a "house" nor "land," for the purpose of assessment under the Metropolis Management Acts, 18 & 19 Vict. cap. 120, secs. 105-250, 25 & 26 Vict. cap. 102, sec. 77. *Angell* v. *Vestry of Paddington*, L. R. 3 Q. B. 714. Owners of a cemetry have in England been held liable to be assessed for a poor rate. *Regina* v. *St. Mary Abbot's*, 12 A. & E., 824. *Regina* v. *Abney Park Cemetery Co.*, L. R. 8 Q. B. 515. "Burying ground" is by this sub-section exempt from taxation. But whether the exemption extends to all "burying grounds," or only such as used in connection with a place of worship, is a question not yet determined. See further, *Broadway Baptist Church* v. *McAtee*, 8 Am. 480; *First Presbyterian Church* v. *Fort Wayne*, 10 Am. 35; *The State* v. *The Mayor, &c., of Newark*, *Ib.* 223; *Boston Seamen's Friend Society* v. *The Mayor, &c., of Boston*, 17 Am. 153.

(*f*) This is not an absolute, but a qualified exemption, viz: "so as long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but *not* if otherwise occupied." A building erected for and used as elementary schools for the education of the poor, and two dwellings erected for the teachers of the

Town and City halls, &c.

(5.) 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. (*g*) 32 V. c. 36, s 9 (5).

Public roads, &c.

(6.) Every public road and way or public square (*h*). 32 V. c. 36, s. 9 (6).

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schools, all vested in a trustee, were held not to be exempt under Eng. Stat. 11 & 12 Vict. cap. 63, secs. 2, 69, from the payment of a rate for the paving of the street on which they abutted. *Bowditch* v. *Wakefield Local Board of Health*. L. R .6 Q. B. 567.

(*g*) The Legislature, in using the terms they do in exempting certain buildings, such as Court-houses, Gaols, Places of Worship and the like, and then exempting the real property of some institutions, and the real *and* personal property of other institutions, must have had in view the nature, object and purposes of these buildings and institutions. Thus:

1. Every place of worship, *and* land in connection therewith church-yard or burying ground. Sub. 3.
2. 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. Sub. 5.
3. The Provincial Penitentiary, the Central Prison, and the Provincial Reformatory *and* the land attacheld hereto. Sub. 8.
4. 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. Sub. 9.

The Legislature, it will be observed, does not exempt all hospitals, but only *public* hospitals. Lord Coke says, in *Sutton's Case*, 10 Rep. 31 a, that there is no legal hospital except where the poor persons benefited are themselves incorporated; and he says that where the corporate succession is vested in trustees to effectuate the purposes of the institution, there is no legal hospital. It seems, however, tolerably clear that a legal hospital in *that* sense is not meant where the words "public hospital" are used in this section. It is more reasonable to hold that the words are used in their popular sense, and that any institution which, though not in a strictly legal, might in a popular sense be called a public hospital, may claim exemption. See *Lord Colchester et al.* v. *Kewney*. L. R. 1 Ex. 368; *In re Appeal of Sisters of Charity of Ottawa*, 7 U. C. L. J. 157.

(*h*) Public squares are as much public property as public roads and ways, and cannot, without a breach of trust, be applied to any use inconsistent with the purpose of their dedication. See *Guelph* v. *Canada Co.*, 4 Grant 632; *Attorney-General* v. *Goderich*, 5 Grant 402; *Attorney-General* v. *Brantford*, 6 Grant 592; *Attorney-General* v.

(7.) 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. (*i*) 32 V. c. 36, s. 9 (7). **Municipal property.**

(8.) The Provincial Penitentiary, the Central Prison and the Provincial Reformatory, and the land attached thereto. (*k*) 32 V. c. 36, s. 9 (8); 34 V. c. 17, s. 34. **Provincial Penitentiary.**

(9.) 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. (*l*) 32 V. c. 36, s. 9 (9). **Poor houses, &c.**

(10.) 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. (*m*) 32 V. c. 36, s. 9 (10). **Scientific institutions, &c.**

Toronto, 10 Grant 436; *Wyoming* v. *Bell*, 24 Grant 564. All such are exempt from taxation.

(*i*) There could be no object in the Council of any County, City, Town, Township or Village, levying taxes on its own property. Hence all such, whether occupied for the purposes thereof or unoccupied, are exempt. The property of the Municipality is not in any proper sense taxable under general tax laws. *People* v. *Solomon*, 51 Ill. 37; *Directors of the Poor* v. *School Directors*, 42 Pa. St 21; *Inhabitants of Worcester County* v. *The Mayor, &c., of Worcester*, 17 Am. 159. But this exemption is not held to extend to property of the Municipality, not for the purpose of carrying on Municipal government, but for the profit or convenience of its citizen's individually or collectively. *Louisville* v. *Commonwealth*, 1 Duv. (Ky.) 295. It is not declared by our Statute that the occupant of the Municipality when occupying for the purposes of gain, shall be exempt from taxation; but the contrary appears. See notes *c* and *d* to sub-secs. 1 and 2 of sec. 6 of this Act.

(*k*) The Penitentiary, erected near the City of Kingston, in the County of Frontenac, called "The Provincial Penitentiary of Canada," the Central Prison in Toronto, and the Reformatory at Penetanguishene are the institutions here intended.

(*l*) The institutions here mentioned are all of a charitable character, and therefore we find the Legislature, with as much liberality as possible, exempt not only the institutions themselves, but the "real *and* personal property belonging to or connected with the same."

(*m*) The property of every public library, mechanics' institute and other public literary or scientific institution, appears to be absolutely exempt; but the property of an agricultural or horticultural

Personal property of Governors.

(11.) The personal property and official income of the Governor-General of the Dominion of Canada, and the official income of the Lieutenant-Governor of this Province (*a*). 32 V. c. 36, s 9 (11).

Land occupied by military or naval officers and their pay, salaries, pensions, &c.

Property of officers on full pay.

(12.) The houses and premises of any officers, non-commissioned officers and privates of Her Majesty's regular Army or Navy in actual service, (*o*) while occupied by them, 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, or elsewhere out of this Province, and the personal property of any person in such Naval or Military services, on full pay, or otherwise in actual service. (*p*) 32 V. c. 36, s. 9 (12); 33 V. c. 27, s. 1.

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society appears to be only conditionally exempt, *i. e.*, "if actually occupied by such society." A society in the Town of Bradford, England, consisting of six hundred members, each having a share in the institution, and each making annual contributions to its funds, the primary object of the society being the formation of a library for books of all descriptions, allowed to be used only by members, was held exempt from taxation under Eng. Stat. 6 & 7 Vict. cap. 36. *The Queen* v. *Bradford Library and Literary Society*, 7 W. R. 36.

(*n*) These exemptions, no doubt, are because of "reasons of State." The official income and personal property of the Governor-General of the Dominion are certainly declared exempt for such reasons. The personal property of the Lieutenant-Governor is, however, not made exempt.

(*o*) This subsection was amended by the introduction of the word "while" before the word "occupied" in the third line. The object is plainly to exempt the property mentioned *only* when occupied by any of the officers, non-commissioned officers and privates of Her Majesty's regular army and navy *in actual service*. See note *c* to sub. 1 of sec. 6 of this Act.

(*p*) The exemptions here are:

1. The full or half pay of any one in *any* of Her Majesty's naval or military services.
2. Any pension, salary, gratuity or stipend, derived by any person from Her Majesty's Imperial treasury *or elsewhere out of this Province.*
3. The personal property of any person in such military and naval services on full pay, or otherwise in actual service.

The plaintiff, a major in the regular army, went on half pay, and, with the consent of the Horse Guards, accepted the position of Deputy Adjutant-General of Militia, under the Dominion Government, with a salary and allowances, including rent, payable by them, and by whom his duties were prescribed. Held, that during such appointment he was not an officer of Her Majesty's regular army in actual service so as to exempt from taxation the house which he

(13.) All pensions of two hundred dollars a year and under payable out of the public moneys of the Dominion of Canada, or of this Province (*q*). 32 V. c. 36, s. 9 (13). Pensions under $200.

(14.) 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. (*r*) 39 V. c. 33, s. 3. Grain, &c., *in transitu*.

(15.) The income of a farmer derived from his farm, and the income of merchants, mechanics, or other persons derived from capital liable to assessment. (*s*) 32 V. c. 36, s. 9 (14); 33 V. c. 27, s. 2. Incomes of farmers, etc.

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occupied. *Jarvis* v. *Kingston*, 26 U. C. C. P. 526. It was held by the Court of Queen's Bench, Harrison, C. J., dissenting, that the salary of a Dominion official, residing in Ottawa, was not exempt from taxation. but the view of the Chief Justice was upheld in the Court of Appeal. *Leprohon* v. *City of Ottawa*, not yet reported. All salaries derived either from Her Majesty's Imperial treasury, or elsewhere out of the Province, are exempt from taxation.

(*q*) While *all* pensions derived by any person from Her Majesty's Imperial treasury or elsewhere out of the Province are by the preceding subsection exempt, *none* but pensions of two hundred dollars a year or under, payable out of the public money of the Dominion or Province, are here made exempt. See *The Queen* v. *Mayor of Liverpool*, 8 A. & E. 176, as to the construction of such a provision.

(*r*) The exemption would appear to cover produce held in some Municipality for the purpose of transit, when the holder is not the producer thereof.

(*s*) The Act of 1868-9 only exempted "the income of a farmer derived from his farm." This, probably, was on the ground that the farm was taxed, and so it would be unfair to tax both the farm and the income derived from it. But until 24th December, 1869, there was nothing to exempt the income of merchants or others derived from capital, although the capital was taxed. Then the 33 Viet. cap. 27, sec. 2 was passed, declaring "that subsection 14, of section 9 of the said Act be amended by adding the following words thereto: 'and the income of merchants, mechanics or other persons *derived from capital liable to assessment.*'" In the United States it was held that power "to tax all real and personal estate within the corporate limits of the city," did not confer authority to tax income. *Savannah* v. *Hartridge*, 8 Ga. 23; but see *Linning* v. *Charleston*, 1 McCord (S. Car.) 345. Or to tax capital employed in merchandise distinct from the articles of property in which the capital was invested. *Municipality* v. *Johnston*, 6 La. An. 20.

Personal property secured by mortgage, or Provincial or Municipal debentures.

(16) 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. (*t*) 32 V. c. 36, s. 9 (15).

Dividends only of Bank Stock to be assessed.

(17.) 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 the twenty-eighth section of this Act. (*u*) 37 V. c. 19, s. 3.

(*t*) Personal property situate in the Province is, as a rule, subject to taxation. The exemption here made is as to so much of the personal property of any person as is—

1. Secured by a 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.

2. Secured by the debentures of the Dominion or of the Province, of Ontario or of any Municipal Corporation thereof.

3. And such debentures.

The reason of the first is, that the land itself, on which the mortgage security rests, is subject to taxes; and the second rests on fiscal considerations, the object being to create a bonus in favour of Government or Municipal debentures, so as to induce persons to invest in those debentures, and so keep up as much as possible the price thereof. But *interest* on mortgages, when forming a portion of a person's income, is apparently not exempt. See sub. 24 of this section.

(*u*) In the United States most of the bank charters are granted by the Legislatures of the several States. These Acts of Incorporation are there looked upon as contracts between the individual stockholders and the State. *O'Donell* v. *Bailey*, 24 Miss. 386. If the State Legislature provide in the Act of Incorporation that there shall be none but State taxes imposed on the bank, a Municipal tax would be void. *State Bank of Indiana* v. *Madison*, 3 Ind. 43. But where there is no such provision in the charter of incorporation, a power to impose Municipal taxes, when conferred by Act of the State Legislature, may be exercised. *Providence Bank* v. *Billings*, 4 Peters (U. S.) 561; *Gordon* v. *The Appeal Tax Court*, 3 How. (U. S.) 133; *Gordon* v. *Baltimore*, 5 Gill. (Md.) 231. If the only power conferred were to tax "property within the limits of the city," that would not confer authority to tax bank stock. *Savannah* v. *Hartridge*, 8 Geo. 23. It was held under the Act of 1873, as amended, that the stock held by a citizen of Kingston in the Merchants' Bank of Canada, of which the head office is in Montreal, is not taxable in the Province of Ontario. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126; 37 U. C. Q. B. 51.

(18.) The stock held by any person in any Railroad Company, (*v*) the shares in Building Societies, and 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 shares in such Building Societies, or from investments in such companies as aforesaid, shall be liable to be assessed. 32 V. c. 36, s. 9 (17); 33 V. c. 27, s. 3. **Railroad and Building Society stock.**

(19.) All personal property which is owned out of this Province, except as hereinafter provided. (*w*) 32 V. c. 36, s. 9 (18); 37 V. c. 19, ss. 1 & 2. **Personal property owned out of the Province.**

(20.) 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, (*x*) or are unpaid on account of the purchase money therefor. 32 V. c. 36, s. 9 (19). **Personal property equal to debts due.**

(21.) The net personal property of any person: provided the same is under one hundred dollars in value. (*y*) 32 V. c. 36, s. 9 (20). **Personalty under $100.**

(*v*) The Legislature did not, in the original Assessment Act exempt the stock of incorporated companies from taxation, with the single exception of stock held in Railroad Companies. Those who take stock in Railroad Companies in Canada seldom do so for the sake of investment or with the expectation of profit. Most of those who have taken railroad stock with such an expectation have hitherto been disappointed. Subscribers for stock in financial or manufacturing companies generally stand on a very different footing. But even as to certain financial companies, the stock is by this section exempted, while the dividends are not. This is to prevent what otherwise would exist—a double assessment.

(*w*) See note *a* to sec. 6 of this Act.

(*x*) If what a man owes on account of his personal estate be equal to or exceed the amount of his personal estate, his personal estate is exempt from taxation. This is because it is unfair to tax a man upon that which he does not really own, and cannot be said really to own so long as he owes the price of it, and must pay such price. The exception is where the debts are secured by mortgage on his real estate. This is because the land, or rather the owner of it, must notwithstanding the incumbrance, pay taxes on the assessed value of the land.

(*y*) The *net* personal property, &c. So much of the personal property of any person as is equal to the just debts owed on account of such property is to be deducted from the value of his personal property. Sub. 20 to this section. The balance is his "*net* personal

Income under $400.

(22.) The annual income of any person: (*z*) provided the same does not exceed four hundred dollars. (*zz*) 32 V. c. 36, s. 9 (21).

Minister's salaries.

(23.) The stipend or salary of any clergyman or minister of religion, while in actual connection with any church, and doing duty as such clergyman or minister, to the extent of one thousand dollars, and the parsonage or dwelling-house occupied by him, with the land thereto attached, to the extent of two acres, and not exceeding two thousand dollars in value. (*a*) 33 V. c. 27, s. 4.

Rental of real estate, etc.

(24.) Rental or other income derived from real estate, except interest on mortgages. (*b*) 32 V. c. 36, s. 9 (23).

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property." If the latter be under one hundred dollars in value, it is exempt from taxation.

(*z*) No provision is here made for the deduction of losses from income. See *Sullivan* v. *Robinson*, 1 Pugs. (N.B.) 431.

(*zz*) Persons having incomes exceeding $400 are apparently liable to be taxed to the full amount of their income, as income, not merely for the excess over $400; but no person is to be assessed at a less sum as the amount of his net personal property than the amount of income in excess of $400. See sec. 28. It has been held in the Court of Appeal reversing the decision of the Court of Queen's Bench, that the income of all officers of the Dominion Government is exempt from taxation. See *Leprohon* v. *City of Ottawa*, not yet reported.

(*a*) The 22nd sub-section of section 9 of the Act of 1859, was so broad as to exempt the stipend or salary of *any* minister of religion, no matter how large it was, and no matter how derived. The consequence was that several clergymen, either in no manner doing duty as such, but having large incomes as professors in universities, or otherwise nominally doing duty as clergymen, but having large incomes independently of their churches, made claim to exemption, and had their incomes exempted, though much better able to pay a tax on income than many professional men, business men and mechanics, who were not exempt from tax on income. This was felt to be such an injustice that the 33 Vict. cap. 27, sec. 4 was passed, repealing sub-section 22 as it formerly stood, and substituting for it the section as it now stands.

(*b*) If the owner of land were taxed for the land according to its value, and also taxed for the rental which he received as income from it, he would be twice taxed. See note *t* to sub. 16 of this sec. A person so situated was doubly taxed under the Act of 1859, and so the law continued till 1868, when it was altered by the sub-section here annotated. Rental is now exempt from taxation. Interest derived from mortgages on real estate is not exempt for the reason mentioned in the note *t* to sub. 16 of this section.

(25.) Household effects of whatever kind, books and wearing apparel. (*c*) 32 V. c. 36, s. 9 (24). Household effects, books, etc.

7. Where any person derives from some trade, office, calling or profession, an income which is entitled by law to exemption from assessment, he shall not be bound to avail himself of such right to exemption, but if he thinks fit, he may require his name to be entered in the assessment roll for such income, for the purpose of being entitled to vote at elections for the Legislative Assembly and Municipal Councils, and such income shall in such case be liable to taxation like other assessable income or property, and it shall be the duty of the Assessor to enter the name of such person in the Assessment Roll (*d*). 37 V. c. 3, s. 2. The case of income exempted from assessment.

8. All real property situate within but owned out of the Province, shall be liable to assessment in the same manner and subject to the like exemptions as other real property under the provisions of this Act. (*e*) 37 V. c. 19, s. 1. Realty within, but owned out of Ontario to be assessable.

9. All personal property within the Province in the possession or control of any agent or trustee for or on behalf of any owner thereof, who is resident out of this Province, shall be liable to assessment in the same manner and subject to the like exemption as in the case of the other personal property of the like nature under this Act. (*f*) 37 V. c. 19, s. 2. Personalty in control of agent for non-resident owner assessable.

(*c*) The bed and bedding and bedsteads in ordinary use by a debtor and his family, as well as the *necessary* wearing apparel of himself and family, together with certain specified articles of furniture and *food*, are also exempt from seizure and sale under execution. Stat. R. S. O. c. 66, s. 2. *All* wearing apparel is, under this sub-section, exempt from taxation. This would, probably, be held to include articles of jewelry in ordinary use. *Montague* v. *Richardson*, 24 Conn. 338; *Towns* v. *Pratt*, 33 N. H. 345.

(*d*) Persons may now vote at Municipal Elections in respect of income although not possessed of real or personal property of any kind. Representation and taxation are said to be correlative. It would be unreasonable to exempt a man's income from taxation and yet give him the right to vote in respect of his income. The exemption is a privilege. If the person who is entitled to the privilege see fit to waive it and submit to taxation his right to vote follows.

(*e*) Real property is governed by the *lex rei sitæ*. It is therefore subject to the law of taxation in the place where situate regardless of the place of residence of the owner.

(*f*) As regards personal property of a visible and tangible nature, such as cattle and chattels in the popular sense of the term, and which are capable therefore of an actual situs, and differing only

APPOINTMENT OF ASSESSORS AND COLLECTORS.

(*See also Rev. Stat.* c. 174, ss. 250-253.)

Assessors and collectors to be appointed.

10. The Council of every Municipality, except Counties, shall appoint such number of Assessors and Collectors for the Municipality as they may think necessary. (*g*) 32 V. c. 36, s. 19.

Municipality may be divided into assessment districts.

11. Such Councils may appoint to such Assessors and Collectors the assessment district or districts within which they shall act, and may prescribe regulations for governing them in the performance of their duties. (*h*) 32 V. c. 36, s. 20.

DUTIES OF ASSESSORS.

Assessment rolls, their form, contents, etc.

12. The Assessor or Assessors shall prepare an assessment roll, (*a*) in which, after diligent inquiry, he or they

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from land in the fact that the one is immovable, and the other movable from one place to another, there is very little difficulty. Both are equally protected by the laws of the country where they are situated, and both are justly chargeable with a proportion of the local burdens of the place in which they happen to be, according to all just principles of taxation. *Per* Burton, J., in *Nickle* v. *Douglas*, 37 U. C. Q. B. 60.

(*g*) See s. 250 of The Municipal Act.

(*h*) The powers are—

1. To appoint to each assessor and collector the district or districts within which he shall act.
2. To prescribe regulations for governing the officer in the performance of his duties.

(*a*) The assessment as respects real property, is the mode provided for ascertaining the actual value thereof. Unless followed by the imposition of a rate, it creates no liability. None of the methods pointed out by the statute for the collecting and enforcing payment of a rate can apply until a rate has been actually imposed. *Corbett* v. *Taylor*, 23 U. C. Q. B. 454. But the assessment roll, when completed, is the foundation of all proceedings with a view to elections or taxation. See sec. 42 of this Act, and notes thereto. And all copies and lists ought to correspond with it, for it is the primary or original roll. *Per* Adam Wilson, J., in *Laughtenborough* v. *McLean*, 14 U. C. C. P. 180. But while this is so, there is no special provision whatever declaring it to be an offence to add or alter such a roll. *The Queen* v. *Preston*, 21 U. C. Q. B. 86. An assessor is not bound to enquire into the trusts upon which lands are held, but to view each man's premises, and to find out whether or not he is assessable, or whether or not he comes under any of the exemptions allowed by law. *Franchon* v. *St. Thomas*, 7 U. C. L. J. 245.

shall set down according to the best information to be had—(*b*)

(1.) The names and surnames in full, if the same can be ascertained, of all taxable persons resident in the Municipality who have taxable property therein, or in

Names of residents.

(*b*) The duty of an assessor in preparing the assessment roll is, under this section, twofold :

1. To make diligent inquiry for the information suggested ;

2. To set the results down according to the best information to be had.

If any assessor *refuse* or *neglect* to perform any duty required of him by this Act, he shall upon conviction thereof before any Court of competent jurisdiction in the County in which he is assessor, forfeit to Her Majesty such sum as the Court may order and adjudge, not exceeding one hundred dollars. Sec. 189 of this Act. If he make an *unjust* or *fraudulent* assessment, or copy of any assessors roll, or wilfully and fraudulently enter on the roll the name of any person who should not be entered therein, or fraudulently omits the name of any person who should be entered, or *wilfully* omit any duty required of him by this Act, he shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment till the fine be paid, in the common gaol of the County or City for a period not exceeding six months, or to both such fine and imprisonment in the discretion of the Court. Sec. 191 of this Act. An assessor convicted of having made any unjust or fraudulent assessment shall be sentenced to the greatest punishment both of fine and imprisonment, allowed by this Act. Sec. 193 of this Act. Proof, to the satisfaction of the jury, that any real property was assessed by the assessor at an actual value greater or less than its true actual value by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. Sec. 192 of this Act. Both real and personal property should be estimated by assessors at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor. Sec. 23 of this Act. It is no excuse for an assessor departing from the instructions laid down for his guidance to say that some member or members of the Municipal Council ordered him to do as he did. His acceptance of the office obliges him to fulfil the duties which the statute attaches to the office. No Municipal Council has power to override the positive regulations laid down by the statute. The honest performance of the duties prescribed is essential to the real good of all the ratepayers. If the property, real or personal, of some ratepayers be undervalued the burden of other ratepayers is thereby increased. The amount to be levied is distributed among the several ratepayers according to the assessed value of their property, real and personal. Property assessed for less than its value escapes its due proportion of the burthen of taxation, but as the whole amount to be taxed cannot be altered, other property must bear more than its due proportion of the burthen.

the district for which the Assessor has been appointed; (*c*)

Of non-residents.

(2.) And of all non-resident owners who have given the notice in writing mentioned in section three, and required their names to be entered in the roll. (*d*)

Property assessable.

(3.) The description and extent or amount of property assessable against each ; (*e*)

Further particulars.

(4.) And such particulars in separate columns as follows: (*f*)

(*c*) "Taxable persons" may be either residents or "non-residents," who have requested their names to be entered on the roll. The names and surnames, *in full*, of all such (if the same can be ascertained) should be entered on the roll, and that in alphabetical order. There cannot be too much particularity in this respect. The roll is, as it were, a judgment roll, the highest evidence of a debt, recoverable by process of a most summary character. Even the description of persons on the roll as executors or trustees does not absolve them from personal liability for taxes, or save their own goods from distress for taxes. *Denison* v. *Henry*, 17 U. C. Q. B. 276. Persons assessed in a representative character, as trustee, guardian, executor or administrator, should however, be assessed as such, with the addition to the name of the representative character. Sec. 36 of this Act.

(*d*) An assessor cannot legally of his own motion insert the name of a non-resident on the roll. His only power to do so is when the latter shall have given the notice in writing required by section three of the Act. "The plaintiffs seem to have proceeded on the idea that if the owner be *known*, the assessor might assess him on his roll by name for his lands within the Municipality, whether he himself was a resident within the Municipality or not. But the whole frame of the Act . . . . shows that not to have been the intention." *Per* Robinson, C. J., in *Berlin* v. *Grange*, 1 E. & A. 283.

(*e*) The assessor should so set down the description *and* extent or amount of property assessable against each taxable person. If land, it should be assessed as granted, as subsequently divided, or as actually owned by the party taxable. If the person taxable be the owner of several lots, the lots should be as much as possible kept distinct, and not unnecessarily thrown together. See notes to sec. 137 of this Act. It is the duty of the assessor to assess village lots the property of non-residents separately, placing opposite to each the value and amount of assessment. *Black* v. *Harrington*, 12 Grant 175. A whole lot returned by the Surveyor-General must be assessed as one lot, though half of it be in one concession and half in another. *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594. On a grant of several lots, each must be separately assessed. *Ib.* See further, notes to secs. 137 and 145 of this Act.

(*f*) These particulars are required with a view to the imposition of taxes, statistical information, &c. The information should be diligently obtained, and, when obtained, carefully entered on the roll. So much, for weal or woe, depends on the state of the roll,

Column 1.—The successive number on the roll.

Column 2.—Name of taxable party.

Column 3.—Occupation.

Column 4.—Statement whether the party is a Freeholder, Householder, Tenant or Farmer's Son, by inserting opposite the name of the party the letter "F," "H," "T," or "F. S.," as the case may be.

Column 5.—The age of the assessed party.

Column 6.—Name and address of the owner, where the party named in column two is not the owner.

Column 7.—School section, and whether Public or Separate School Supporter.

Column 8.—Number of concession, name of street, or other designation of the local division in which the real property lies.

Column 9.—Number of lot, house, &c., in such division.

Column 10.—Number of acres, or other measure showing the extent of the property.

Column 11.—Number of acres cleared, (*or*, in Cities, Towns or Villages, whether vacant or built upon.)

Column 12.—Value of each parcel of real property.

Column 13.—Total value of real property.

Column 14.—Value of personal property other than income.

Column 15.—Taxable income.

Column 16.—Total value of personal property and taxable income.

Column 17.—Total value of real and personal property and taxable income.

Column 18.—Statute labour (in case of male persons from twenty-one to sixty years of age), and number of days' labour.

Column 19.—Dog tax; number of dogs and number of bitches.

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that the greatest care should be used in the selection of competent persons to fill the office of assessor; and these persons when appointed should use the greatest diligence and accuracy in the performance of their duties. A slovenly assessment is often the forerunner of expensive litigation, and is at all times and under all circumstances a source of trouble and annoyance to all concerned. The rights of electors and their interests as ratepayers may alike be jeopardized by carelessness or ignorance in those to whom the law entrusts the discharge of most important duties.

Column 20.—Number of persons in the family of each person rated as a resident.

Column 21.—Religion.

Column 22.—Number of cattle.

Column 23.—Number of sheep.

Column 24.—Number of hogs.

Column 25.—Number of horses.

Column 26.—Date of delivery of notice under section forty-one. 32 V. c. 36, s. 21; 40 V. c. 10, s. 5 (1). *See* Schedule B.

Mode of Assessing Real Property.

Land to be assessed in the municipality or ward.

Personal property.

13. Land shall be assessed in the Municipality in which the same lies, and, in the case of Cities and Towns, in the Ward in which the property lies; and this shall include the land of incorporated Companies, as well as other property; (*g*) and when any business is carried on by a person in a Municipality in which he does not reside, or in two or more Municipalities, the personal property belonging to such person shall be assessed in the Municipality in which such personal property is situated, and against the person in possession or charge thereof, as well as against the owner. (*h*) 32 V. c. 36, s. 22.

When land to be assessed in owners' name.

14. Land occupied by the owner shall be assessed in his name. (*i*) 32 V. c. 36, s. 23.

(*g*) See note *j* to sec. 5 of this Act.

(*h*) Personal property of a person having a shop, factory, office or other place of business, must, as a rule, be assessed at the place of business. Sec. 31. If several places of business in different Municipalities, then, according to this section, at the place or places where situate, sec. 13, for that portion of personal property connected with the business carried on at each. Sec. 31. sub. 2. If no place of business, then at the place of residence. Sec. 32. See further, note *j* to sec. 5 of this Act.

(*i*) The word "owner" is here used as a word of a very wide signification. Upon seeing land occupied by an apparent owner, the assessor is bound to assess the occupant for it, no matter upon what trust the freehold of the land is held. See *Dennison* v. *Henry*, 17 U. C. Q. B. 276; *Franchon* v. *St. Thomas*, 7 U. C. L. J. 245. In *Lister* v. *Lobley*, 7 A. & E. 124, the trustees of a turnpike road were authorized to enter and take certain land, &c., making satisfaction to the *owners* or *proprietors* for their loss, and it was held that the composition was payable not only to the owners in fee simple, but to lessees for years. In *Chauntler* v. *Robinson*, 4 Ex. 163, which was

15 As to land not occupied by the owner, but of which the owner is known and, at the time of the assessment being made, resides or has a legal domicile or place of business in the Municipality, or has given the notice mentioned in section three, (*k*) the same shall be assessed against such

When land not occupied by the owner, but owner is known.

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an action brought by a person against his neighbour for not keeping the house of the latter in repair, whereby, &c., Parke, B., said: "The term 'owner,' as well as 'proprietor,' is ambiguous. It may mean that the defendant had the whole legal interest in the house at the time of the wrong complained of, or that he was owner of the whole or some interest, as distinguished from that of the tenant in possession; but in any understanding of this term there is no obligation towards a neighbour cast by law on the owner of a house, merely as such, to keep it repaired in a lasting and substantial manner," &c. *Ib.* 170. In *Hopkins* v. *Provincial Insurance Co.*, 18 U. C. C. P. 74, a person having only a leasehold interest was held to be the owner within the meaning of a question put to him before the issue of the notice. In *Bouldich* v. *Wakefield Local Board of Health*, L. R. 6 Q. B. 567, a trustee, in whom was vested a public school for the education of poor children, was held to be the owner for the purpose of taxation, under secs. 2 and 69 of 11 & 12 Vict. cap. 63. See further *The School Board for London* v. *The Vestry of St. Mary, Islington*, L. R. 1 Q. B. Div. 65. By sec. 33 of the Town Police Clauses Act, 1847, (10 & 11 Vict. c. 89), the commissioners may send engines, with their appurtenances and firemen, beyond the limits of the special Act for extinguishing fire in the neighbourhood of the limits; and the owner of the lands and buildings where such fire shall have happened, shall in such case defray the actual expense which may be thereby incurred: Held, that the occupier was the owner of lands within the meaning of the enactment, and liable for expenses incurred in sending an engine to extinguish a fire at a haystack belonging to him. *Lewis* v. *Arnold*, L. R. 10 Q. B. 245. It is the duty of the assessor to enter on the roll the names of all persons in occupation, whom, after diligent enquiry, he believes to be owners. It does not seem that a *personal* occupation of the lot is necessary. A lot may be used with another part of the same farm, and that without there being a house upon it, or even a barn—the house and farm buildings being on an adjoining farm. But the occupancy must be so visible that the assessor can see it. *Bank of Toronto* v. *Fanning*, 17 Grant 514; *S. C.* on appeal, 18 Grant 391. If the person served as owner omit to appeal, he is bound by the assessment, whether owner or not. *McCarrall* v. *Watkins et al.*, 19 U. C. Q. B. 248.

(*k*) The duties of the assessor under the first part of this section relate to land not coming under the description of the previous section, as "land occupied by the owner," but to lands such as described in sec. 3 as "unoccupied land." These duties are, to assess the owner—

1. If known, *and* residing or having a legal domicile or place of business *within* the Municipality.

2. If, being resident without the Municipality, he has given the notice mentioned in sec. 3 of this Act.

owner alone, if the land is unoccupied, or against the owner and occupant, if such occupant is any other person than the owner. (*l*) 32 V. c. 36, s. 24.

When owner non-resident and unknown.

16. If the owner of the land is not resident within the Municipality, but resident within this Province, then, if the land is occupied, it shall be assessed in the name of and against the occupant and owner; but if the land is not occupied, and the owner has not requested to be assessed therefor,

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The assessor has no legal right to place on the roll the name of a non-resident owner merely because he is known to him. His right to do so only arises when the latter has given the notice required by sec. 3 of this Act. See notes to that section. But in the case of a person residing in or having a legal domicile or place of business within the Municipality, his name, when known, may be placed on the roll. A man's place of residence may not be his domicile or place of business. There are cases in which place of abode and place of business mean the same thing. See *Haslope* v. *Thorne*, 1 M. & S. 103; *Alexander* v. *Milton*, 2 C. & J. 424; *Roberts* v. *Williams*, 2 C. M. & R. 561; *Johnson* v. *Lord*, M. & M. 444. But place of residence and place of business do not necessarily mean the same thing. *The Queen* v. *Deighton*, 5 Q. B. 896; *The Queen* v. *Coward*, 16 Q. B. 819; *The Queen* v. *Hammond*, 17 Q. B. 772; *The Queen* v. *Gregory*, 1 E. & B. 600; *The Queen* v. *Spratley*, 6 E. & B. 363.

(*l*) If the land be occupied the occupant should be assessed. If not the owner, both he and the owner should be assessed. If unoccupied, then the owner alone must be assessed. Occupation here meant is not simply possession as by a child, servant, or caretaker, but by a person having an interest of some kind in the land. The occupation need not be a personal one in this sense, that the occupant should have his house on it. It will be enough if he have his house elsewhere in the Municipality, and so work it as to be visibly possessed of it. *Bank of Toronto* v. *Fanning*, 17 Grant 514; *Warne* v. *Coulter*, 25 U. C. Q. B. 177; see also *Fryer* v. *Bodenham*, 19 L. T. N. S. 645. But merely sinking a post in the ground or some other trifling act of that character will not be sufficient to constitute occupation. *Grant* v. *Local Board of Oxford*, 19 L. T. N. S. 378. Where the occupation is necessary for the performance of services, and the occupier is required to reside on the premises in order to perform the services, the occupation being strictly auxillary to the performance of duties which the occupier must perform, the occupier is a servant and ought not to be assessed. *Hughes* v. *Overseers of the Parish of Chatham*, 5 M. & G. 54; *Dobson* v. *Jones*, *Ib.*, 112; *Clark* v. *Overseers of the parish of St. Mary Bury St. Edmunds*, 1 C. B. N. S. 23; *The Queen* v. *The Overseers of Whaddon*, L. R. 10 Q. B. 230; *Fox* v. *Dalby*, L. R. 10 C. P. 285; *Smith et al.* v. *Overseers of Seghill*, L. R. 10 Q. B. 422; *Attorney-General* v. *The Mutual Tontine Westminster Chambers Association Limited*, L. R. 10 Ex. 305; *White* v. *Maynard*, 15 Am. 28.

then it shall be assessed as land of a non-resident. (*m*) 32 V. c. 36, s. 25.

Occupant for non-resident owner may be assessed as owner in certain cases.

17. In the case of real property, owned by a person not resident within this Province, who has not required his name to be entered on the assessment roll, then if the land is occupied it shall be assessed in the name of and against the occupant as such, and he shall be deemed the owner thereof for the purpose of imposing and collecting taxes upon and from the same land; (*n*) but if the land is not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident; (*o*) and it shall not be necessary that the name of such non-resident or owner be inserted in the assessment roll, but it shall be sufficient to mention therein the name of the reputed owner, or the words "*Owner Unknown*," according to the Assessor's knowledge or information. 37 V. c. 19, s. 4.

When land may be assessed as non-resident.

When land assessed against owner and occupant.

18. When land is assessed against both the owner and occupant, or owner and tenant, the Assessor shall (*p*) place both names within brackets on the roll, and shall write

(*m*) The meaning of this section is not free from doubt. If land be occupied, no doubt it should be assessed in the name of the occupant. If unoccupied, and owned by a person living in the Municipality where he is owner, it may be assessed in his name. But if unoccupied and owned by a non-resident, it can only be assessed in his name on his request in writing. See note *f* to sec. 3, of this Act. This section provides that if the land be occupied "it shall be assessed in the name of and against the occupant *and* owner." The question is, whether this is to be done where the owner is a non-resident of the Municipality, and has not requested his name to be entered on the roll. The language of the section is broad enough to cover all owners, whether resident within or without the Municipality. But the narrower construction seems to be the correct one. Persons in the occupation of land in the sense that they are in exclusive occupation of any part of it, whether above or below, are liable to be rated in England for poor rate. See *Pimlico, &c., Tramway Co.* v. *Greenwich*, L. R. 9 Q. B. 9; see further, *Allan* v. *Overseers of the Poor, Liverpool*, L. R. 9 Q. B. 180; *London and North Western Railway Co.* v. *Buckmaster*, L. R. 10 Q. B. 70; *S. C. Ib.*, 444; *Cory et al.* v. *Bristow*, L. R. 1 C. P. Div. 54; *S. C.*, L. R. 2 Ap. Div. 262.

(*n*) See note *l* to sec. 15.

(*o*) The only power to assess on the owner, as owner, when a non-resident is on request. See note *f* to sec. 3 of this Act.

(*p*) A strict compliance with this section is not necessary to the validity of an assessment. *DeBlaquire* v. *Beeker et al.*, 8. U. C. C. P. 167; *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. In the last mentioned case Mr. Dalton said, "The name of the defen-

opposite the name of the owner the letter "F," and opposite the name of the occupant or tenant the letter "H" or "T," and both names shall be numbered on the roll. (*q*) 32 V. c. 36, s. 26.

Ratepayer only to be counted once.

2. No ratepayer shall be counted more than once in returns and lists required by law for municipal purposes, and the taxes may be recovered from either the owner or occupant or from any future owner or occupant, saving his recourse against any other person. (*s*) 32 V. c. 36, s. 26.

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dant is not set down under that of Henry Bowen and bracketed with it, nor is the assessment against the defendant separately numbered on the roll. Some other deviations from the statutory form will be observed. The defendant's name however, is written in the general heading 'Names of Taxable Parties,' and that it was so written for the purpose of assessing him is known from other facts. Are these deviations, then, so essential as to render the assessment void? After examining the English cases and our own, as far as I have been referred to or have been able to find them, I have come to the conclusion that the assessment is good. It would certainly seem an extraordinary thing, considering the class that assessors must necessarily come from, that variances from the form of the assessment should vitiate it." Mr. Dalton's decision was approved of and followed by the Court of Queen's Bench. *In re Johnson and Lambton*, 40 U. C. Q. B. 305. See further *Morgan* v. *Parry*, 17 C. B. 334, and *Bramfitt* v. *Bremner*, 9 C. B. N. S. 1; *Applegarth* v. *Graham*, 7 U. C. C. P. 171; but see also, *The Queen ex rel McGregor* v. *Ker*, 7 U. C. L. J. 67. If an assessor or any other officer of a Municipality omit to follow the plain directions in an Act of Parliament, and any loss thereby arises to the Municipality, it would seem that the officer causing the loss would be held answerable therefor. *Christie* v. *Johnson*, 12 Grant 534.

(*q*) The obligation of the landlord is *prima facie* to pay taxes. See sec. 21. If the tenant agree to pay taxes, the obligation is shifted as between them. But in regard to the Municipality, taxes may be recovered from either, and not only so, but from "any future owner or occupant," saving his recourse against any other person. See *Smith* v. *Shaw*, 8 U. C. L. J. 297; *Holcomb et al.* v. *Shaw*, 22 U. C. Q. B. 92; *Warne* v. *Coulter*, 25 U. C. Q. B. 177.

(*s*) The way in which this section is expressed would lead one to suppose that *future* owners or occupiers can alone be made liable when *both* the owner and occupant have been assessed, but that is not the proper construction to be placed on the section. It should be read in connection with sections 15 and 16. The words used in sec. 7 of the Assessment Act of 1853: "And the taxes thereon may be recovered from either or from any future owner or occupant, saving his recourse against the other party," had reference not to the particular case alone of owner and occupant being assessed together, *but of either of them being*

When land occupied by more owners than one.

19. When the land is owned or occupied by more persons than one, and all their names are given to the Assessor, they shall be assessed therefor in the proportions belonging to or occupied by each respectively; (*t*) and if a portion of the land so situated is owned by parties who are non-resident, and who have not required their names to be entered on the roll, (*tt*) the whole of the property shall be assessed in the names furnished to the Assessor as the names of the owners, saving the recourse of the persons whose names are so given against the others. (*u*) 32 V. c. 36, s. 27.

Mode of assessing farmers' sons resident on their parents farm.

20. Every farmer's son *bona fide* resident on the farm of his father or mother, at the time of the making of the assessment roll, shall be entitled to be, and may be, entered, rated and assessed on such roll, in respect of such farm, in manner following:

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assessed separately. "If they were both assessed, the taxes were to be recovered from either of them. And in *every* case, if the owner or occupant did not pay, the taxes were to be recovered from any *future* owner or occupant. This was plainly the construction of sec. 7 of the Act of 1853, for why were future owners or occupants made liable when both owner *and* occupant were assessed and not when the owner or occupant was singly assessed? In both cases the taxes are equally a special lien on the land, for which the land may be sold. Why should a *future* occupant be liable when his original assessed owner could still be resorted to? Or, why should a future owner be liable when the original assessed occupant is in possession, and, of course, liable? Either owner or occupant shall pay when both are assessed; and future owners and occupiers are liable in every case to pay, saving their recourse against any other person. *Per* Wilson, J., in *Anglin* v. *Minis*, 18 U. C. C. P. 170, 177. The goods of the future occupant cannot be legally distrained and sold for the taxes imposed on the *personal property* of the former occupant. *Squire* v. *Moony*, 30 U. C. Q. B. 531. But if any portion of the tax distrained for be in respect of the realty, trespass will not lie. *Ib.*

(*t*) Where on an assessment roll under the general heading "Names of Taxable Parties," were entered the names of Ker, William and Henry, for two separate parcels of land, and in the proper columns were the letters "F" and "H," and in the columns headed "Owners" and "Address," opposite to the parcels of land, "Wm. Ker and Bros.," it was held that Wm. Ker and Henry Ker, and not "Wm. Ker and Bros.," were the persons in whose names the properties were rated. *The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67; see further, *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. *In re Johnson and Lambton*, 40 U. C. Q. B. 397.

(*tt*) See note *f* to s. 3.

(*u*) See note *s* to s. 18.

If father living.

1. If the father is living, and either the father or mother is the owner of the farm, the son or sons may be entered, rated and assessed, in respect of the farm, jointly with the father, and as if such father and son or sons were actually and *bona fide* joint owners thereof.

If father dead and farm owned by the mother.

2. If the father is dead, and the mother is the owner of the farm, and a widow, the son or sons may be entered, rated and assessed, in respect of the farm, as if he or they was or were actually and *bona fide* an occupant or tenant, or joint occupants or tenants thereof, under the mother, and within the meaning of "*The Election Act.*"

Rev. Stat. c. 10.

3. Occasional or temporary absence from the farm for a time or times, not exceeding in the whole four months of the twelve months next prior to the return of the roll by the Assessor, shall not operate to disentitle a son to be considered *bona fide* resident as aforesaid.

4. If there are more sons than one so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote at an election for a member of the Legislative Assembly, or at a municipal election, to the father and all the sons, where the father is living, or to the sons alone where the father is dead and the mother is a widow, then the right to be assessed under this Act shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the amount at which the farm is rated and assessed will, when equally divided between them, give a qualification so to vote.

5. If the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father, if living, and one son, to give to each a qualification so to vote, then the father shall be the only person entitled to be assessed in respect of such farm. 40 V. c. 9, s. 2.

Farmer's son may require his name to be entered on assessment roll as joint owner.

6. A farmer's son entitled to be assessed under any of the preceding provisions, may require his name to be entered and rated on the assessment roll as a joint or separate owner, occupant, or tenant of the farm, as the case may be; and such farmer's son so entered and rated shall be liable in respect of such assessment as such owner, tenant, or occupant. 40 V. c. 9, s. 4.

7. Wherever the following words occur in this section they shall be interpreted as follows: Interpretation.

(a) "Owner" shall signify proprietor in his own right or in the right of his wife, of an estate for life, or any greater estate, either legal or equitable, except where the proprietor is a widow, and in such latter case the word "owner" shall signify proprietor in her own right of any such estate. "Owner."

(b) "Farm" shall mean land actually occupied by the owner thereof, and not less in quantity than twenty acres. "Farm."

(c) "Son," or "sons," or "farmer's son," shall, for the purposes of this Act, mean any male person or persons not otherwise qualified to vote, and being the son or sons of an owner and actual occupant of a farm. "Son," &c.

(d) "Election" shall mean an election for a member to the Legislative Assembly of this Province, or to a municipal Council, as the case may be. "Election."

(e) "To vote" shall mean to vote at an election. "To vote."

(f) "Father" shall include step-father. 40 V. c. 9, s. 1. "Father."

21. Any occupant may deduct from his rent any taxes paid by him, if the same could also have been recovered from the owner, or previous occupant, unless there is a special agreement between the occupant and the owner to the contrary. (v) 32 V. c. 36, s. 28. When tenants may deduct taxes from rent.

(v) If the lease contain no provision as to the payment of taxes, it is the duty of the landlord, as owner of the land, to pay them. *Dore* v. *Dore*, 18 U. C. C. P. 424; see further, *Rook* v. *Mayor of Liverpool*, 17 C. B. N. S. 249; and *Sheffield Water Works Co.*, v. *Bennett*, L. R. 7 Ex. 409. But if between the owner and the occupant there be a special agreement to the contrary, of course there will not be the right to deduct taxes from rent. Defendant took a written agreement for a lease of certain premises, which lease was silent as to taxes, but verbally agreed to pay them; no lease was ever executed, owing to a disagreement on another point. Defendant occupied the premises for four years, paying taxes for three years without objection. When sued for rent subsequently accrued, he claimed to set off the taxes, on the ground that as the agreement made no provision for them, and could not be added to by verbal evidence, they must fall on the landlord. Held that, having voluntarily made the payments in pursuance of his own agreement, even if it were without consideration, he could not recover back or set off such payments. *McAnany* v. *Tickell*, 23 U. C. Q. B. 499. It is not said in the Act when, or from quarter or month, the occupant may deduct the taxes

Assessor to note non-residents, if required, on the roll.

22. The Assessor shall write opposite the name of any non-resident freeholder, who requires his name to be entered on the roll, as hereinbefore provided, (*w*) in column number three, the letters "*N. R.*," and the address of such freeholder. (*x*) 32 V. c. 36, s. 29.

How property estimated.

23. Except in the case of mineral lands hereinafter provided for, real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor. (*y*) 32 V. c. 36, s. 30.

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from his rent; and under a similar enactment in England it was held that a tenant could not occupy for several years, paying taxes, and claim to deduct from his last quarter's rent the whole amount of taxes paid by him during the term. *Stubbs* v. *Parsons*, 3 B. & Al. 516. And our Act has in one case received a similar construction. *Wade* v. *Thompson, et al.*, 8 U. C. L. J. 22. An ordinary lease, under the words in the statute, containing a covenant "to pay taxes," covers a special rate created by a Corporation By-law, as well as other taxes. *In re Michie and Toronto*, 11 U. C. C. P. 379. Defendant in 1872 leased a farm from the plaintiff for a year from 27th September, 1872, and covenanted to pay all taxes, rates, assessments, whatsoever whether parliamentary, Municipal or otherwise, which now are, or which during the continuance of the term, shall at any time be rated charged, assessed, or imposed in respect to the premises. Held, (Wilson, J. *diss.*) that defendent was not liable for the taxes for 1872. *MacNaughton* v. *Wigg*, 35 U. C. Q. B. 111. See further *Hurst* v. *Hurst*, 4 Ex. 571.

(*w*) See sec. 3 and notes thereto.

(*x*) The omission to do as here directed would not invalidate the assessment so far as made. See *DeBlaquier* v. *Becker et al.*, 8 U. C. C. P. 167; see further, note *p* to sec. 18.

(*y*) There is nothing that men so much differ about as the value of property. See *Mersey Dock Co.* v. *Liverpool*, L. R. 9 Q. B. 84; *The Queen* v. *London & North Western Railway Co.* L. R. 9 Q. B. 134. It is, to a great extent, a matter of opinion. The opinions of men on such a subject are very materially affected, more so than they are perhaps aware of by the point from which they consider it. A man who is impressed with a consideration of how much a thing is worth, will entertain a widely different opinion from him who simply looks at it as a thing to be purchased in expectation of profit, whether by the employment of it or selling it again. *Per* Draper, C. J., in *McQuaig* v. *The Unity Fire Insurance Co.*, 9 U. C. C. P. 88. Perhaps, after all, the best standard of value is that mentioned in this section—"actual cash value," such as the property would be appraised "in payment of a just debt from a solvent debtor." See further, notes to sec. 192. But it is no defence to an action for taxes, that the property was excessively rated. *London* v. *The Great Western Railway Co.*, 17 U. C. Q. B. 267; see also, *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U. C. Q. B. 194; see further,

Mineral lands.

2. In estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural purposes, but the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under this Act. (*z*) 33 V. c. 27, s. 5.

What shall be deemed vacant land, and how its value shall be calculated in cities, etc

24. In assessing vacant ground, or ground used as a farm, garden, or nursery, and not in immediate demand for building purposes, in Cities, Towns, or Villages, whether incorporated or not, the value (*a*) of such vacant or other ground shall be that at which sales of it can be freely made, and where no sales can be reasonably expected during the current year, the Assessors shall value such land as though it was held for farming or gardening purposes, with such per centage added thereto as the situation of the land reasonably calls for; and such vacant land, though surveyed into building lots, if unsold as such, may be entered on the assessment roll as so many acres of the original block or lot, describing the same by the description of the block or by the number of the lot and concession of the Township in which the same is situated, as the case may be. (*b*)

Mersey Docks and Harbour Board v. *Overseers of Birkenhead*, L. R. 8 Q. B. 445.

(*z*) A Statute of Pennsylvania provided that in addition to taxes already collectable, the owners of ore beds in a particular township, should pay to the supervisors of the woods, one and a half per cent for each ton of ore received and carried away by teams over the roads. It was held that the Statute was constitutional, and that the owner of an ore bed was bound to pay the tax, although he had leased the bed. *Weber* v. *Reinhard*, 13 Am. 747.

(*a*) "The question of what is the proper principle of valuation is one extremely general in its application. It effects the pecuniary interests of almost every one, not excepting the Judges themselves, and we should therefore not go out of our way to express opinions upon it." *Per* Robinson, C.J., in *In re Dickson and Galt*, 10 U. C. Q. B. 395, 398.

(*b*) This section in effect divides vacant land into two classes. One class consists of lands of which sales can be reasonably expected during the current year; the other class, of lands of which no sales can be reasonably expected during the current year. Between the two there must be a difference of value, and a difference in the mode of assessment. The first is to be valued at the price at which sales can be freely made; the second is to be valued as though held for gardening or farming purposes, with such per centage added thereto as the situation of the land may reasonably call for. Any construction of the Act which confounds these two classes abrogates the one

Assessment thereof.

2. In such case, the number and description of each lot, comprising each such block shall be inserted in the assessment roll; and each lot shall be liable for a proportionate share as to value, and the amount of the taxes, if the property is sold for arrears of taxes. (*c*) 32 V. c. 36, s. 31.

When not held for sale, but for gardens, etc.

25. When ground is not held for the purposes of sale, but *bona fide* inclosed and used in connection with a residence or building as a paddock, park, lawn, garden or pleasure ground, it shall be assessed therewith, at a valuation which, at six per centum, would yield a sum equal to the annual rental which, in the judgment of the Assessors, it is fairly and reasonably worth for the purposes for which it is used, reference being always had to its position and local advantages. (*d*) 32 V. c. 36, s. 32.

Railway companies to furnish certain statements to clerks of municipalities.

26. Every Railway Company shall annually transmit, on or before the first day of February, (*e*) to the Clerk of every Municipality in which any part of the roadway or other real property of the Company is situated, a statement showing:—

1. The quantity of land occupied by the roadway, and the actual value thereof, according to the average value of land in the locality, as rated on the assessment roll of the previous year;

2. The real property, other than the roadway in actual use and occupation by the Company, and its value; and

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or other class, and if the second, is an evasion of the statute. See remarks in 9 U. C. L. J. 232.

(*c*) This is essential for the preservation of the relation of the lots to each other, so as properly to adjust the burden of taxation in the event of the sale of some portion thereof for taxes.

(*d*) The preceding section provides for the assessment of vacant land, or land used as a farm, garden or nursery, and not in immediate demand for building purposes. This section applies to land not held for purposes of sale, but *bona fide* inclosed and used as a paddock, park, lawn, garden or pleasure ground, used in connection with a residence or building; in which case the valuation is to be, not as for purposes of sale, but for the purpose for which the land is used, reference being had to its position and local advantages. This is to be done by assessing such land, with the residence or building, at a valuation which, at six per cent. per annum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth. See *Dudman* v. *Vigar*, L. R. 6 H. L. C. 212.

(*e*) *On or before*, &c. See note *y* to sec. 240 of The Municipal Act.

3. The vacant land not in actual use by the Company, and the value thereof, as if held for farming or gardening purposes;

Duties of clerks thereon.

And the Clerk of the Municipality shall communicate such statement to the Assessor, who shall deliver at, or transmit by post to, any station or office of the Company a notice addressed to the Company of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, showing the amount for each description of property mentioned in the above statement of the Company; (*f*) and such statement and notice respectively shall be held to be the statement and notice required by the thirty-seventh and forty-first sections of this Act. (*g*) 32 V. c. 36, s. 33.

(*f*) Duties are cast upon the Railway Company, the Clerk of the Municipality, and the Assessor.

The Railway Company must annually transmit to the Clerk of the Municipality in which any part of the road or other real property of the company is situate, a statement describing—

1. The actual value of land occupied by the road in the Municipality, according to the average value of land as rated on the roll of the previous year in the locality.
2. The value of *all* the real property of the Company, *other than the roadway;*
3. The vacant land not in actual use by the company, and the value thereof, as if held for farming or gardening purposes.

The Clerk must communicate the foregoing statement to the Assessor.

The Assessor must deliver at, or transmit by post to, any station or office of the company, a notice of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, distinguishing the value of the land occupied by the road, and the value of the other real property of the Company. It is only the land occupied by the road (not the superstructure) that is liable to assessment *The Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.*, 17 U. C. Q. B. 262; *Toronto* v. *Great Western Railway Co.*, 25 U. C. Q. B. 570. The assessment of the land must be according to the average value of land in the locality. *Great Western Railway Co.* v. *Ferman*, 8 U. C. C. P. 221.

(*g*) The statement from the Railway Company to the Municipality need not be in any particular form. *Great Western Railway Co.* v. *Ferman*, 8 U. C. C. P. 221. And the delivery of the statement by the Assessor to the Company of the amount at which he has assessed the real property of the Company is necessary, to enable the Company, if dissatisfied, to appeal. *London* v. *Great Western Railway Co.*, 16 U. C. Q. B. 500; *Nicholls et al.* v. *Cumming*, 25 U. C. C. P. 169. The omission of the Assessor to distinguish in his notice to a Railway Company between the value of the land occupied by the road, and

Proceedings in case of non-resident lands.

27. As regards the lands of non-residents who have not required their names to be entered in the roll, (*h*) the Assessors shall proceed as follows:—

To be inserted in roll separately.

1. They shall insert such land in the roll separated from the other assessments, and shall head the same as "*Non-residents' Land Assessments.*" (*i*)

When not known to be subdivided into lots.

2. If the land is not known to be subdivided into lots, it shall be designated by its boundaries or other intelligible description. (*j*)

When known to be subdivided into lots.

3. If it is known to be subdivided into lots, or is part of a tract known to be so subdivided, the Assessors shall designate the whole tract in the manner prescribed with regard to undivided tracts; and, if they can obtain correct information of the subdivisions, they shall put down in the roll, and in a first column, all the unoccupied lots by their numbers and names alone, and without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest; in a second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation; in a third column, and opposite to the quantity, they shall set down the value of such quantity, and, if such quantity is a full lot, it shall be sufficiently designated as such by its name or number, but if it is part of a lot, the part shall be designated in some other way whereby it may be known. (*k*) 32 V. c. 36, s. 34.

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their other real property, as required by the Act, does not absolutely void the assessment. *Great Western Railway Co.* v. *Rogers*, 27 U. C. Q. B. 214. It is only the subject of complaint to the Court of Revision. *S. C.* 29 U. C. Q. B. 245.

(*h*) See sec. 3 of this Act, and notes thereto.

(*i*) No action will lie for the recovery of taxes against a non-resident who has not required his name to be entered on the roll. See note *f* to sec. 3. The only remedy of the Municipality is against the land itself. *Ib.*

(*j*) If the land is not *known*, *&c.* It is the duty of the Assessor, under sec. 12, Nos. 8 and 9, to enter the number of the concession, name of street, or *other* designation of the *local* division in which the real property is situate, and the number of lot, house, &c., in *such* division. The object is to have some intelligible local description. Here it is enacted that if the land be *not* known to be subdivided into lots, it *shall* be designated by its boundaries, or *other* intelligible description.

(*k*) It is the duty of the Assessors, if they can obtain correct information as to the subdivisions, to put down in separate columns—

Mode of Assessing Personal Property.

How person deriving income from any trade or profession to be assessed.

28. Subject to the provisions of the seventh section, no person deriving an income exceeding four hundred dollars per annum from any trade, calling, office, profession or other sourse whatsoever, (*l*) not declared exempt by this Act, (*m*) shall be assessed for a less sum as the amount of his net personal property than the amount of such income during the year then last past, in excess of the said sum of four hundred dollars, but no deduction shall be made from the gross amount of such income, by reason of any indebtedness, save such as is equal to the annual interest thereof; and such last years' income, in excess of the said sum of four hundred dollars, shall be held to be his net personal property, unless he has other personal property liable to assessment, in which case such excess and other personal property shall be added together and constitute his personal property liable to assessment. (*n*) 32 V. c. 36, s. 35.

Personal property of corporate companies not to be assessed.

29. The personal property of an incorporated Company shall not be assessed against the Company, but each shareholder shall be assessed for the value of the stock or shares

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1. All unoccupied lots by their numbers and names alone, without the names of the owners, beginning at the lower number and proceeding in numerical order to the highest.

2. The quantity of land in each lot liable to taxation.

3. The value of such quantity.

If the quantity be a full lot, it shall be designated as such by its name or number. If a part of a lot, the part shall be designated in some *other* way *whereby it may be known.*

(*l*) See note *p* to sec. 352 of The Municipal Act.

(*m*) See sec. 6, subs. 13, 15, 16, 17, 18, 22, 23 and 24 of this Act, and notes thereto, as to the incomes which are exempt from taxation.

(*n*) This section is in its language somewhat involved. It is the first of the series of sections as to "*the manner* of assessing personal property." Income for the past year is to a certain extent made by the section the gauge of personal property for the current year. See note *p* to sub. 14 of sec. 56. The substance of the enactment appears to be, that a person having personal property liable to assessment exceeding in value the amount of his income for the past year, less deduction of interest on debt, he shall be assessed for the real value of such personal property; but no matter how much less in value his personal property be, in no case shall he be assessed for less than the amount of income, less interest on debt, as the net value of personal property. See *In re Yarwood*, 7 U. C. L. J. 47.

held by him as part of his personal property, unless such stock is exempted by this Act. (*o*)

Gas companies, etc.

2. In Companies investing their means in gas works, waterworks, plank and gravel roads, manufactories, hotels, railways and tram roads, harbours or other works requiring the investment of the whole or principal part of the stock in real estate already assessed for the purpose of carrying on such business, the shareholders shall only be assessed on the income derived from such investment. (*p*) 32 V. c. 36, s. 36.

Personal property of partnerships, how

30. The personal property of a partnership shall be assessed against the firm at the usual place of business of the partner-

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(*o*) The goods and chattels of an incorporated company having its locality and existence without the Province, but which goods and chattels are within the Province, are under the operation of this section exempt from taxation. *Western of Canada Oil Lands and Works Co.* v. *The Corporation of the Township of Enniskillen*, 28 U. C. C. P. 1

(*p*) If the capital, or principal part of the capital stock be invested in real estate for the purpose of carrying on the business, or for any other purpose, such real estate is subject to assessment, and being so, it is deemed fair that shareholders shall only be assessed on the income derived from the investment. The Suspension Bridge across the Niagara River, between the Province of Ontario and State of New York, owned by a Company, being real estate, was improperly assessed as personal estate. It was argued that it ought not to be assessed as real estate because the shares of the shareholders are liable to taxation. But the Court refused to give effect to the argument. *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194. Wilson J. in delivering judgment, said; "It was also said it would be unfair to assess the bridge as real estate against the Company, because it is held by shareholders, and their *shares* are by the statute assessable against them respectively as personal property. and so the same property would be twice taxed and paid for. No doubt this is so; but we cannot help that. The land and erections are not less real estate because the interest of the owners in the same is rated as personal estate. The land is in the town of Clifton, where it should be rated and paid for. Where the shareholders are we do not know. There may not, so far as we judicially know, be one of them in the Province; or their shares may not be worth one farthing, and may not be computed by them in the return made of their personal property. But if it were otherwise, it could make no difference, for the reason against this property being assessed as land is quite as good a reason for the shares not being assessed as personal estate; and so, if the argument be good, it should escape taxation altogether. . . The 37th section of the Assessment Act (same section 29 of this Act) shews that this bridge should be considered as real estate, in which case, as the principal part of the stock consists of real estate, the shareholders are liable to be only assessed on the income derived from their investment. *Ib.* 199, 200.

ship, (*q*) and a partner in his individual capacity shall not be assessable for his share of any personal property of the partnership which has already been assessed against the firm. 32 V. c. 36, s. 37. and where to be assessed.

2. If a partnership has more than one place of business, (*r*) each branch shall be assessed, as far as may be, in the locality where it is situate, for that portion of the personal As to partnerships having more than one business locality.

(*q*) It is no easy matter to say where the usual place of business of a partnership is, where the business is such that it cannot be conducted in one place, but necessarily in several places. Thus: Suppose a lumbering firm having an office in Toronto, getting out logs during the winter in different parts of the Province, floating the logs in spring in other parts of the Province, and in summer selling the logs in Quebec or at some other point out of the Province. The business is that of getting out logs and selling them at a profit. It is apprehended that the business ought to be said to be carried on on where the principal office or head office is situate. In *Taylor* v. *The Crowland Gas Co.*, 11 Ex. 1, it was held that a Corporation *dwells* where it *carries on its business*. In *Minor* v. *London and North-Western Railway Co.*, 1 C. B. N. S. 325, it was held that a Railway Company does *not* carry on its business at a receiving house or booking office kept by an agent. In *Shields* v. *Great Northern Railway Co.*, 7 Jur. N. S. 631, it was held that a Railway Company does not carry on business at any place *other* than its principal office at which its business is managed. In *Brown* v. *London and North-Western Railway Co.*, 4 B. & S. 326, it was held that this means their *general* business—not where they carry on a part or even a material part of their business. See further, *Adams* v. *Great Western Railway Co.*, 30 L. J. Ex. 124; *Mitchell* v. *Hender*, 18 Jur. 430; *McMahon* v. *The Irish North Western Railway Co.*, 19 W. R. 212; *Ahrens* v. *McGilligat, The Grand Trunk Railway Co., garnishees*, 23 U. C. C. P. 171. In *Ex parte Charles*, L. R. 13 Eq. 638, where manufacturers of steel and other articles at Sheffield, who rented three rooms in London, two of which were occupied by an agent who kept samples and solicited orders, it was held that the business was carried on at Sheffield and not at London. In *Attorney-General* v. *Sulley*, 4 H. & N. 769, it was held that a member resident in London of a mercantile firm established at New York for the sale of goods, and who made purchases in England for the firm in New York, was liable to income tax, but the decision was afterwards reversed. 5 H. & N. 711. Cockburn, C. J., in delivering the judgment of the Court of Error, said: "The question is, whether there is a carrying on or exercise of the trade in this country. I think there is not, looking at the sense in which the term is used, and having regard to the subject matter of the statute. Wherever a merchant is established in the course of his operations, his dealings must extend over various places. He buys in one place and sells in another. But he has one *principal* place in which he may be said to trade, viz., *where his profits come home to him*. That is *where* he exercises his trade." *Ib.* 717. See further, *Attorney-General* v. *Alexander*, L. R. 10 Ex. 20.

(*r*) See preceding note.

property of the partnership which belongs to that particular branch ; (*s*) and if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, and shall be required to produce a certificate at each of the other places of business of the amount of personal property assessed against it elsewhere. 32 V. c. 36, s. 38.

Where parties carrying on trade, etc., to be assessed for personal property.

31. Every person having a farm, shop, factory, office or other place of business where he carries on a trade, profession, or calling, shall, for all personal property owned by him, wheresoever situate, be assessed in the Municipality or Ward where he has such place of business, at the time when the assessment is made. (*t*) 32 V. c. 36, s. 39.

(*s*) The words are, that *each* branch shall be assessed, *as far as may be*, in the locality where it is situate, for *that portion* of the personal property of the partnership which belongs to that *particular branch*. The difficulty will be to say, *first*, whether there is a branch; and secondly, what portion of the personal property belongs (or appertains) to that particular branch. Everything will depend upon the nature, character and extent of the business, and the mode in which the same is conducted. In almost every ordinary mercantile business there will be considerable difficulty in applying the section. It is provided that, if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, in which event it shall be so assessed and shall be required to produce a certificate at each place of business of the amount of personal property assessed against it elsewhere. Whether this will apply to a firm having its principal place of business out of the Province, is a question which must rest for the decision of the Courts. It has been held that "steamboating" is a species of business which can only be assessed as a whole, where there is but one boat ; and that plying between two points in different Counties, such a business is not to be understood as consisting of several branches within the meaning of this section. *In re Hatt*, 7 U. C. L. J. 103. The question was raised whether the owner of a road having toll gates in different Municipalities is a person having different places of business, but no decision was given on the point. *In re Hepburn and Johnson*, 7 U. C. L. J. 46.

(*t*) It is enacted that every person having—

1. A farm ;
2. Shop ;
3. Factory ;
4. Office ;
5. Or *other* place of business,

} *where* he carries on a trade, profession or calling,

shall, for all personal property owned by him, *wheresoever situate*, be assessed in the Municipality or Ward where he has such place of business at the time when the assessment is made. A man may have his place of business in one Municipality and reside in another, or in

When the party has two or more places of business.

2. If he has two or more such places of business in different Municipalities or Wards, he shall be assessed at each for that portion of his personal property connected with the business carried on thereat; or, if this cannot be done, he shall be assessed for part of his personal property at one, and part at another of his places of business; but he shall, in all such cases, produce a certificate at each place of business of the amount of personal property assessed against him elsewhere. (*u*) 32 V. c. 36, s. 40.

When the party has no place of business.

32. If any person has no place of business, he shall be assessed at his place of residence. (*w*) 32 V. c. 36, s. 41.

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one County and reside in another. So long as resident in the Province, and having only one place of business, there might be no difficulty in assessing him at that place of business for his personal property wheresoever situate within the Province. But if he have personal property *out of the Province* there would be great difficulty in holding that such last-mentioned property should be assessed at his place of business. Such a holding would certainly be contrary to the opinions expressed by the learned Chief Justice who delivered judgment in *Attorney-General* v. *Sulley*, 5 H. & N. 711. See note *q* to sec. 30; see also *In re Goodhue*, 19 Grant 366. In the last-mentioned case, Strong, V.C., intimated that the testator's grandchildren, domiciled without the Province of Ontario, could not be effected by any Act of the Provincial Legislature. In *Duer* v. *Small*, 4 Blatchf. 263, it was held that the statute of a State, providing that persons doing business in the State as merchants, bankers or otherwise, though not *residents* of the State, should be assessed on all sums invested in their business, the same as if they were residents of the State, was constitutional. As to the meaning of the words "office" and "officer," see *The King* v. *Bridgewater*, 6 A. & E. 398; *The Queen* v. *The Local Government Board*, L. R. 9 Q. B. 148.

(*u*) See note *s* to sec. 30.

(*w*) It is by sec. 12, sub. 1, made the duty of an Assessor to set down the names and surnames in full of all taxable persons *resident* in the Municipality who have taxable property therein. But as a person may be taxed at his place of business and yet not be a resident of the Municipality, it follows that sec. 12, sub. 1, must be read as somewhat amplified. See sec. 31. Unless, however, the person taxed have either a place of business or a place of residence in the Municipality he cannot be legally placed on the roll. *Cartwright* v. *Kingston*, 6 U. C. L. J. 189. Prior sections to this provide for assessment at the place or places of business. Thus, if any person resident in the Municipality have no place of business, he shall be assessed at his place of residence. The word "residence" in different statutes may have different meanings, according to the subject matter and purpose of the statutes. Where the lessees of a road running through the Village of St. Thomas, lived in the Township of Yarmouth, it was held that they could not be assessed in St. Thomas for their interest in the road. *In re Hepburn and*

Salaries, &c., to be assessed at the place where earned.

33. Every person who holds any appointment or office of emolument to which an annual salary, gratuity or other compensation is attached, and performs the duties of such appointment or office within a Municipality in which he does not reside, shall be assessed in respect of the amount of such salary, gratuity or other compensation at the place where he performs such duties, and he shall not be assessable therefor at his place of residence, (*x*) but, if required, shall procure a certificate of being otherwise assessed under the provisions of this section: but this section shall not apply to County municipal officers. 37 V. c. 19, s. 6.

When personalty of non-residents may be assessed against the agent therefor.

34. The personal property of a person not resident within this Province, shall be assessed in the name of and against any agent, trustee or other person who is in the control or possession thereof, and shall be deemed to be the individual property of such agent, trustee or other person, for all objects within this Act. (*y*) 37 V. c. 19, s. 5.

Separate assessment of joint owners possessors.

35. In case of personal property, owned or possessed by or under the control of more than one person resident (*a*) in the Municipality or Ward, each shall be assessed for his share only, or if they hold in a representative character, (*b*) then each shall be assessed for an equal portion only. (*c*) 32 V. c. 36, s. 43.

Johnston, 7 U. C. L. J. 46. So where the appellant, whose residence was London, though in the Village of St. Thomas at the time of the assessment, was only temporarily there for the purpose of winding up the business of an agency of the Bank of Montreal at that place, it was held that he could not be taxed on his income in St. Thomas. *In re Ashworth*, 7 U. C. L. J. 47. So where a farmer, resident of Vienna, having taken a house at Ingersoll, in another Municipality, whither the greater part of his household effects had been removed, and most of his family resided at the time of the assessment, although he temporarily remained and slept in his former domicile during the night, it was held that he could not be legally assessed in Vienna. *Marr* v. *Vienna*, 10 U. C. L. J. 275.

(*x*) The intention of the Act is that a person holding an office or having a place of business shall, for personal property, be assessed at the place where the office or place of business is situate, and not at his place of residence. See note *t* to sec. 31. This section is in affirmance of that principle.

(*y*) See note *d* to sec. 36.

(*a*) *Resident*, &c. See note *w* to sec. 32 of this Act.

(*b*) See note *d* to sec. 36 of this Act.

(*c*) This apparently intends the assessment to be separate as to

36. Personal property in the sole possession or under the sole control of any person as trustee, guardian, executor or administrator, shall be assessed against such person alone. (*d*) 32 V. c. 36, s. 42. Cases of executors, etc.

2. Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, (*e*) with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment, (*f*) and he shall be assessed for the Parties assessed as trustees, etc., to have their representative character attached to their names.

each; each to be assessed for an equal portion *only*. Why this should be so, it is difficult to understand. It may be in case of the persons assessed. See note *d*, *infra*. If all were jointly assessed, then each would be severally as well as jointly liable for the whole amount of the assessment. But where each is only assessed "for a portion," each must be discharged on payment of the taxes for *that* portion.

(*d*) Trustees, guardians, executors and administrators are supposed to have the means of reimbursing themselves out of the estate moneys paid for taxes. Though described on the roll in their representative capacity it would seem that they are personally liable for the payment of taxes. "It may, no doubt, operate hardly, but not more so than the seizure of any other person's goods which may happen to be in the possession of the person assessed." *Per* Robinson C. J., in *Dennison* v. *Henry*, 17 U. C. Q. B. 276. So a person appearing upon the books of a bank as the legal holder of its shares is, upon the failure of the bank, held liable for the debts of the bank to the extent of the shares held by him, although he received and holds the shares as collateral security for a loan to a shareholder or otherwise in trust. See *Crease et al.* v. *Babcock et al.*, 10 Met. (Mass.) 525; *Grew* v. *Breed et al.*, 10 Met. (Mass.) 569; *Adderly* v. *Storm*, 6 Hill. (N. Y.) 624; *Rosevelt* v. *Brown*, 11 N. Y. 148; *Re Empire City Bank*, 18 N. Y. 199; *Hale* v. *Walker*, 31 Iowa 344; *S. C.* 7 Am. 137. Personal property of a person not resident within the Province must be assessed in the name of and against any agent, trustee or other person who is in the control or possession thereof, and is to be deemed the individual property of such trustee, agent or other person for all objects within the Assessment Act. See s. 34. *The People* v. *Gardner*, 51 Barb. (N.Y.) 352. It was held that a resident of New York was not liable to be assessed there for capital invested in other States upon securities taken and held there by her agents. In *Catlin* v. *Hull*, 21 Vt. 152, it was held that where notes were left by a resident of the State of New York in the State of Vermont in the hands of the agent for management, collection, and investment that they might be properly assessed in Vermont. But in *Hunter* v. *Board of Supervisors*, 11 Am. 132, it was held that where a resident of Iowa had deposited for safe keeping in Illinois promisory notes collected by himself in Iowa that they were liable to assessment in Iowa.

(*e*) See note *d* to sec. 34.

(*f*) An administrator, though assessed in his own name for real

value of the real and personal estate held by him, whether in his individual name, or in conjunction with others in such representative character, at the full value thereof, or for the proper proportion thereof, if others resident within the same Municipality are joined with him in such representative character. (*g*) 32 V. c. 36, s. 44.

General Provisions.

Particulars respecting real property to be delivered to assessors in writing by the parties to be assessed.

37. It shall be the duty of every person assessable for real or personal property in any local Municipality, to give all necessary information to the Assessors, and if required by the Assessor, or by one of the Assessors if there is more than one, he shall deliver to him a statement in writing, signed by such person (or by his agent, if the person himself is absent,) containing all the particulars respecting the real or personal property assessable against such person, which are required in the assessment roll; and if any reasonable doubt is entertained by the Assessor, of the correctness of any information given by the party applied to, the Assessor shall require from him such written statement. (*i*) 32 V. c. 36, s. 45.

Statements given by parties not

38. No such statement shall bind the Assessor, or excuse him from making due enquiry to ascertain its correctness; (*k*)

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property belonging to the estate, cannot qualify upon it as a member of the Council. *The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128.

(*g*) It is quite plain from the reading of this section that there ought to be no confusion between the assessment of property belonging to a man in his own right, and that which he holds in a representative capacity. When holding property in the latter capacity, he is to be assessed as such, *and* the assessment is to be carried out separate from his individual assessment. So if others resident within the Municipality be joined with him in such representative character.

(*i*) The duty is—

1. To give all *necessary* information to the Assessors.
2. (If required by the Assessors or one of them) To deliver a written statement signed by such person (or by his agent if the person himself is absent) containing *all the particulars* respecting the real and personal property assessable against such person which are required in the assessment roll. See sec. 12. And
3. If any *reasonable doubt* be entertained by the Assessor of the correctness of any information given by the party applied to the Assessor *shall* require from him such written statement. But no such statement is binding on the Assessor. Sec. 38.

(*k*) The stetement, whether written or verbal, is intended for the information of the Assessor. But he is still bound to make enquiry,

and, notwithstanding the statement, the Assessor may assess such person for such amount of real or personal property as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the Assessor has reason to believe that he is not entitled to be placed on the roll or to be assessed for such property. (*l*) 32 V. c. 36, s. 46.

Binding on assessors.

39. In case any person fails to deliver to the Assessor the written statement mentioned in the two preceding sections when required so to do, or knowingly states anything falsely in the written statement required to be made as aforesaid, (*m*) such person shall, on complaint of the Assessor, and upon conviction before a Justice of the Peace having jurisdiction within the County wherein the Municipality is situate, forfeit and pay a fine of twenty dollars, to be recovered in like manner as other penalties upon summary conviction before a Justice of the Peace. 32 V. c. 36, s. 47.

Penalty for no giving statement or making false statement.

40. To prevent the creation of false votes, where any person claims to be assessed, or claims that any other person should be assessed, as owner or occupant of any parcel of

Assessor to make inquiries before assessing persons

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or to be otherwise satisfied of its correctness. The receipt of the statement is not intended to be a substitute for but an aid to diligence by the Assessor.

(*l*) The Assessor is to make such an assessment as he believes to be just and correct. Some men, owning assessable property, may desire to be assessed at too small a sum, in order to escape taxation. Others, having property, but not of sufficient value to qualify them either as Councillors or voters, may desire to be assessed at too large an amount, in order either to be a candidate for office or a duly qualified voter. Others, having no assessable property of any kind, may, for either of the purposes last mentioned, desire to be assessed for property when they ought not to be assessed at all. It is the duty of the Assessor to be astute in preventing erroneous assessments, from whatever cause designed.

(*m*) The penalty of twenty dollars may be enforced in case of—

1. Failure to deliver the *written* statement when required by the Assessor;
2. *Knowingly* stating therein *anything false* therein.

The written statement is only to be delivered when required by the Assessor. If he have reasonable doubt as to the correctness of verbal information given to him, it is his duty to require the written statement. See note *i* to sec. 37. The latter should of course, be as nearly as possible a true statement. It is intended to be acted upon by the Assessor, and may mislead him, to the advantage of the person giving it. Hence the imposition of a penalty for the giving of a *knowingly* false statement.

claiming to be assessed.

land, or as possessing the income which entitles him to vote in the Municipality at any election, and the Assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, it shall be the duty of the Assessor to make reasonable enquiries before assessing such person. (*n*) 39 V. c. 11, s. 28. *See also Rev. Stat.* c. 9, s. 29.

Assessors to give notice to parties of the value at which their property assessed.

41. Every Assessor, before the completion of his roll, shall leave for every party named thereon, resident or domiciled, or having a place of business within the Municipality, and shall transmit by post to every non-resident who has required his name to be entered thereon, and furnished his address to the Clerk, a notice of the sum at which his real and personal property has been assessed, according to the form of Schedule B., annexed to this Act, (*nn*) and shall enter on the roll oppo-

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(*n*) The proper discharge of the duties of the Assessor are of the greatest possible importance to the true working of the Municipal machinery. The duty here cast upon the Assessor is imperative. Whenever the Assessor has reason to suspect that the person claiming the vote, or for whom the claim is made, it is his duty to make reasonable enquiries before assessing the person. The neglect of the Assessor to perform this or any other duty cast upon him by The Assessment Act subjects him to a penalty. See sec. 189. Upon a prosecution for the penalty there will be two enquiries—

1. Whether the Assessor had reason to suspect.
2. Whether, having reason to suspect, he made reasonable enquiries before assessing.

In order to subject the Assessor to the penalty it is not necessary to prove that he acted from any corrupt motive. See *Tarr* v. *McGahey*, 7 C. & P. 380.

When an Assessor has reasonable notice before he returns the roll that a change in occupancy has been made, and he omits to make the necessary changes on the roll it may be probably considered when the Assessor fails to do this that he has wrongfully refused to insert the proper name on the roll. *Per* Richards, C. J., *In re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 452.

(*nn*) The object of this notice is to enable the person for whom intended, if dissatisfied with the sum at which his real and personal property has been assessed, to appeal therefrom. Considered in this light, it is of great importance that it should be left or transmitted by post (as the case may be), according to the direction of the statute. If neglected, it would seem that the Municipal Corporation would not be in a position to enforce payment of the taxes, either by distress or action. *London* v. *The Great Western Railway Co.*, 16 U. C. Q. B. 500. In *Nicholls et al.*, v. *Cumming*, 25 U. C. C. P. 169. The plaintiffs, being persons liable to assessment were served by the assessors with a notice in the form prescribed to the effect that they were assessed for 1874 at the sum of $20,900 and

site the name of the party, the time of delivering or transmitting such notice, which entry shall be *prima facie* evidence of such delivery or transmission. 32 V. c. 36, s. 48.

When assessment roll to be completed.

42. Subject to the provisions of the forty-fourth and forty-sixth sections, every Assessor shall begin to make his roll in each year not later than the fifteenth day of February, and shall complete the same on or before the thirtieth day of April, (*r*) and shall attach thereto a certificate signed by

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without any further or other notice being served on them they were entered on the assessment roll as finally revised by the Court of Revision for $43,400, the Court of Common Pleas held that they were not liable to be taxed on the last named sum. This decision was reversed by the Court of Appeal in *S. C.* 26 U. C. C. P. 323, but the latter was in its turn reversed, and the decision of the Common Pleas restored by the Supreme Court of Canada and the Superior Court. *Ib.* 395.

(*r*) In each year every Assessor must now begin to make his roll not later than the fifteenth day of February, and must complete the same on or before the thirtieth day of April, and on the first day of May, must deliver the completed roll to the Clerk of the Municipality, with the certificates and affidavits required by law attached. Sec. 43. The duty, so far as the Assessors are concerned, to make and complete the rolls by the days fixed for the purpose, is imperative. See note *g* to sec. 240 of the Municipal Act. One reason for it being so in the case of Assessors is, that persons desirous of appealing from their assessments are only allowed fourteen days—not after the return of the roll, but "*after the time fixed for the return of the roll*,"—to give notice of appeal. Sec. 56, sub. 2 of this Act. If an Assessor delay to return his roll for several days after the time fixed for the return of his roll, he abridges by so many days the time allowed by the statute for giving notice of appeal against his assessments. If the delay be the result of *wilful* omission on the part of the Assessor, he is made liable upon conviction—

1. To a *fine* not exceeding $200, and to imprisonment until the fine be paid, in the common gaol for a period not exceeding six months.

2. Or, to *both* fine and imprisonment, in the discretion of the Court. See sec. 191 of this Act.

But if the delay be the result of *other* than willful omission, still the Assessor is liable to forfeit such sum as the Court shall order and adjudge not exceeding $100. See sec. 189 of this Act.

But the non-return of the roll by the day named does not invalidate the assessment. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126; *The Queen* v. *Ingall*, L. R. 2 Q. B. Div. 199. See further note *g* to sec. 240 of The Municipal Act. If there be a change of occupancy, and the assessor have notice of it, he may before the return of the roll make a corresponding alteration on the roll. *In re McCulloch and the County Judge of Leeds and Grenville*, 35 U. C. Q. B. 449.

him, and verified upon oath or affirmation in the form following: (*s*)

Certificate attached to roll.

"I do certify (*t*) that I have set down in the above assessment roll "all the real property liable to taxation situate in the Municipality "(*or* Ward) of (*as the case may be*) and the true actual value thereof in "each case, according to the best of my information and judgment: "and also that the said assessment roll contains a true statement of "the aggregate amount of the personal property, or of the taxable "income, of every party named on the said roll; and that I have "estimated and set down the same according to the best of my infor- "mation and belief; and I further certify, that I have entered thereon "the names of all the resident householders, tenants and freeholders, "and of all other persons who have required their names to be en- "tered thereon, with the true amount of property occupied or owned, "or of income received by each, and that I have not entered the "name of any person whom I do not truly believe to be a house- "holder, tenant or freeholder, or the *bona fide* occupier or owner of "the property, or in receipt of the income set down opposite his "name, for his own use and benefit; and that the date of delivery "or transmitting the notice, required by section forty-one of *The "Assessment Act* in every case truly and correctly stated in the said "roll; and I further certify and swear (*or* affirm, *as the case may be*) "that I have not entered the name of any person at too low a rate in "order to deprive such person of a vote, or at too high a rate in order "to give such person a vote, or for any other reason whatever; and "that the amount for which each such person is assessed upon the "said roll truly and correctly appears in the said notice delivered or "transmitted to him as aforesaid."

32 V. c. 36, s. 49; 36 V. c. 2, s. 4; 37 V. c. 19, s. 8, 40 V. c. 8, s. 55.

(*s*) The duty of Assessors is not only to return the roll by the time limited for the purpose, but before doing so to attach thereto a certificate signed by them respectively, *and* verified upon oath or affirmation in the form given. See note *s* to sec. 320 of The Municipal Act. The omission of the certificate does not invalidate the assessment. See note *p* to sec. 18.

(*t*) The certificate, it will be observed, embraces the following points:

1. That the Assessor set down in the roll *all* the real property liable to taxation situate in the Municipality or Ward (*as the case may be.*)
2. That he set down the *true actual value thereof* in each case, according to the best of his information and judgment.
3. That the roll contains a true statement of the *aggregate amount* of the *personal* property, or of the *taxable income*, of *every* party named on the roll.
4. That he has estimated and set down the same according to the best of his information and belief.

43. Every Assessor shall, on or before the first day of May, deliver to the Clerk of the Municipality such assessment roll, completed and added up, with the certificates and affidavits attached; (*u*) and the Clerk shall immediately upon the receipt of the roll, file the same in his office, and the same shall, at all convenient office hours, be open to the inspection of all the householders, tenants, freeholders and income

Assessment rolls to be delivered to clerks of municipalities, etc.

5. That he entered thereon the names of *all* the resident householders, tenants and freeholders, and of all *other* persons who have required their names to be entered thereon, with the true amount of property occupied or owned, or of the income received, by *each*.

6. That he has not entered the name of any person whom he did not *truly believe* to be a householder, tenant or freeholder, or the *bona fide* occupier or owner of the property, or in receipt of the income, set down opposite his name for his own use and benefit.

7. That the date of delivery or transmitting the notice required by section 41 of the Assessment Act is in every case *true* and *correctly stated* in the roll.

8. That he has not entered the name of any person at too low a rate in order to deprive such person of a vote, or at too high a rate in order to give such person a vote, or for any *other* reason whatever.

9. That the amount for which each such person is assessed upon the said roll truly and correctly appears in the notice delivered or transmitted to him.

In the case of *Haslemere* 1 Sommers' Tracts, 374, 1680, it was said that "the making of votes by such means (fraudulent deeds) was a very evil and unlawful thing, and tended to the destruction of the Government and debauching of Parliament," and that "it was needless to think such practices were part of the constitution of our Government, or to imagine that persons whom we entrust with our lives and fortunes ought to be made and chosen by such evil devices." See 1 Peckwell 319. In England at least two statutes have been passed to prevent the making of conveyances for such purposes. These are the statutes 7 & 8 Will. III. cap. 25, sec. 7, and 10 Anne cap. 23. But notwithstanding both these statutes, it was held that a conveyance of land by one vendor to several vendees for a *bona fide* consideration is valid, although the avowed object of the vendor was to multiply votes, and that of the vendees to acquire the right of voting. *Alexander* v. *Newman*, 2 C. B. 122. Whether or not there is a fraud in the making of the grant is a question of fact, which must in all cases be decided by the Revising Court. *Newton* v. *Mobberly*, *1b.* 203.

(*u*) It is by the previous section made the duty of Assessors "to *make and complete*" their rolls by a day fixed for the purpose. Here it is made their duty *to deliver* to the Clerk the assessment roll completed and added up, with the certificates and affidavits attached, See note *r* to sec. 42 of this Act.

voters resident, owning or in possession of property, or in receipt of incomes in the Municipality. (*v*) 32 V. c. 36, s. 50; 37 V. c. 19, s. 8.

Special provisions relating to Counties, Cities, Towns and Villages.

Time for taking the assessment and revising the rolls in cities, &c.

44. In Cities and Towns separate from the County, the Council, instead of being bound by the periods above mentioned for taking the assessment, and by the periods named for the revision of the rolls by the Court of Revision, and by the County Judge, may pass by-laws for regulating the above periods, as follows, (*w*) that is to say:—For taking the assessment between the first day of July and the thirtieth day of September, the rolls being returnable in such case to the City or Town Clerk on the first day of October; and in such case the time for closing the Court of Revision shall be the fifteenth day of November, and for final return by the Judge of the County Court the thirty-first day of December; and the assessment so made and concluded may be adopted by the Council of the following year as the assessment on which the rate of taxation for said following year shall be levied, and in the year following the passing of the by-law, the Council may adopt the assessment of the preceding year as the basis of the assessment of that year. 39 V. c. 33, s. 1 (2).

(*v*) One object of the delivery of the roll to the Clerk, so far as this section is concerned, is that the same may be filed and open to the inspection of all the householders and freeholders resident or owning property in the Municipality. See *The King* v. *Arnold*, 4 A. & E. 657; *The Queen* v. *Blagge*, 10 Jur. 983. This is in order to enable the persons designated, to examine the roll, and if not found correct to appeal against the same in the manner directed and within the time limited for the purpose. Sec. 56. The Court or a Judge no doubt would, on a proper application, grant a *mandamus* to any householder, tenant or freeholder resident, owning or in possession of property in the Municipality, who, at a proper time and in a proper manner demanded inspection of the Clerk, but was refused. See *The King* v. *Newcastle-upon-Tyne*, 2 Stra. 1223; *The King* v. *Babb*, 3 T. R. 579; *The King* v. *Shelly*, *Ib.* 141; *The King* v. *Lucas*, 10 East. 235; *The King* v. *Tower*, 4 M. & S. 162; *The King* v. *Arnold*, 4 A. & E. 657; see also, *Tapping on Mandamus*, 52, 95.

(*w*) The periods for taking the assessment and for the revision of the rolls, are as a rule fixed, but this section authorizes exceptions in the case of Cities and Towns separate from the County. The Councils of those Municipalities have the power within certain limits, to regulate the periods for the services named.

Payment of taxes by instalments.

45. In Cities, Towns and incorporated Villages, the Council may further pass by-laws for making the taxes payable to the Treasurer by instalments; and may in such case impose an additional per centage, now applicable to default of taxes if paid in bulk, on default in any of the instalments in which the same may be made payable. (*x*) 39 V. c. 33, s. 1. (3)

County Council may pass by-laws for regulating the taking of assessment, &c.

46. County Councils may pass by-laws for taking the assessment in Towns, Townships and incorporated Villages, between the first day of February and the first day of July. (*y*)

2. If any such by-law extends the time for making and completing the assessment rolls beyond the first day of May, then the time for closing the Court of Revision shall be six weeks from the day to which such time is extended, and for final return by the Judge of the County, twelve weeks from that day. (*z*) 39 V. c. 33, s. 2.

COURT OF REVISION AND APPEAL.

When council consists of five members only.

47. If the Council of the Municipality (*a*) consists of not more than five members, such five members shall be the Court of Revision for the Municipality. 32 V. c. 36, s. 51.

(*x*) This, if fairly carried out, will be found a convenience to the taxpayer. The prompt payment of the instalments may be made a condition precedent to the enjoyment of the privilege intended to be conferred. Besides, it is in the power of the Municipal Council to impose a per centage on default of payment of any of the instalments. This may be a per centage "additional" to that now applicable to default of payment of taxes if payable in bulk.

(*y*) This is an exception to the general rule. See note *w* to sec. 44.

(*z*) See note *r* to sec. 42.

(*a*) By the B. N. A. Act, sec. 92, sub. 14, the power to make laws in relation to the administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, is vested exclusively in the Legislature of the Province. It is competent to the Provincial Legislature to provide for the establishment of inferior Courts, and to invest them with such jurisdiction and powers as may be deemed expedient. See *Gray* v. *The State*, 2 Harring. (Del.) 76; *Egleston* v. *City Council*, 1 Const. (S. C.) 45. And this has been so held in the United States, notwithstanding a constitution provisional that the judicial power of the State shall be vested in the District Courts and in Justices of the Peace, or other Courts or officers known to the law. See *Mayor* v. *Morgan*, 7 Martin, (La. N. S.) 1; *State* v. *Johnston*, 17 Ark. 407; *Seale* v. *Mitchell*, 5 Cal. 401; *Hickman* v. *O'Neal*, 10 Cal. 292; *Vassault* v. *Austin*, 36 Cal. 691; *Ex parte Stratman*, 39 Cal. 517; *State* v. *Young*, 3 Kansas, 445; *Shafer* v.

Mumma, 17 Md. 331; *Hutchings* v. *Scott*, 4 Halst. (N. J.) 218; *Waldo* v. *Wallace*, 12 Ind. 569; *Gulick* v. *New*, 14 Ind. 93; *The State* v. *Maynard*, 14 Ill. 419; *Beesman* v. *Peoria*, 16 Ill. 484; *Meagher* v. *County*, 5 Nev. 244. But inferior tribunals so constituted are to be restricted to the jurisdiction and to the exercise of the powers expressly given or necesssarily implied. *Zylstra* v. *Charleston*, 1 Bay. (S. C.) 382; *People* v. *Slaughter*, 2 Doug. (Mich.) 334. The section here annotated makes provision for a Court of Revision, so called because it is its duty, on proper application, to revise the assessment rolls in each local Municipality. If the Council consists of not more than five members, *such* members shall be the Court of Revision. If of more than five members, then, by the next section, the Council is to appoint five of its members to be the Court of Revision. The jurisdiction of the Court is, by sec. 53, "to try all complaints in regard to persons wrongfully placed upon or omitted from the roll, or assessed at too high or too low a sum." Whatever fairly comes under this language is within the jurisdiction of the Court. The roll as finally passed by the Court is, except as to cases appealed, and for which special provision is made (sec. 59,) to be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to the roll. Sec. 57 of this Act. It is only, however, to be so held as to matters within the jurisdiction of the Court. If the subject matter of complaint be within the jurisdiction of the Court, the party concerned must appeal to the Court, and has no other remedy. See *Milward* v. *Caffin*, 2 W. Bl. 1330; *Wilson* v. *Weller*, 1 B. & B. 57; *The King* v. *Hulcott*, 6 T. R. 583; *Commonwealth* v. *Leech*, 44 Pa. St. 332; *In re Canal and Walker Street*, 12 N. Y. 406; *The King* v. *Mayor of Bridgewater*, 6 A. & E. 339; *Ex parte Lee*, 7 A. & E. 139; *The Queen* v. *Poole*, *Ib.* 738; *The Queen* v. *Mayor of Norwich*, 8 A. & E. 633; *The Queen* v. *Lords of the Treasury*, 10 A. & E. 374; *Allen* v. *Sharpe*, 2 Ex. 352; *The Queen* v. *Mayor of Norwich*, 3 Q. B. 235; *Churchwardens of Birmingham* v. *Shaw*, 10 Q. B. 868; *Pedley* v. *Davis*, 10 C. B. N. S. 492; *Scragge* v. *London*, 26 U. C. Q. B. 263; *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194; *Barton* v. *Piggott*, L. R. 10 Q. B. 86. The Stat. 43 Eliz. cap. 2, sec. 1, enabled the overseers of every parish to raise, weekly or otherwise, by taxation of every *inhabitant*, &c., and of every *occupier* of lands, &c., competent sums of money for and towards the necessary relief of the lame, impotent, old, &c. By sec. 6 an appeal was given to the Court of Sessions in these words: "That if any person or persons shall find themselves grieved *with any sess or tax or other* act done by the said Churchwardens, &c., that then it shall be lawful for the Justices of the Peace, at their General Quarter Sessions, &c., to take order therein as to them shall be thought convenient, and the same to conclude and bind all the parties." In *Milward* v. *Caffin*, 2 W. Bl. 1330, the Court said that all that related to the assessment of land *not* in the occupation of the plaintiff was *coram non judice*, and the determination of the Justice's a nulity. This case was upheld in *Fletcher* v. *Wilkins*, 6 East. 285, 286, and *Hurrell* v. *Wink*, 8 Taunt. 369; *The King* v. *Welbank*, 4 M. & S. 222. In *Marshall* v. *Pitman*, 9 Bing. 595, the Court said that if the person aggrieved were an *inhabitant* possessing visible property, he was liable to be placed on the rate, although his ratable property turn out afterwards to amount

to nothing; and that his only remedy in such case was an appeal to the Justices. The contrary is the rule if the subject matter of the complaint be one over which the Court has no jurisdiction. See *Groenvelt* v. *Burwell*, 1 Ld. Rayd. 471; *Weaver* v. *Price*, 3 B. & Ad. 409; *Governors of Bristol Poor* v. *Wait*, 1 A. & E. 264; *Charleton* v. *Alway*, 11 A. & E. 993; *The Queen* v. *Mayor, &c., of Newbury*, 1 Q. B. 751; *The Queen* v. *Mayor &c., of Sandwich*, 2 Q. B. 895; *S. C.* 10 Q. B. 563; *The Queen* v. *Mayor, &c., of Harwich*, 2 Q. B. 909; *The Queen* v. *St. George, Southwark*, 10 Q. B. 852; *The Queen* v. *Mayor, &c., Lichfield*, 16 Q. B. 781; *The Queen* v. *Glamorganshire Canal Co.*, 3 E. & E. 186; *Mersey Docks* v. *Cameron*, 11 H. L. C. 443; *Commissioners of Leith Harbour and Dock* v. *Inspectors of the Poor*, L. R. 1 H. L. Sc. 17; *The Queen* v. *St. Martin's Leicester*, L. R. 2 Q. B. 493; *Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262; *Shaw* v. *Shaw*, 21 U. C. Q. B. 432; *Shaw* v. *Shaw*, 12 U. C. C. P. 456. By 43 Geo. III. cap. 99, the laws relating to the duties under the management of the commissioners for the affairs of taxes were consolidated. It provided for the appointment of assessors, and by sec. 24 gave an appeal to any person who should think himself "*overcharged* or *overrated* by any assessment or surcharge," &c.; but by secs. 69 and 70 of 43 Geo. III., cap. 161, the right of appeal was extended to "*any assessment.*" This was held to include the case of a person claiming exemption and otherwise wrongly assessed. *Allan* v. *Sharpe*, 2 Ex. 352; see further, *Pedley* v. *Davis*, 10 C. B. N. S. 492. The words used as to the jurisdiction of Courts of Revision in this Act are substantially the same as used in 16 Vict. cap. 182, secs. 26-28. The question was raised at a very early period as to whether persons claiming to be exempt from assessment, or whose assessment was otherwise illegal, were bound to appeal to the Courts of Revision; in other words, whether the Courts of Revision had jurisdiction to try such a subject matter of complaint. In *Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168, Sir J. B. Robinson said: "The 26th and 28th clauses of cap. 182 (16 Vict.) only make the decision of the Judge of the Court final in regard to such matters as are to be submitted to him—that is, any alleged overcharge or undercharge, or the wrongful insertion of any person's name;" and held that as the superstructure of a Railway Company was exempt from taxation, the assessment of superstructure was illegal, and neither the Court of Revision nor County Judge had power to adjudicate on such a question. There was no complaint in this case that the name of the Company was "wrongfully inserted on the roll." The complaint was that it was inserted on the roll for property that was exempt from taxation, and the Court held that this was not a case of overcharge within the meaning of the Act. In *London* v. *Great Western Railway Co.*, 17 U. C. Q. B. 262, Sir John B. Robinson, referring to *Milward* v. *Coffin*, 2 W. Bl. 1330. And *Charlton* v. *Alway*, 11 A. & E. 993, said that "when that has been assessed which could not be legally assessed, the objection becomes a very different one as to its consequences from that of *a mere overvaluation*;" and Burns, J., referring to *Milward* v. *Coffin*, 2 W. Bl. 1330; *Marshall* v. *Pitman*, 9 Bing. 595; *Governors of Bristol Poor* v. *Wait*, 1 A. & E. 264, was more explicit, and said, "The distinction where it is necessary to appeal, and where the claim may be resisted

by action of trespass or replevin, is this: if the power existed *to make the assessment*, then there is a jurisdiction in those doing it, and in *such case* the remedy is by appeal *only*. But if the assessment be *illegal*, then there is no jurisdiction to do it, and in *such case* the person resisting is not compelled to resort to the remedy of appeal, but may resist the illegal exaction. . . . . If people were obliged to submit to an arbitrary mode of making the assessment, and so compelled to go to the Court of Revision for redress rather than take the opinion of the Law Courts on the illegal act of the Assessor, it might lead to great inconvenience and hardship, besides holding the door open to injustice being perpetrated by the Assessors; and as the rolls are revised by a Court of Revision formed from members of the Council, they should not adopt an illegal assessment. . . . I do not think the Assessor could drive the defendants to the Court of Revision as a matter of necessity by calling that *land* which was *not land*." In *Shaw* v. *Shaw*, 21 U. C. Q. B. 432, 437, Sir J. B. Robinson said, "If the property was exempt from assessment by statute, there was no necessity for going to the Court of Revision in order to have their decision on the point, as the cases of *Milward* v. *Coffin*, 2 W. Bl. 1330, and *Charleton* v. *Allway*, 11 A. & E. 993, fully establish." In *Shaw* v. *Shaw*, 12 U. C. C. P. 456, 459, Mr. Justice Morrison, then a Judge of that Court, in giving judgment said, "The property in question (property in the occupation of the Crown) *not* being taxable property, was wrongly inserted on the roll, and being specifically exempt by the statute from taxation, the unauthorized assessment of it could not render it liable to taxation, or *give Jurisdiction to the Court of Revision*. It was a mere nullity, &c. . . . There is nothing in the statute to show, or which can be construed as showing, that property so exempt should become liable to taxation from the fact of the Assessor assessing the property or inserting it on the roll." Up to this point both the Common Law Courts held that property exempt from taxation could not be taxed, and that neither the Court of Revision nor the County Judge had power under the words used in the Act to adjudicate on such a question. But in *Toronto* v. *Great Western Railway Co.*, 25 U. C. Q. B. 570, where the question sought to be brought before the Court was as to the effect of the Court of Revision and County Judge upholding an assessment of the superstructure of a railway, which by law is exempt from taxation, Draper, C. J., said, "As to the question itself, as at present advised, we do not think it would be found to present any great difficulty. If the Assessors had put the two annual values (the roadway and superstructure were separately assessed) as forming the whole valuation of the land, though there *might* have been an appeal to the County Judge on the question of *excessive valuation*, and he must have confirmed or reduced it, we do not see how, under the statute, his decision could have been brought in question." This was certainly, so far as the case can be taken as a decision of any kind, a decision at variance with *London* v. *Great Western Railway Co.*, 17 U. C. Q. B. 262, where Burns, J. said in a similar case, "I do not think the Assessor could drive the defendant to the Court of Revision by calling that land which was not land," &c., and the cases following it, including *Shaw* v. *Shaw*, 12 U. C. C. P. 458. Mr. Justice Morrison, who delivered the judgment of the Court of Common Pleas in *Shaw*

48. If the Council consists of more than five members, such Council shall appoint five of its members to be the Court of Revision. (*b*) 32 V. c. 36, s. 52. When of more than five.

49. Every member of the Court of Revision, before entering upon his duties, shall take and subscribe, before the Clerk of the Municipality, the following oath (or affirmation in cases where by law affirmation is allowed):—(*c*) Oaths of members of Court of Revision.

"I , do solemnly swear (*or* affirm) that I will, to the best "of my judgment and ability, and without fear, favour or par- "tiality, honestly decide the appeals to the Court of Revision which "may be brought before me for trial as a member of said "Court."

37 V. c. 19, s. 9.

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v. *Shaw*, was a member of the Queen's Bench when *Toronto* v. *Great Western Railway Co.* was decided, but was absent, and so took no part in the judgment. This case was in *Scragg* v. *London*, 26 U. C. Q. B. 263, treated as a decision overruling all the prior cases. One of the questions raised in *Scragg* v. *London* was, whether the decision of the Court of Revision (on a claim of exemption from taxation) was final—no appeal having been lodged to the County Judge. Hagarty, J., who delivered the judgment of the Court, after a review of most of the cases, and quoting sec. 60 of the then statute (same as sec. 56 of the present statute), said: "It is perhaps not easy to see how these words do not cover the whole ground—namely, the wrongful *insertion of a name* and *undercharge* or *overcharge*. The man who has nothing but property not assessable is *wrongfully on the roll*. According to these decisions *London* v. *Great Western Railway Co.* he need not appeal, or if he do, is not bound by the judgment of the Court of Revision or County Judge. We think on the whole, we should follow the latest decision of this Court, (*Toronto* v. *Great Western Railway Co.*, 25 U. C. Q. B. 570,) *as it accords with our individual views*," &c. Draper, C. J., concurred. Morrison, J., who delivered a judgment in the case on another point, apparently abstained from in any manner referring to the point. *Scragg* v. *London* was appealed to the Court of Appeal, and though the point was one of the grounds of appeal, and argued in the Court of Appeal in the hope that that Court would settle the law on this very important point, yet the following is the only note either of the argument or the judgment of the Court on the point: "It was contended also that the decision of the Court of Revision was final, as determined by the Court below; but the argument on this point is omitted, as the judgment proceeds upon the *other* ground *only*." *Scragg* v. *London*, 28 U. C. Q. B. 459. But in *Nickle* v. *Douglas*, 37 U. C. Q. B. 51, the point was before the Court of Appeal and that Court upheld the earlier decisions holding that where there was no jurisdiction to make the assessment the decision of the Court of Revision is not binding on the person erroneously assessed. See further *Lewis* v. *Gray*, L. R. 1 C. P. Div. 452, and note *a* to s. 57 of this Act.

(*b*) Court of Revision. See the last note.

(*c*) See sec. 267 of The Municipal Act, and notes thereto.

Quorum.

50. Three members of the Court of Revision shall be a quorum; and a majority of a quorum may decide all questions before the Court. (*d*) 32 V. c. 36, s. 53.

Who to be Clerk.

51. The Clerk of the Municipality shall be Clerk of the Court, and shall record the proceedings thereof. (*e*) 32 V. c. 36, s. 54.

Meetings of Court.

When first meeting of the Court to be held.

52. The Court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the head of the Municipality; but the first sitting of the Court of Revision shall not be held until after the expiration of at least ten days from the expiration of the time within which notice of appeals may be given to the Clerk of the Municipality. (*f*) 32 V. c. 36, s. 55; 37 V. c. 19, s. 11.

Court to try all complaints, etc.

53. At the times or time appointed, the Court (*g*) shall meet and try all complaints in regard to persons wrongfully

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(*d*) *Quorum.* See note *n* to sec. 211 of The Municipal Act.

(*e*) See sec. 237 of The Municipal Act, and notes thereto.

(*f*) At least ten days from, &c. See note *a* to sec. 111 of The Municipal Act.

(*g*) This section declares the jurisdiction of the Court. It is not only to try all complaints of persons "assessed at too high or too low a sum," but all complaints of persons "*wrongfully* placed upon or omitted from the Roll." See note *a* to s. 47, and note *a* to s. 51. The person who gives a notice of his intention to appeal is not bound to follow it up. Should he, before the day for the trial, abandon his notice the appeal would drop. In *The Queen* v. *Stoke Bliss*, 6 Q. B. 158, on an appeal from an order of Justices to the Sessions, the appellant served a notice of countermand, but the Court, notwithstanding, made an order confirming the order of the Justices, with costs. It was held that the Court had no jurisdiction to do so. And *per* Patteson, J.: "It is unfortunate that the Sessions proceeded in this manner. The orders states that, no one appearing to prosecute the appeal, they confirm the order of removal. That, they had no jurisdiction to do; and we connot separate the order for costs from the order of confirmation," &c. But by this statute it is declared that "if *either* party fails to appear in person or by an agent, the Court *may* proceed *ex parte*." Sub. 17 of sec. 56 of this Act. If the appellant appear to prosecute his appeal, and show himself to be in a position to do so, it is the duty of the Court to try it. But the Court, before proceeding *ex parte* against the persons to whom the notice was given must be satisfied that due notice—that is to say, at least six days' notice—had, before the Court, been given to such parties, *Per* Morrison, J., in *The Queen* v. *Cornwall*, 25 U. C. Q. B. 292. The appearance of the parties by their council for the purpose of objecting to the notice is no waiver of it. *Ib.* In the event of the Court refusing to hear a complaint when it ought to do so, a *mandamus* might be obtained to compel them to do so. *The King* v. *Justices of Kent*, 9 B.

placed upon or omitted from the roll, or assessed at too high or too low a sum. 32 V. c. 36, s. 58.

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t C. 283. In this case, on the appearance of the appellant, a resolution was moved, seconded and carried, to the effect that no further notice should be taken of his application for relief. The Court held that there had not been any decision. *Ib.* And *per* Lord Tenterden, C.J.: "In this case a rate was made and a sum of money ordered to be paid out of that rate to Suter. Ritchie (the appellant) objected to such payment, and applied for relief under the sixty-third section to the churchwardens, &c. They resolved that they would take no notice of his application for relief. They refused, in fact, to hear the appeal at all. The proper course under these circumstances would have been to have applied to this Court for a *mandamus* to compel them to hear this appeal." *Ib.* 287. It is the duty of the Court, when a person appeals against an assessment, and appears to support his appeal, to decide the complaint either one way or the other. *The Law Society of Upper Canada* v. *Toronto*, 25 U. C. Q. B. 199. Abstaining from decision is no determination of the matter of appeal *Ib.* See also *Regina* v. *Guardians of Biggleswade Union*, 21 L. T. N. S. 494. *The Queen* v. *Bedminster Union*, L. R. 1 Q. B. Div. 503. The person appealing is entitled to a decision on his appeal before he can be made liable to pay any taxes in respect of the assessment against which he appeals. Until decided, the assessment is, as it were, withdrawn from the assessment roll. *The Law Society of Upper Canada* v. *Toronto*, 25 U. C. Q. B. 207 *per* Morrison, J. Some *act* of the Court would, it seems be necessary before a decision could be said to be given. *Ib. In re Judge of Perth and J. L. Robinson*, 12 U. C. C. P. 252, where on an application claiming a reduction of assessment, the Court of Revision adopted a resolution "That the application of James Lukin Robinson for a reduction of his taxes on the assessment be dismissed, as this Council is of opinion that the lands of complainant have not been assessed higher in any case than lands similarly situated of residents of the Municipality," it was held that this resolution was a sufficient act done as to amount to a decision. And *per* Draper, C. J.: "I think it would amount to an entire defeating of the statute, and a denial of the relief it was intended to afford, if, by refusing to entertain the petition altogether they could prevent the complaint being heard. As at present advised, I should treat *such* a refusal as a decision against the petitioner. In substance it certainly is so, only it may be said to be a decision without trying the case. In the present instance, the Council have, I think, by the very terms of their resolution, shown that they have tried the matter, though they have done so without hearing the complainant further than by reading the statements of his petition. They have dismissed the petition 'because his lands have not been assessed higher in any case than lands similarly situated of residents of the Municipality.' This is really a decision of the complaint, and imports an examination *into the merits*. They profess to have ascertained a fact which in their judgment, disentitles the applicant to relief under the Act. *Ib.* 252. In *The King* v. *Tucker*, 3 B. & C. 544, the dismissal of a complaint, on the mistaken ground that the Court had not jurisdiction to hear it, was, under the peculiar provisions of 3 Geo. IV. cap. 33, sec. 2, considered such an act done by the Court as

May administer oaths, etc.

54. The Court, or some member thereof, may administer an oath to any party or witness, before his evidence is taken, and may issue a summons to any witness to attend such Court. (*h*) 32 V. c. 36, s. 56; 37 V. c. 19, s. 15. *See also sec.* 56 (16).

Penalty to witnesses who refuse to attend.

55. If any person summoned to attend the Court of Revision as a witness fails, without good and sufficient reason, to attend (having been tendered compensation for his time at the rate of fifty cents a day), he shall incur a penalty of twenty dollars, to be recoverable, with costs, by and to the use of any person suing for the same, either by suit in the proper Division Court, or in any way in which penalties incurred under any by-law of the Municipality may be recovered. (*h*) 37 V. c. 19, s. 10.

Proceeding for the Trial of Complaints.

Notice of complaint by party aggrieved.

56. Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the roll, or as having been undercharged or overcharged by the Assessor in the roll, may personally or by his agent give notice in writing to the Clerk of the Municipality, (or Assessment Commissioner, if any there be), that he considers himself aggrieved for any or all of the causes aforesaid. (*a*) 32 V. c. 36, s. 60 (1); 36 V. c. 48, s. 200.

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to give a right to appeal. And *per* Abbott, C. J.: "The application must be made within a certain time, notices are to be given, and the Petty Sessions must be held within thirty days. The party, therefore, cannot *renew* his application for relief if the complaint is dismissed, nor can this Court issue a *mandamus* to the special Petty Sessions. The question then is, whether a dismissal of the complaint not on the merits, but on a mistaken notion of law, is not, *under such circumstances*, to be considered as an act done against which an appeal lies by the seventh section of the Act. I think that it is, but my opinion is founded on the peculiar provisions and language of the Act, and must not be considered as a precedent in any other case." *Ib.* 547.

(*h*) No witness can be compelled to a tend till paid or tendered compensation at the rate of fifty cents a day. See 55 of this Act.

(*h*) The duty of a witness when summoned is to attend Court. But that duty is not made compulsory unless when summoned he be paid at the rate of fifty cents a day. This is intended as compensation for his time. When this has been paid or tendered, the witness is bound to attend, or submit to a penalty "not exceeding twenty dollars."

(*a*) Every Assessor, before the completion of his roll, and therefore before the return of it, must leave for every party named therein,

Time within which notices of appeal to the Court are to be given.

(2.) The notice shall be given to the Clerk (or Assessment Commissioner, if any there be) within fourteen days after the day upon which the roll is required by law to be returned, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose. (*b*) 37 V. c. 19, s. 12.

When elector thinks any person assessed at too low or too high a rate.

(3.) If a municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the roll, he may within the time limited by the preceding sub-section give notice in writing to the Clerk of the Municipality, (or Assessment Commissioner, as the case may be) and the Clerk shall give notice to such person and to the Assessor of the time when the matter will be tried by the Court of Revision; and the matter shall be decided in the same manner as complaints by a person assessed. (*c*) 32 V. c. 36, s. 60 (2); 37 V. c. 19, s. 12; 36 V. c. 48, s. 200.

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and resident or domiciled or having a place of business within the Municipality, and transmit by post to every non-resident who shall have requested his name to be entered thereon and furnished his address to the Assessor, a notice of the sum at which his real and personal property has been assessed. Sec. 41. If, upon inspection of it, the person assessed finds in regard to himself, an error or omission of the description mentioned in this subsection, he must, within fourteen days after the time fixed for the return of the roll give notice thereof in writing to the Clerk of the Municipality, that he considers himself aggrieved for any or all of the causes mentioned in this subsection. If the notice required by sec. 41 has not been served, the assessment might be held invalid. *London* v. *Great Western Railway Co.*, 16 U. C. Q. B. 500; *Nicholls* v. *Cumming*, 25 U. C. C. P. 169. But if the notice be served, and the party either omit to appeal within the time herein limited, or wholly omit to do so, the assessment would bind him. *McCarrall* v. *Watkins*, 19 U. C. Q. B. 248. Mere formal objections to the notice of appeal ought not to be allowed to prevail when no one can be misled or injured by the alleged errors. *In re McCulloch and the Judge of the County Court of Leeds and Grenville*, 35 U. C. Q. B. 452. In the case of palpable errors needing correction, the Court may extend the time for making the complaints ten days further. Sub. 18 of this section.

(*b*) As to computation of time, see note *a* to sec. 177 of The Municipal Act.

(*c*) Persons assessed may not only, under the preceding subsection, complain of errors or omissions in regard to themselves, but, under this subsection, any municipal elector, thinking that any person has been assessed too high or too low, may make a complaint, in which event he, the complainant, should, in writing, request the Clerk to notify the person complained against, and the Assessor, of the time when the matter will be tried by the Court, and it will be the duty of the Clerk to do as requested. In England it has been held that if

Clerks to give notice by posting up list.

(4.) The Clerk of the Court shall post up in some convenient and public place within the Municipality or Ward a list of all complainants, on their own behalf, against the Assessors' return, and of all complainants on account of the assessment of other persons, stating the names of each, with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints; (*d*) and no alteration shall be made in the roll, unless under a complaint formally made according to the above provisions. (*e*) 32 V. c. 36, s. 60 (3).

Order of hearing appeals.

(5.) The Clerk of the Court shall enter the appeals on the list in the order in which they are received by him, and the Court shall proceed with the appeals in the order, as nearly as may be, in which they are so entered, but may grant an adjournment or postponement of any appeal. (*f*) 37 V. c. 19, s. 14.

Postponement.

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a burgess has been struck off the roll on the application of another burgess, the latter has sufficient interest in the matter to entitle him to appear on a rule for a *mandamus*, though the official defendant does not; and it is proper, though perhaps not imperative, to serve a copy of the rule on such objector. *The Queen* v. *Mayor of Exeter*, 19 L. T. N. S. 432. The Court will not grant a *mandamus* to rectify such a roll by the insertion therein of the name of the person omitted for non-residence, unless it be made clearly to appear that he does so substantially and *bona fide* reside within the borough as to make his omission therefrom unreasonable. *Ib.* The Court of Revision in doing what is here authorized, act as it were judicially, and, as judges, are protected in what they do. *Fowler* v. *Parsons*, 20 Am. 431.

(*d*) The list should give:

1. The names of all complainants on their *own behalf*, against the Assessor's return.
2. The names of all complainants on account of the assessment of *others*.
3. A concise description of the matter complained against.

Together with an announcement of the time when the Court will be held to hear the complaints. See sub. 6 as to form of list. It is also the duty of the Clerk to advertise in a newspaper the time at which the Court will hold its first sitting, sub. 7, and cause to be left at the residence of the Assessor a list of all the complaints respecting his roll, sub. 8, and notify each person in respect of whom a complaint has been made, subs. 9-11, all of which must be at least six days before the sitting of the Court. Sub. 12.

(*e*) Any alteration made otherwise than under a complaint, according to law, would be as no alteration, and so regarded. See *Nicholls* v. *Cumming*, 25 U. C. C. P. 169, reversed in the Court of Appeal, but upheld by the Supreme Court.

(*f*) The Clerk has no discretion as to the placing of the appeals; his duty is to enter them on the list in the order in which they are

(6.) Such list may be in the following form :—(*g*) Form of list of appeals.

Appeals to be heard at the Court of Revision, to be held at on the day of 18 .

Appellant.	Respecting whom.	Matter complained of.
A. B.	Self	Overcharged on land.
C. D.	E. F.	Name omitted.
G. H.	J. K.	Not *bona fide* owner or occupant.
L. M. ..... &c.	N. O. ..... &c.	Personal property undercharged.

32 V. c. 36, s. 60 (5).

(7.) The Clerk shall also advertise in some newspaper published in the Municipality, or, if there be no such paper, then in some newspaper published in the nearest Municipality in which one is published, the time at which the Court will hold its first sittings for the year, and the advertisement shall be published at least ten days before the time of such first sittings. (*h*) 32 V. c. 36, s. 60 (6); 37 V. c. 19, s. 11. Clerk to advertise sittings of Court

(8.) The Clerk shall also cause to be left at the residence of each Assessor, a list of all the complaints respecting his roll. (*i*) 32 V. c. 36, s. 60 (7). to leave a list with assessor

(9.) The Clerk shall prepare a notice in the form following (*k*) for each person with respect to whom a complaint has been made : and prepare notice to person complained against.

"Take notice, that you are required to attend the Court of Revision at on the day of in the matter of the following appeal :

"Appellant, G. H.

"Subject—That you are not a *bona fide* owner or occupant, (*or as the case may be.*)

" (Signed) X. Y.,
"To J. K. Clerk."

32 V. c. 36, s. 60 (8).

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received ; but the Court is only obliged te proceed with the appeals in the order "as nearly as may be" with the express power to grant an adjournment or postponement of any appeal.

(*g*) See note *s* to sec. 320 of The Municipal Act.

(*h*) "At least ten days." See note *a* to sec. 111 of The Municipal Act.

(*i*) This is directed to be done in order to apprize the Assessor of the cause of complaint, so that he may attend and, if deemed proper, support the roll.

(*k*) See note *s* to sec. 320 of The Municipal Act.

Service to be at residence.

(10.) If the person resides or has a place of business in the local Municipality, the Clerk shall cause the notice to be left at the person's residence or place of business. (*l*) 32 V. c. 36, s. 60 (9).

How absentees served.

(11.) If the person is not known, then the notice shall be left with some grown person on the assessed premises, if there is any such person there resident; or if the person is not resident in the Municipality, then the notice shall be addressed to such person through the post office. (*m*) 32 V. c. 36, s. 60 (10.)

When notice to be completed.

(12.) Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sittings of the Court. (*n*) 32 V. c. 36, s. 60 (11.)

(*l*) The preparation of the notice directed by the preceding subsection would be of little worth, unless the notice, when prepared, were in some way or other communicated to the person concerned. If the person intended to be notified reside or have a place of business in the Municipality, it will be sufficient if the notice be left at his residence or place of business. If a non-resident, it will be sufficient to address the notice to him through the post office. Sub. 11. If not known the notice may be left with some grown person upon the assessed premises. Sub. 11. Service at the dwelling house is sufficient. *The Queen* v. *Justices of North Riding of Yorkshire*, 7 Q. B. 154; see also *The Queen* v. *Justices of Cheshire*, 11 A. & E. 139. It is doubtful if service on a Sunday would be sufficient. *The Queen* v. *Leominster*, 2 B. & S. 391. If the last day for service fall on Sunday, service would certainly not be sufficient. *The Queen* v. *Justices of Middlesex*, 2 Dowl. N. S. 719; *Aspell* v. *Justices of Lancaster*, 16 Jur. 1067; *Peacock* v. *The Queen*, 4 C. B. N. S. 264; *Wynne* v. *Ronaldson*, 13 W. R. 849. But if allowed to be sent by post, it would seem that the arrival of the notice on Sunday would not invalidate the service. *The Queen* v. *Leominster*, 2 B. & S. 391.

(*m*) If the person be resident *within* the Municipality, though not known, notice may be left with some grown-up person on the assessed premises. But if *without* the Municipality, then the notice must be addressed to him through the post office. See *Lewis* v. *Evans*, L. R. 10 C. P. 297.

(*n*) An elector served the Clerk of the Municipality with notice that several persons had been wrongfully inserted on the roll, and others omitted or assessed too high or too low, and requesting the Clerk to notify them and the Assessor when the matter would be tried by the Court of Revision. On the 22nd of May the Court met, when it was objected, on behalf of the parties named in the notice, that only *five* days' notice had been given. The Court then adjourned until the 30th of May, directing proper notice to be given. But the Clerk omitted to give the notice. The Court, in consequence, on

(13.) Where necessary, the Clerk of the Municipality may, at the cost of the Municipality, call to his aid such assistance as may be required to effect the services which he is required by law to make; and in the event of his failure to effect any such services in time for the first sitting of the Court, the Court, in its discretion, may appoint an adjourned sitting, for the purpose of hearing the appeals for which the services were not effected in time for the first day, and the proper services shall be made for such adjourned day. (*o*) 37 V. c. 19, s. 13.

Clerk may require assistance in making services.

Power to adjourn.

(14.) If the party assessed complains of an overcharge on his personal property or taxable income, he or his agent may appear before the Court, and make a declaration, in case the complainant appears in person, in the form of Schedule C. D. or E. to this Act, according to the fact; and if the complainant appears by agent, such agent may make the declaration in the form of Schedule F. G. or H., as the case may be; and no abatement shall be made from the amount of income on account of debts due, nor from the value of personal property, other than income in respect of debts, except debts due for or on account of such personal property;

Proceedings when party assessed complains of overcharge on personal property, etc.

30th of May refused to hear the appeal, and finally passed the roll. Held, that the decision of the Court was not erroneous. *The Queen* v. *Court of Revision of Cornwall*, 25 U. C. Q. B. 286. Held also, that the appearance of the parties, by their counsel, for the purpose of objecting to the sufficiency of the notice, was no waiver of it. *Ib.* And *per* Morrison, J.: "Upon an examination of subsections 2, 7, 8 and 10 of sec. 60, which bear on this application, we find that they are all imperative by force of the Interpretation Act, and when we consider the object of the complaints made by the relator, we cannot overlook the plain words of the statute. The Legislature clearly intended that in all cases of objection by third parties, a notice of complaint must be given to the party complained against at *least* six days before the sitting of the Court at which it is to be heard, and that such notices should be prepared and given in due time by the Clerk. . . . The language of the Act is plain and unambiguous. If the mode of proceeding provided by the statute is insufficient, inconvenient or open to abuse, the remedy is with the Legislature. For this Court to say that five days' notice or any less number is sufficient, would be to assume a legislative authority."

(*o*) The notices of appeals may be so numerous that there will not be time for the Clerk to have them all served within the time limited for the purpose with a view to a hearing of the appeal. The right to call in assistance in such a case arises. But even with the aid there may not be sufficient time between the service and the day appointed for the hearing, and in such case provision is made for the granting of an adjourned sitting.

and the Court shall thereupon enter the person assessed at such an amount of personal property or taxable income as is specified in such declaration, unless such Court is dissatisfied with the declaration, in which case the party making the declaration, and any witnesses whom it may be desirable to examine, may be examined on oath by such Court, respecting the correctness of such declaration ; (*p*) and such Court shall confirm, alter or amend the roll as the evidence seems to warrant. 32 V. c. 36, s. 60 (12.)

Effect of declaration by each party.

Proceedings in other cases.

(15.) In other cases, the Court, after hearing the complainant, and the Assessor or Assessors, and any witness adduced, and, if deemed desirable, the party complained against, (*q*) shall determine the matter, and confirm or amend the roll accordingly. 32 V. c. 36, s. 60 (13).

Oaths of certain parties not necessary.

(16.) It shall not be necessary to hear upon oath the complainant or Assessor, or the party complained against, unless where the Court deems it necessary or proper, or the evidence of the party is tendered on his own behalf or required by the opposite party. (*r*) 37 V. c. 19, s. 15.

When to proceed *ex parte*.

(17.) If either party fails to appear, either in person or by an agent, the Court may proceed *ex parte*. (*s*) 32 V. c. 36, s. 60 (14).

(*p*) Net personal property is personal property, less certain debts. See note *x* to sub. 20 of sec. 6. No one is to be assessed for a less sum as the amount of his personal property than the amount of his income during the past year, and this without deduction by reason of any indebtedness, "save such as shall equal the annual interest thereof." Sec. 28. The value of personal property, less such debts as may be deducted, or amount of income without deduction for debts, if the assessment be disputed, is *prima facie* determined by the declaration of the party complaining. If the Court be not satisfied with the declaration it may proceed to take evidence and "confirm, alter or amend the roll as *the evidence* shall seem to warrant." Formerly the declaration was *conclusive evidence*.

(*q*) The person complaining is a competent witness on his own behalf. So the person complained against. These and the assessors together with any witness adduced are to be heard.

(*r*) The right of the complainant or person complained against, or the assessor to tender himself as a witness, might, if uncontrolled, lead to some abuse. The right, therefore, is made subject to some but not much control. The evidence is to be heard :

1. Where the Court deems it necessary or proper.
2. Where the evidence is tendered by the party on his own behalf.
3. Where it is required by the opposite party.

(*s*) It is the duty of the Court before proceeding *ex parte* under

Extension of time for complaints,

(18.) Where it appears that there are palpable errors which need correction, the Court may extent the time for making complaints ten days further, and may then meet and determine the additional matter complained of, and the Assessor may, for such purpose, be the complainant. (*t*) 32 V. c. 36, s. 60 (4).

and to finish business by July 1st.

(19.) Subject to the provisions of the forty-fourth and forty-sixth sections, all the duties of the Court of Revision, which relate to the matters aforesaid, shall be completed and the rolls finally revised by the Court, before the first day of July in every year (*u*)—except in the Municipality of Shuniah, in which Municipality all the duties of the Court of Revision which relate to the matters aforesaid shall be completed, and the rolls finally revised, by the Court, before the fifteenth day of July in every year. 32 V. c. 36, s. 59; 37 V. c. 19, s. 11; 40 V. c. 31, s. 9.

Proviso as to Shuniah.

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this section to ascertain whether or not due notice has been given to the parties. See note *q* to sec. 53.

(*t*) "Palpable," strictly speaking, means perceptible to the case—a something that may be felt. But according to the general understanding, it means something easily perceived and detected—something so plain that the perception of it immediately produces detection. If errors of this nature appear and are of sufficient importance to be corrected, there may be an extension of time for making complaint in reference to them.

(*u*) So far as the Court is concerned, this section would appear to be imperative. But so far as the public is concerned, it may be held to be only directory. See note *q* to sec. 240 of The Municipal Act. Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, a Superior Court of law has the power of ordering it to be done under the prerogative writ of *mandamus*. *Per* Lord Campbell, C. J., in *The Queen* v. *Rochester*, 7 E. & B. 924. Of this we have a well-known instance in *The King* v. *Sparrow*, 2 Str. 1123, where Overseers of the Poor not having been appointed for a parish as the statute requires, "in Easter week or within one month after Easter," a *mandamus* was granted after the expiration of that time to Justices to appoint Overseers for that Parish, and the appointment having been made was solemnly adjudged to be valid. This decision has been frequently recognized and acted upon. There can be no doubt that for the public good, and to effectuate the intention of the Legislature, the revision of the list (though the first day of July have passed without it,) if practicable, ought still to take place. The proper course would probably be to apply for a *mandamus* to the head of the Council to summon the Court to meet, under the authority given him by sec. 52, with a view to hear and determine the matters complained of, due notices being first given to the respective parties. See *The Queen* v. *Cornwall*, 25

Roll to be binding, notwithstanding errors in it or in notice sent to persons assessed.

57. The roll, as finally passed by the Court, and certified by the Clerk as passed, shall, except in so far as the same may be further amended on appeal to the Judge of the County Court, be valid, and bind all parties concerned, (*v*) notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or mis-statement in the notice required by section forty-one of this Act, or the omission to deliver or transmit such notice. (*a*) 40 V. c. 8, s. 56.

U. C. Q. B. 292. Possibly the writ might be directed to the Court, or members composing it; for though not a Corporation, they constitute, as it were, a standing and perpetual tribunal within the Municipality. *Per* Lord Campbell, C. J., in *The Queen* v. *Rochester*, 7 E. & B. 925.

(*v*) The Court of Common Pleas in *Nicholls et al.* v. *Cumming*, 25 U. C. C. P. 169, held the notice essential to the validity of the assessment. The Court of Appeal reversed that decision. The Supreme Court affirmed the decision. This amendment is designed to get rid of the effect of the Supreme Court decision.

(*a*) In *Earl of Radnor* v. *Reeve*, 2 B. & P. 391, 392, the Court said that "it had been determined by all the Judges of England that when a statute provides that the judgment of Commissioners appointed thereby shall be final, their decision is conclusive, and cannot be questioned in any collateral way." In *Berlin* v. *Grange*, 1 E. & A. 285, Robinson, C. J., said: "When the statute provides that after the roll has been finally passed by the Court of Revision it shall bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, that cannot, I think, be taken to mean that it shall be binding on a party whose name there never was *any legal authority* for introducing upon the roll at all, because there the very foundation of assessment against *the party* is wanting." In *Birmingham Churchwardens* v. *Shaw*, 10 Q. B. 868, the English Court of Queen's Bench held that a person *exempt* from poor rate as the occupier of premises belonging to a scientific or literary society, must, if assessed for such premises, contest the liability before the inferior Court constituted for the purpose, to whom the appeal is directed to be made by persons complaining of being wrongfully assessed. Lord Denman in giving judgment, said: "We are driven, therefore, to consider the second ground on which the rule is supported, whether, namely as regards the present rates, the Society is deprived of the benefit of its exemption because it has not appealed against them. And as it cannot be successfully contended that the President might not have appealed, the question is narrowed to this: whether, there being a remedy by appeal, and that remedy passed by, the law will allow an action to be brought for the enforcement of a rate good on its face, and made by a competent authority, on a person and in respect of the occupation of property apparently within the jurisdiction of that authority. This is not a new question. Nor is the principle of decision unsettled or difficult. The only difficulty lies in its application. The right of appeal is co-extensive with the operation of the

rate. Whether it has defects which make it even a nullity in law, or be objectionable only as excessive in amount, or unequal in its assessment, any one who is grieved by it may appeal. But the right of action is limited, as well for the sake of convenience as on principles of law and justice. The making and allowance of the rate are acts entrusted by the law to certain functionaries, the overseers and the justices; and the exercise of their functions is subjected by the law to revision by a Court of Appeal. If in the exercise of their functions, *but acting within their jurisdiction*, they do an erroneous act, it is no more null and void, while unquestioned by appeal, than an erroneous decision of this Court on a matter within its jurisdiction while unquestioned by a writ of error. If it be appealed against, the law has made the decision of the Court of Appeal final; and if that Court confirmed the act of the inferior functionaries, however confessedly erroneous that decision might be, it would be conclusive for all purposes, and, among others, for enforcement; else this absurdity would follow, that a rate which the Court of direct and final jurisdiction had pronounced valid, must be considered as invalid when considered collaterally in any other Court as the protecting authority for the officer of the law who was directed to enforce it. And to this extent there can be no difference between the case of a rate not appealed against and one appealed against and confirmed. The authority of the original Court, up to the time of appeal and subject to that, is exactly of the same force as that of the Court of Appeal. Both stand on exactly the same principles. They are the acts and decisions of functionaries or Courts entrusted by the law on matters within their jurisdiction. But all this depends on that limitation of jurisdiction. If in the first instance the primary Court has gone beyond those limits, its act is void. The party grieved may, if he please, appeal, because the statute enables him to do so, and excess of jurisdiction is in itself a ground of appeal as much as merely erroneous decision. And if the Court of Appeal erroneously confirms the act of the Court below, it may be that the party appealing cannot object to the want of jurisdiction in any collateral proceeding; his own act may estop him personally. But in the case supposed he is not bound to appeal, because he is at liberty to treat the act as void." *Ib.* 878. The reasoning of this case was approved, adopted and applied by the Court of Common Pleas in *Pedley* v. *Davis et al.*, 10 C. L. N. S. 492, 512. The question, then, according to this reasoning, is, whether the act of the Assessors in assessing the person complaining was an act within their jurisdiction. If within their jurisdiction, the act remains, unless disallowed by the Court of Revision or on appeal to the County Judge. If not within the jurisdiction, the act is null and void, and no act of the Court of Revision or the County Judge can give it validity. See note *a* to sec. 47. In *Allen* v. *Sharp*, 2 Ex. 352, it was held that the decision of the Assessor under 43 Geo. III. cap. 99, sec. 24, and 43 Geo. III. cap. 161, secs. 69, 70, to the effect that a person was a "horse dealer," was conclusive, unless appealed against in the manner prescribed by the statute. Parke, B., said: "On a careful consideration of these Acts of Parliament, they seem to me to differ from the 42 Eliz. cap. 2, as to the Poor Rate, and that the Legislature intended that the *assessment* of the Assessors appointed by the Commissioners should be final and conclusive, unless appealed from in the first place to the Commissioners,

Further powers granted to Court of Revision for remitting or reducing taxes.

58. The Court shall also, before or after the first day of July, and with or without notice, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any person who declares himself, from sickness or extreme poverty, unable to pay the taxes, or who, by reason of any gross and manifest error in the roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum

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and further, if necessary, to the Judges of the Superior Courts. . . . . Without referring to the statutes, I should say *a priori*, that the object of the Legislature was to make the decision of the Assessor final and binding, unless disputed in the manner pointed out. On reading the statutes I come to the same conclusion. . . . . Let us then look to the power of appeal, which possibly might be framed in such a way as to show that the Legislature did not mean it to be conclusive. This provision is contained in the 24th section of the 43 Geo. III. cap. 99 which enacts that 'if any person should think himself *overcharged* or *overrated* by any assessment or surcharge, &c., it shall be lawful for him to appeal to the Commissioners,' &c. It is argued that the wording of this clause shows that the Legislature meant it to apply only to persons liable to be rated, *but rated for too much*. Admitting it to be so, and that the word "overrated" has that meaning, then this plaintiff is in the predicament of a person overrated, since he is clearly liable to *part* of the rate, &c. . . . I think the word 'overrated,' ought not to receive the narrow construction attempted to be put upon it. Though in its strict sense, 'overrating' means rating for *more* than ought to be, yet it *may* also mean rating when the party *ought not to have been rated at all*. If the latter be not the meaning of the word in the statute, this absurdity would follow—that provision is made for the case of an *excess* of rating, and none whatever for a rate altogether unjust." It only remains to be added that our statute, besides using the words "undercharged" or "overcharged," also uses the words, "*wrongfully* inserted on or omitted from the roll." In *Scragg* v. *London*, 26 U. C. Q. B. 271, Hagarty, J., when referring to the language of our statute, said: "Language more apparently indicating the establishment of a rule of decision to govern *all cases* and *bar all further question* as to the liability to assessment could, we think, not easily be used." In *McCarroll* v. *Watkins*, 19 U. C. Q. B. 248, where a person who at one time had been an occupant of a house, but never was owner or had any pretence to be owner, was assessed as owner, but paid no attention to the notice of assessment, Sir J. B. Robinson, said: "But whether he was assessed on the roll as owner or as occupier, it was incumbent on him to appeal or to petition under the 26th section of 16 Vict. cap. 182, if he meant to insist that his name was *wrongfully inserted* on the roll. Having *omitted* to do so, he became liable to pay the amount for which he stood assessed on the roll." But in the latest decision on the point, it has been held that where the person was improperly assessed, he is not precluded by an adverse decision of the Court of Revision from after-

he ought to be charged; (*b*) and the Court may, subject to the provisions of any by-law in this behalf, remit or reduce the taxes due by any such person, or reject the petition; (*c*) and the Council of any local Municipality may, from time to time, make such by-laws, and repeal or amend the same. 32 V. c. 36, s. 62.

APPEALS FROM THE COURT OF REVISION.

Appeal from Court of Revision.

59. An appeal to the County Judge shall lie, not only against a decision of the Court of Revision on an appeal to said Court, but also against the omission, neglect or refusal of said Court to hear or decide an appeal. (*d*)

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wards disputing his liability to be assessed. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126; *S. C.* 37 U. C. Q. B. 51. See further, note *a* to sec. 47 of this Act.

(*b*) The classes of persons entitled to avail themselves of the provisions of this section, are three, viz:

1. A person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made.
2. A person who declares himself, from sickness or extreme poverty, unable to pay the taxes.
3. A person who, by reason of any gross and manifest error in the roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged.

(*c*) The Court is bound to receive and decide upon the petition of a person coming within the meaning of this section. The decision may be either for the remission or reduction of the taxes, or for rejection of the petition, subject always to the provisions of any By-law in this behalf passed by the Municipal Council.

(*d*) Such an appeal as the present can only exist by statute, and only to the extent that the statute plainly gives the right. *Attorney-General* v. *Sillem*, 10 H. L. C. 704; *People* v. *Police Justice*, 7 Mich. 456; *Dubeque* v. *Rebman*, 1 Iowa, 444; *Conboy* v. *Iowa City*, 2 Iowa, 90; *Muscatine* v. *Steck*, 7 Iowa, 505. The Municipal authorities are not bound, in the absence of statutory requirement, to inform a person either of his right of appeal or of the proceedings necessary to prosecute the appeal. *The King* v. *Justices of West Yorkshire*, 3 M. & S. 493, 496; see also, *Murphy q. t.* v. *Harvey*, 3 U. C. C. P. 528. Ignorance of the provisions of a statute, as the present, is no excuse for non-compliance with its provisions. No man can be allowed to complain of his own act. Where the appellant not only attended the meeting at which the application was made of the Town funds of which he complained, but himself settled the form of the resolution against which he appealed, it was held that he could not be allowed to appeal. *Harrup* v. *Bayley*, 6 E. & B. 218. "According to every principle of justice he cannot com-

Service of notice of appeal.

2. The person appealing shall, (*e*) in person or by his attorney or agent, serve upon the Clerk of the Municipality (or Assessment Commissioner, if any there be), within five days after the date herein limited for closing the Court of

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plain of what was his own act." *Per* Lord Campbell, C.J., *Ib.* 224. In *The King* v. *Justices of Norfolk*, 5 B. & Ad. 990-992, Lord Denman said, speaking of appeals to Quarter Sessions: "It is desirable that the Court of Quarter Sessions should not vary their rules from time to time, and that they should rather lean to the hearing of appeals than to dismissing them on technical grounds." But a person who, after a summary conviction, at once expresses dissatisfaction and gives a notice of appeal, is entitled to be heard, although he paid the amount of the fine—the payment having been made to prevent the distress and sale of his goods. *In re Justices of York and Peel*, 13 U. C. C. P. 159; Draper, C. J., said: "I think further, that a party should not, on any doubtful ground, be deprived of a right of appeal against a summary conviction; and that if his conduct can fairly bear a contrary interpretation, it should not be construed as a waiver of this right. I am disposed to extend rather than to narrow Lord Denman's remark, that the Court of Quarter Sessions 'should rather lean to the hearing of appeals than to dismissing them on technical grounds.'" *Ib.* 162, 163.

(*e*) The decision of the Court of Revision is binding, subject to an appeal which is here given apparently on certain conditions. In *Adey* v. *Hill*, 4 C. B. 40, Wilde, C. J., speaking of Eng. Stat. 6 & 7 Vict. cap. 18, sec. 62, said; "Upon the ground, therefore, that the right of appeal against the decision of the Revising Barrister is given only upon a condition which has not been complied with in the present case, the Court is unanimously of opinion that the appellant is not in a situation to be heard." See further, *Torrance* v. *McPherson*, 11 U. C. Q. B. 200; *In re Meyers and Wonnacott*, 23 U. C. Q. B. 611; *In re Tozer and Preston*, 23 U. C. Q. B. 310; *Pentland* v. *Heath*, 24 U. C. Q. B. 464; *McLellan* v. *McClellan*, 2 U. C. L. J. N. S. 297; *Ex parte Curtis*, L. R. 3 Q. B. Div. 13. One of the conditions imposed by this section is, that the person appealing shall, in person or by his attorney or agent, serve upon the Clerk of the Municipality, within five days after the first day of July, a written notice of his intention to appeal to the County Judge. When the Legislature is thus giving to a Judge jurisdiction over rights that have always been the subject of such watchful jealousy, it is in a peculiar manner incumbent on the Judge to confine himself strictly within the limits prescribed for him. "A deliberate deviation from an enactment so express and positive in its terms would induce a mischief much greater than any inconvenience that can arise from the blunder of the appellant in this case." *Per* Wilde, C. J., in *Adey* v. *Hill*, 4 C. B. 38, 40; see further, *Wanklyn* v. *Woolett*, 4 C. B. 86; *Woolet* v. *Davis*, *Ib.* 115. The first point to be noted is, that the notice must be in writing. See *The Queen* v. *Justices of Salop*, 4 B. & Al. 626; *The Queen* v. *Justices of Surrey*, 5 B. & Al. 539; *The Queen* v. *Justices of Lincolnshire*, 3 B. & C. 548; *The Queen* v. *Justices of Huntingdonshire*, 19 L. J. M. C. 127. It is not said that it *must* be signed. *Petherbridge* v. *Ash*, 4 C. B. 74; see also, *Curtis* v. *Bright*, 11 C. B. N. S. 95;

Revision, a written notice of his intention to appeal to the County Judge—except in the Municipality of Shuniah, in which municipality the notice shall be given within ten days after the first day of August in every year.

Proviso as to Shuniah.

The Queen v. *Justices of Kent*, L. R. 8 Q. B. 305. It must be given "*within* five days after the first day of July." See note *a* to sec. 177 of The Municipal Act. The first day of July is now the day fixed by law for the final revision of the roll by the Court of Revision, Sub. 19, of sec. 56. By sub. 12 of sec. 56, it is declared that "every notice hereby required shall be completed *at least* six days before the sittings of the Court." See notes to that sub-section. In England, under a somewhat analogous statute, there is a power ("It shall be lawful," &c.,") delegated by the Legislature to the Court "if it shall appear to the Court *that there has not been reasonable time* to give or send such notice (ten days at least) in any case to postpone the hearing of the appeal in such case, as to the said Court shall seem meet." 6 & 7 Vict. cap. 18, sec. 64. In speaking of this provision, Wilde, C. J., said: "Postponing the consideration of the appeals to the next term, as suggested, would not have the effect of relieving the parties from the difficulty (the day appointed for the hearing of the appeals having been unusually early). The day appointed by the Court for the hearing of the appeals would be still the same. Unless, therefore, the Court is prepared to act in a manner that would be wholly inconsistent with judicial gravity and decorum, by resorting to a mere subterfuge in order to get over a supposed difficulty, the objection that now presents itself would not be at all lessened by the lapse of time. *Adey* v. *Hill*, 4 C. B. 38, 40. In another case the same learned Judge said: "The attorney has had the whole time between the decision of the case by the Revising Barrister and the fourth day of the term, inclusive, to prepare and deliver his notice. He has thought fit to leave it till the last moment, when there is no time left to remedy the defect. The only power we have to extend the time is under section 64, and that applies to the notice of the respondent, and not to a case like this." *Petherbridge* v. *Ash*, 4 C. B. 74, 75; see also *Brown* v. *Tamplin*, L. R. 8 C. P. 241. Courts of Revision are now expressly authorized to appoint adjourned sittings for the purpose of hearing appeals, for which notices were not served in time for the first day. Sub. 13 of sec. 56. The appearance of the party on whom the notice was served for the purpose of objecting to the sufficiency of the notice, is no waiver. *The Queen* v. *Cornwall*, 25 U. C. Q. B. 286; see also, *Grover* v. *Bontems*, 4 C. B. 70. The notice is to be of the intenion of the party to appeal. Its object is simply to inform the parties concerned that the person decided against is dissatisfied, and intends to avail himself of the right to appeal which the statute gives him. If it substantially give this information, it will be, no matter what the form be, held sufficient. *The Queen* v. *Justices of Denbighshire*, 9 Dowl. 509; *The Queen* v. *Justices of Oxfordshire*, 4 Q. B. 177; *The Queen* v. *Westhoughton*, 5 Q. B. 300; *The Queen* v. *Justices of Buckinghamshire*, 4 E. & B. 259, note *b*; see also, *The Queen* v. *Recorder of Liverpool*, 15 Q. B. 1070. The grounds of the appeal need not be stated on the notice, unless so required by the statute giving the appeal. *The Queen* v. *Westmoreland*, 10 B. & C. 226; see also, *The Queen* v.

Day for hearing.

3. The Judge shall notify the Clerk of the day he appoints for hearing appeals. (*f*)

Clerk to notify parties.

4. The Clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for giving notice on a complaint under the fifty-sixth section of this Act; but in the event of failure by the Clerk to have the required service in any appeal made, or to have the same made in proper time, the Judge may direct service to be made for some subsequent day upon which he may sit. (*g*)

List of appellants, &c. to be posted up by Clerk.

5. The Clerk of the Municipality shall cause a conspicuous notice to be posted up in his office, or the place where the Council of the Municipality hold their sittings, containing the names of all the appellants and parties appealed against, with a brief statement of the ground or cause of appeal, together with the date at which a Court will be held to hear appeals. (*h*)

Derby, 20 L. J. M. C. 44; see further, *The Queen* v. *Justices of Newcastle-upon-Tyne*, 1 B. & Ad. 933; *The Queen* v. *Justices of Oxfordshire*, 1 B. & C. 379; *The Queen* v. *Sheard*, 2 B. & C. 856. But it should, on the face of the notice, in some manner appear that the party is dissatisfied with the decision intended to be appealed against. *The Queen* v. *Mayor of Harwich*, 1 E. & B. 617; see also *The Queen* v. *Justices of West Riding Yorkshire*, 7 B. & C. 678; *The Queen* v. *Blackawton*, 10 B. & C. 792; *The Queen* v. *Justices of Essex*, 5 B. & C. 431. There does not appear to be any power to waive these notices so as to give the Court jurisdiction. See *Newton* v. *Overseers of Mobberly*, 2 C. B. 203, and *Grover* v. *Bontems*, 4 C. B. 70.

(*f*) The duration of the notice is not here in express terms specified. Possibly sub. 12 of sec. 56 would apply, wherein it is declared that every notice hereby required, whether by publication, letter or otherwise, shall be completed at least six days before the sitting of the Court.

(*g*) In *The Queen* v. *The Court of Revision of the Town of Cornwall*, 25 U. C. Q. B. 291, Morrison, J., said: "It was argued on the part of the relator that the neglect of the Clerk, or a failure by him in the performance of his duty, ought not to have prevented the complaints being heard, and that all that was incumbent on the relator was to make a request under sub. 2 to the Clerk. Upon an examination of sec. 60, and its subs. 2, 7, 8 and 10, which bear on this application, we find that they are all *imperative*, by force of the Interpretation Act; and when we consider the object of the complaints made by the relator, we cannot overlook *the plain words of the statute*." The provision here for the authorization of service for a subsequent day, in the event of failure of the Clerk to do what is required of him, meets the difficulty.

(*h*) See preceeding note.

6. The Clerk of the Municipality shall be the Clerk of such Court. (*i*) Clerk of Court.

7. At the Court so holden, the Judge shall hear the appeals (*j*) and may adjourn the hearing from time to time, and defer judgment thereon at his pleasure, but so that all the appeals may be determined before the first day of August—except in the Municipality of Shunìah (in which Municipality all such appeals shall be determined before the fifteenth day of September in every year), and except in the cases provided for in sections forty-four and forty-six. 37 V. c. 19, s. 16; 40 V. c. 31, s. 10. Hearing and adjournment. Proviso as to Shunìah, &c.

(*i*) It is obligatory upon the Clerk of the Municipality to act as Clerk of the Court. No provision is made for the appointment of a substitute.

(*j*) It has been made a question whether any new evidence can be gone into or fresh witnesses called on an appeal from the decision of an inferior tribunal, in the absence of statutory provision to that effect. In the case of a conviction for an offence, it is said, the party offending has due notice of the hearing, and it is his duty to bring all his evidence to the hearing. *Keen* v. *Stuckely*, Gilb. R. 155, 156; 3 Back. Com. 455. Superior Courts *review* the sentences of inferior ones, but that only, and do not admit new evidence not produced below in order to examine the justice of a sentence that was not in any degree produced by it. See Dickenson, Quarter Sessions, 907, note. In a civil bill appeal in Ireland, Richards, B., held that new evidence is inadmissible. *Gorman* v. *Beaghan*, 3 Cr. & Dix. C. C. 344; Bunker's Digest, 1206. But in *The King* v. *Commissioners of Excise*, 3 M. & S. 133, it was held that the Commissioners of Appeals on matters of Excise could not properly reject the testimony of witnesses tendered for the appellant, upon an appeal to them against a conviction by the Commissioners of Excise, upon the ground that such witnesses were not examined at the original hearing. *The King* v. *Commissioners of Appeals in Excise*, 3 M. & Sel. 133. In delivering judgment, Lord Ellenborough said: "If any inconvenience is likely to result from this determination, the Legislature must be applied to to remedy it." *Ib.* 143. In *The King* v. *Jeffreys*, 1 B. & C. 604, however, where a person who had been summoned by two Justices, under 7 & 8 Will. III., cap. 6, sec. 1, appeared before them and was ordered to pay the tithes demanded, and raised no question as to the *modus*, but afterwards appealed to the Sessions, and at the Sessions for the first time set up the *modus*, it was held that the Justices of the Sessions might, in the exercise of their discretion, rightly reject the new evidence. In *The King* v. *The Justices of Suffolk*, 1 B. & Al. 640, where an appeal was made to the Sessions against a rate on four grounds specified, and the party, being still dissatisfied, made a further appeal to the General Sessions, specifying two additional grounds of appeal, Bayley, J., said: "The impression on my mind is, that he must, at the *County* Sessions, be confined to the same grounds of objection that he took at the *Borough* Sessions, for the former Court is in the nature of a *Court of Review*, and it is their duty to examine

Assessment roll to be produced to the Court, and amended, etc.

60. At the Court to be holden by the County Judge, or acting Judge of the Court, to hear the appeals hereinbefore provided for, (*k*) the person having charge of the assessment roll passed by the Court of Revision shall appear and produce such roll, and all papers and writings in his custody connected with the matter of appeal, (*l*) and such roll shall be altered and amended according to the decision of the Judge, if then given, who shall write his initials against any part of the said roll in which any mistake, error or omission is corrected or supplied; (*m*) and if the decision is not then

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if the rate can be supported on the grounds decided upon by the Court below. If that were not so, it would be open to the party at the Borough Sessions to state any illusory grounds of appeal, and to *put forth his whole strength by surprise at the County Sessions.*" *Ib.* 645. Holroyd, J., said: "The County Sessions are to re-try the same matters which were triable at the Borough Sessions. In all cases of new trials or of error, the Court of Appeal looks at the original proceedings. *There may, however, be fresh evidence adduced.* . . . The appeal to the County Sessions must here be confined to the *original matter of complaint only.*" *Ib.* 646. "It seems to be an universally admitted rule that, in every case of appeal to the Sessions, both parties are at liberty to examine competent witnesses on their behalf, *without regard to whether they have been examined before or not.*" Paley on Convictions, 5th ed. 369. In England the Legislature has at length, as suggested by Lord Ellenborough in *The King* v. *Commissioners of Excise*, 3 M. & Sel. 133, interfered in matters of excise by 7 & 8 Geo. IV., cap. 53, sec. 54, as amended by 4 & 5 Will. IV., cap. 51, sec. 24, by providing that no witnesses are to be examined on an appeal in matters of excise except those who were examined before the Justices, or tendered for examination and refused by them. See *The Queen* v. *Gamble*, 16 M. & W. 384. In *Kirby* v. *The Owners of the Scindia*, L. R. 1 P. C. 241, the Privy Council, as a matter of discretion, refused to receive fresh evidence upon an appeal from an interlocutory decree of the Vice Admiralty Court of the Cape of Good Hope, in a cause of salvage. The result of the authorities would appear to be, that it is in the discretion of the County Judge to receive fresh evidence in support of the grounds of appeal raised in the Court af Revision, but not in support of any new or additional grounds of appeal.

(*k*) This section applies to all appeals that may be and are legally brought before the County Judge or acting Judge for his decision.

(*l*) The person having the custody of the roll passed by the Court of Revision would, properly speaking, be the Municipal Clerk. It is made his duty, on the hearing of the appeal, not only to produce the roll, but "all papers and writings in his custody connected with the matter of appeal." This would include all exhibits and other papers given in evidence before the Court of Revision, touching the appeal in that Court.

(*m*) It is presumed that the alteration of the roll by the Judge, in any case where he is without jurisdiction, would be of the same

given the Clerk of the Court shall, when the same is given, forthwith alter and amend the re" ... rding to the same, and shall write his name against every such alteration or correction. (*n*) 32 V. c. 36, s. 65. Amendments how certified.

61. In all proceedings before the County Judge or acting Judge of the Court, under or for the purposes of this Act, such Judge shall possess all such powers for compelling the attendance of, and for the examination on oath of all parties, whether claiming, or objecting or objected to, and all other persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, (*o*) as belong to or might be exercised by him, in the Division Court or in the County Court, either in Term time or vacation. 32 V. c. 36, s. 66; 37 V. c. 19, s. 17. Powers of Judge sitting in appeal from Court of Revision.

62. All process or other proceedings in, about or by way of appeal, may be entitled as follows :— (*p*) Style of proceedings.

In the matter of appeal from the Court of Revision of the , of

———————————, Appellant,

and

———————————, Respondent,

and the same need not be otherwise entitled. 37 V. c. 19, s. 17.

63. The cost of any proceeding before the Court of Revision or before the Judge as aforesaid shall be paid by or apportioned Costs to be apportioned by the Judge, and how enforced.

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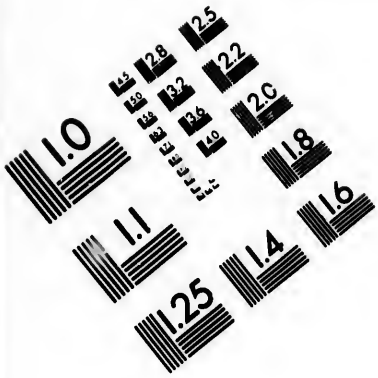
and of no other effect than the alteration of the roll by a stranger.

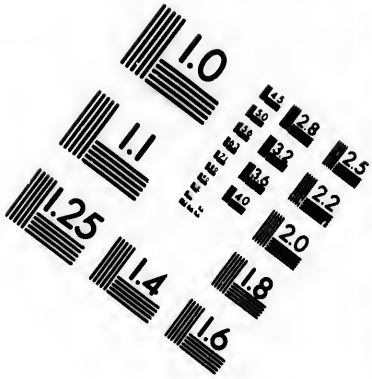
(*n*) It is, in the case here provided for, made the duty of the Clerk of the Municipality, upon receipt of a certificate of the decision from Clerk of the Court, forthwith" to "alter and amend" the roll, and for evidence in the event of any dispute as to the fact, "to write his name against every such alteration or correction." The order to amend is not the amendment. The latter, to be effectually made, should be actually made; and this is what is contemplated in the first part of the section, in the production of the roll, and in the latter part by the certificate to the Clerk, and alteration of the roll by the Clerk. See also sec. 65 of this Act.

(*o*) The powers enumerated are :

1. For compelling the attendance of, and for the examination on oath of all parties, whether claiming, or objecting or objected to, and all other persons whatsoever.
2. For the production of books, papers, rolls and documents.
3. For the enforcement of orders, decisions and judgments.

(*p*) See note *s*, of sec. 320 of The Municipal Act.





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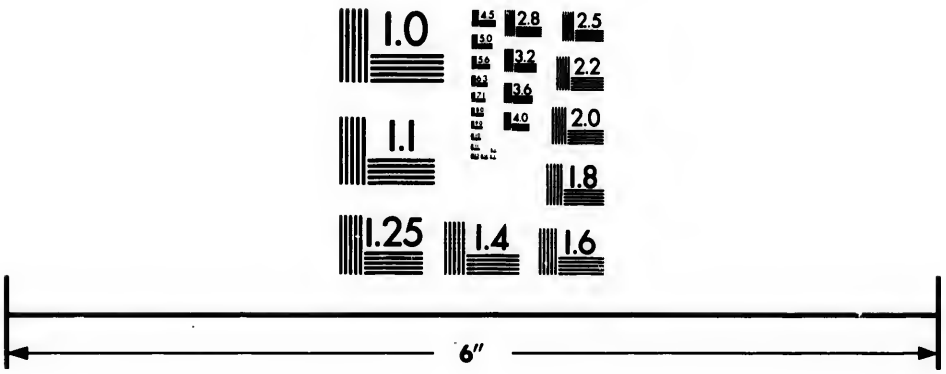

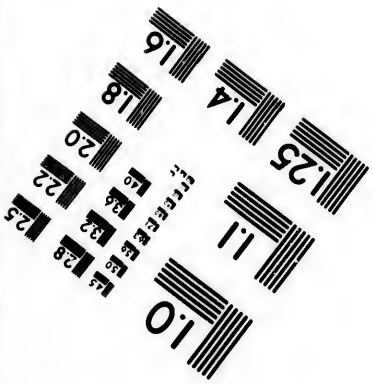

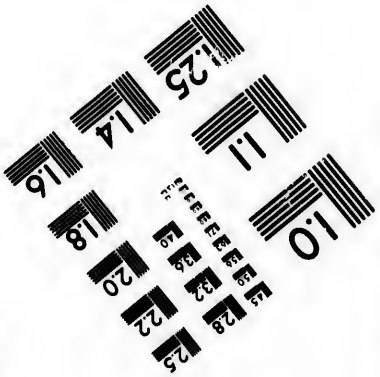

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between the parties in such manner as the Court or Judge thinks fit, and where costs are ordered to be paid by any party claiming or objecting or objected to, or by any Assessor, Clerk of a Municipality, or other person, the same shall be enforced, when ordered by the Court of Revision, by a distress warrant under the hand of the Clerk and the corporate seal of the Municipality, and when ordered by the Judge, by execution to be issued as the Judge may direct, either from the County Court or the Division Court within the County of which the Municipality or assessment district, or some part thereof, is situated, in the same manner as upon an ordinary judgment for costs recovered in such Court. (*q*) 32 V. c. 36, s. 67 ; 37 V. c. 19, s. 18.

What costs chargeable.

64. The costs chargeable or to be awarded in any case may be the costs of witnesses, and of procuring their attendance and none other ; (*r*) and the same are to be taxed according to the allowance in the Division Court for such costs ; and in cases where execution issues, the costs thereof as in the like Court, and of enforcing the same, may also be collected thereunder. 37 V. c. 19, s. 19.

Decision of County Judge to be final.

65. The decision and judgment of the Judge or acting Judge shall be final and conclusive (*s*) in every case adjudicated, and the Clerk of the Municipality shall amend the rolls accordingly. 32 V. c. 36, s. 69.

(*q*) The costs chargeable, or to be awarded, in any case may be the costs of witnesses and of procuring their attendance, and none other. And the same are to be taxed according to the allowance in the Division Court for such costs. Sec. 64.

(*r*) "And none other." These words exclude any allowance for counsel fees or for service of notices, &c.

(*s*) The decision, &c., is made final and conclusive in *every case* adjudicated. The words do not mean that the decisions on appeals to the County Judge shall be final and conclusive to all intents and purposes, but merely that the judgment shall be final and conclusive in the *particular case*. The Judge, though sitting in appeal, may review his previous decisions, and overrule them if clearly demonstrated to be erroneous. See *Webster* v. *Overseers, &c.*, L. R. 8 C. P. 306. And the decision, &c., is only final and conclusive in the particular case adjudicated, *where there is power or jurisdiction to adjudicate*. See note *a* to sec. 47. If there be power to adjudicate, the result is to be looked at as the decision or judgment, regardless of the reasons given for arriving at that result. *In the matter of the Mayor of Hythe*, 5 A. & E. 832 ; *The Queen* v. *Bolton*, 1 Q. B. 66; *Thompson* v. *Ingham*, 14 Q. B. 710 ; *The Queen* v. *Dayman*, 7 E. & B. 672 ; *Forster* v. *Forster*, 4 B. & S. 187 ; *The Queen* v. *Levi*, 34 L. J. M. C. 174 ; *Wildes* v. *Russell*, L. R. 1 C. P.

722; *Ex parte Vaughan*, L. R. 2 Q. B. 114; *Elston* v. *Rose*, L. R. 4 Q. B. 4. If there was jurisdiction in the particular Court to adjudicate, and the decision of that Court is made final or conclusive, no other Court can review the sufficiency of the reasons; often there is a good judgment and bad reasons. *Ib.* In *Allen* v. *Sharp*, 2 Ex. 352-360, Parke, B., said: "Wherever a statute gives to certain persons the power of adjudicating upon a particular matter, their jurisdiction excludes all further inquiry. Here it is as if the statute had said that the Assessor shall decide whether or no the person is a horse dealer; and the Assessor having done so his decision is final and conclusive, unless appealed against in the manner pointed out by the Act." In *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194-200, Wilson, J., said: "The Judge had power to *reduce* the assessment made, and he has done so. But it is said he did so upon a false ground and for a bad reason; that he did so because the land was not land according to the interpretation of the Assessment Act, and not because the assessment was too high. There is no rule of law which requires the Judge to give the reasons on which his judgment is founded. His reasons may be bad, but his conclusion or judgment, however illogical it may be, will, nevertheless, be good. We do not think it would be *safe* to say that in *no case* can the decision of the Court of Revision or of the County Judge be questioned by an action, although the statute declares that the decision of the Court shall be valid and binding on all parties if not appealed from to the County Judge, and that his decision shall be final and conclusive. If the Judge were to decide that property expressly exempted was not exempt, or that non-residents should be assessed personally on the roll, although they had given no notice to be so assessed, and protested against it, his decision, no doubt, would *not* be final. It would be void and be inquirable into, in an action, for he would in such a case be acting wholly without jurisdiction. But in cases where he has jurisdiction his decision is final, though it is plainly erroneous. Here he had jurisdiction to say whether *the property* was assessed too high or too low. This gave him authority to enquire into *the nature of the property*. He came to the conclusion that it was assessed too high, because the chief part of the property in question was personal and not real property. His decision that it was personal property was plainly erroneous, for it undoubtedly *was* and *is* land and real estate within the meaning of the statute, and at common law. There is not the *slightest pretence* for calling it personal, yet we *fear* his decision is irreversible. The statute has declared it shall be final and conclusive in all cases adjudicated." If this reasoning be sound, and applied to cases of exemption of real and personal property, it would prove that there is jurisdiction to rate real or personal property plainly exempt from taxation so long as the Judge, with, or without, or against, reason *increases or reduces* the assessment. Take an exemption of real estate by reason of its occupation by the Crown. The Judge has power to inquire into the nature of the property. He comes to the conclusion that it is personal property. He accordingly *increases* the assessment. His decision that it was personal property was plainly erroneous. But he had jurisdiction to increase or reduce the assessment. The result is, that property which *if* real estate, and which is real estate and exempt by law, is taxed because the Judge having

power to increase or reduce *calls* it personal estate and *increases* the amount. But, after all, the question really is, whether a person assessed for property exempt is not as much bound to appeal as the person taxed for property which he does not own; for in the latter case it has been held that if the party *wrongfully assessed* omit to appeal, he is bound by the roll. Mr. Baron Parke, in *Allen* v. *Sharpe*, 2 Ex. 365, said: "Though in its strict sense overrating means rating for *more* than it ought to be, yet it *may* also mean rating when the party *ought not to have been rated at all.*" If in our statute the only words used were "undercharged or overcharged," it might be argued according to the reasoning of Baron Parke, that a person wrongfully assessed is overcharged and so must appeal. But the better opinion appears to be that where an assessor assesses that which is not assessable his act is a nullity, and there is no obligation to appeal against it. *Nickle* v. *Douglas*, 37 U. C. Q. B. 63, 67. Where the foundation of the jurisdiction is defective, a prohibition may be applied for at once. *The Mayor, &c., of London* v. *Cox*, L. R. 2 H. L. C. 239; *Everard* v. *Kendall*, L. R. 5 C. P. 428; *James* v. *London and South Western Railway Co.* L. R. 7 Ex. 187; *S. C.* L. R. 7 Ex. 287; *Jay Cook* v. *Gill et al*, L. R. 8 C. P. 107; *Whinny* v. *Schmidt*, *Ib.* 118; *In re Charkish*, L. R. 8 Q. B. 197. The Court of Chancery has jurisdiction to grant prohibition, *Re Bateman*, L. R. 9 Eq. 660; see also, *In re Foster*, 3 Jur. N. S. 1238, but will in general, leave the party applying for it to the Common Law Courts, if the Common Law Courts be sitting. *Ib.* Either prohibition (R. S. O. c. 52, s. 3) or *mandamus* (*Ib.* 18) may now be obtained from a Judge of the Common Law Courts in vacation. Those who seek prohibition must apply with promptitude. *In re Denton and Marshall*, 1 H. & C. 654. It may be granted after judgment and sentence in the inferior Court, when the party has had no opportunity of applying earlier to the superior Court, and has not acquiesced in the proceedings of the inferior Court. *Roberts* v. *Humbly*, 3 M. & W. 120; *Yates* v. *Palmer*, 6 D. & L. 283; *Aldridge* v. *Cato*, L. R. 4 P. C. 313; but see *In re Poe*, 5 B. & Ad. 681. It may, in the discretion of the Court, be granted on the application of a stranger. *De Haber* v. *The Queen of Portugal*, 17 Q. B. 171; *The Queen* v. *Twiss*, 10 B. & S. 298. The affidavits should be intituled simply in the Court, and not in any cause. *Ex Parte Evans*, 2 Dowl. N. S. 410; see further *Breeden* v. *Capp*, 9 Jur. 781. If the application fail it will not be allowed to be renewed upon affidavits stating matter not before presented to the Court, but existing at the time of the original application. *Bodenham* v. *Ricketts*, 6 N. & M. 537. The decision of the inferior Court on facts going to its jurisdiction is reviewable on on application for prohibition. *Liverpool Gas Light Co.* v. *Overseers of Everstow*, L. R. 6 C. P. 414. The Court will not in such a case interfere by prohibition, unless it be perfectly clear that there has been an excess of jurisdiction. *Ricordo* v. *Maidenhead Board of Health*, 2 H. & N. 257; *Manning* v. *Farquharson*, 6 Jur. N. S. 1300; *The Queen* v. *Twiss*, L. R. 4 Q. B. 407; see also, *Bonyard* v. *McWhirter*, 12 U. C. Q. B. 143; *McWhirter* v. *Bonyard*, 14 U. C. Q. B. 85; *In re Chief Superintendent of Schools* v. *Sylvester*, 18 U. C. Q. B. 538. If any inferior Court proceed or attempt to proceed in a matter in which it has not jurisdiction, there may be a prohibition from one of the superior Courts of Law. *Darby* v. *Cosens*, 1 T. R. 552; *Ex parte Smythe*, 2

Copy of roll to be transmitted to county clerk.

66. When, after the appeal provided by this Act, the assessment roll has been finally revised and corrected, the Clerk of the Municipality shall, without delay, transmit to the County Clerk a certified copy thereof. (*t*) 32 V. c. 36, s. 70.

NON-RESIDENTS' APPEALS.

Appeals with respect to non-residents' lands.

67. In case any non-resident, whose land within the limits of any City, Town, incorporated Village or Township, has been assessed in any revised and corrected assessment roll, (*u*) complains by petition to the proper Municipal Council, at any time before the first day of May in the year next following that in which the assessment is made, such Council shall, at its first meeting, after one week's notice to the appellant, try and decide upon such complaint; (*v*) and all decisions of Municipal Councils under this Act may be appealed from, tried and decided, as provided by the fifty-ninth and following sections of this Act; and if the lands are found to have been assessed twenty-five per centum higher than similar land belonging to residents, the Council or Judge shall order the taxes rated on such excess to be struck off; (*w*) and, in all such cases, where the land has been subdivided into park, village or

Lots subdivided not to affect rolls revised and corrected.

C. M. & N. 748; *The Queen* v. *Hereord*, 3 E. & E. 115. A declaration by statute, that the proceedings of an inferior tribunal shall be final and conclusive, is held not to deprive the party of a writ of *certiorari* in cases where it is proper for such a writ to go—not to try the merits, but to see where the limited jurisdiction has exceeded its bounds. *The King* v. *Morley*, 2 Burr. 1040; see also, *Ex parte Heath*, 3 Hill (N. Y.) 42; *The King* v. *Commissioners*, 2 Keble 43; *Lawton* v. *Commissioners*, 2 Caines (N. Y.) 179; *Starr* v. *Trustees*, 6 Wend. (N. Y.) 564; *People* v. *The Mayor*, 2 Hill (N. Y.) 9; *Tierney* v. *Dodge*, 9 Minn. 166. But where the declaration is made in reference to a Court of general and superior jurisdiction, as of the Supreme Court of New York (for example, in confirming appraisements for opening streets), there can be no appeal in any manner to a higher tribunal. *In re Canal and Walker Streets*, 12 N. Y. 406; *In re New York Railroad Co.* v. *Marvin*, 11 N. Y. 276.

(*t*) See note *g* to sec. 240 of The Municipal Act.

(*u*) This section probably has reference only to non-residents whose names are not on the roll, and who would therefore not receive the notice made necessary by section 41 of this Act, and who would not have any notice of the day on which the roll would be returned, so as to appeal within fourteen days after its return, as required by sec. 56, sub. 1.

(*v*) See sec. 56 and notes thereto.

(*w*) If the Council be of opinion that the land is not rated higher than similar land belonging to non-residents, they will, of course, dismiss the complaint. *In re Judge of Perth*, 12 U. C. C. P. 252.

town lots, if the same are owned by the same person or persons, the statute labour tax shall be charged only upon the aggregate of the assessment, according to the provisions of this Act; (*x*) but no roll shall be amended, under this section of this Act, if the complaint was tried and decided before such roll was finally revised and corrected, under the provisions of the fifty-sixth to sixty-sixth sections of this Act. (*y*) 32 V. c. 36, s. 64.

EQUALIZATION OF ASSESSMENTS.

Annual examination of assessment rolls by municipal councils, and for what purpose.

68. The Council of every County shall, yearly, before imposing any County rate, and except as provided by sections forty-four and forty-six, not later than the first day of July, (*z*) examine the assessment rolls of the different townships, Towns and Villages in the County, for the preceding financial year, (*a*) for the purpose of ascertaining whether the valuation made by the Assessors in each Township, Town or Village for the current year, bears a just relation to the valuation so made in all such Townships, Towns and Villages, (*b*) and

(*x*) See sec. 87 sub. 2 of this Act.

(*y*) A previous judgment between the same parties on the same subject matter operates as an estoppel. *Commissioners of Leith Harbour* v. *Inspectors of the Poor*, L. R. 1 S. Ap. 17, 23.

(*z*) See note *y* to sec. 240 of The Municipal Act.

(*a*) See *In re Revell and Oxford*, 42 U. C. Q. B. 337.

(*b*) It is made the duty of the County Council, yearly: *To examine* the assessment rolls of the different Townships, Towns and Villages in the County for the preceding financial year, for the purpose of ascertaining whether the valuation made by the assessors in each Township, Town or Village for the current year bears a just relation to the valuation so made in all the Townships, Towns and Villages. And for the *purpose of County rates*, power is given *to increase or decrease* the aggregate valuations of real and personal property in any Township Town or Village, adding or deducting so much per cent. as may, *in their opinion*, be necessary to produce a just relation between all the valuations of real and personal property in the County. But *they shall not reduce* the aggregate valuation thereof for the whole County, as made by the assessors. Valuation of property, real or personal, is, to a great extent, a matter of opinion. See note *y* to sec. 23 of this Act. Some men are more sanguine than others, and therefore more likely, looking to the futnre, to make a higher estimate of present value than those who are less sanguine. Some men in their inquiries into a subject matter of investigation are more careless than others, and so more likely to take things for granted than others. These and similar considerations influencing assessors acting independently of each other, in different local Municipalities, often produce very dissimilar results even in adjoining

may, for the purpose of County rates, increase or decrease the aggregate valuations of real and personal property in any Township, Town or Village, adding or deducting so much per centum as may, in their opinion, be necessary to produce a just relation between the valuation of real and personal estate in the County; (*c*) but they shall not reduce the

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Municipalities. But so far as the County is concerned for the purpose of County rates, a just relation is needed in order that the rate levied may bear, as nearly as possible, equally on all the local Municipalities in the County. In order to bring this about, when inequality is found, a power to increase or decrease the aggregate valuations of taxable property in the local Municipalities of the County, so long as the whole aggregate valuation of the County is not reduced, must be exercised by some body having authority over the whole of the local Municipalities, and that body is the County Council. The Legislature has not attempted absolutely to prescribe by what method of proceeding the local Municipalities shall be made to bear a just relation to each other. It could hardly have succeeded in any such attempt. Much must, of necessity, be left to the judgment of those who are to conduct the operation, and who, by reason of their local knowledge, are best qualified to do so. *Per* Robinson, C. J., in *Gibson and Huron and Bruce*, 20 U. C. Q. B. 119.

(*c*) We may suppose the Council fixing upon some one Township or Town, in the first place, as that in which the value appears to have been assigned with the strictest regard to truth and justice, and then having selected such a standard, we may suppose them taking up each Township, Town, &c., and adjusting the valuation by such standard. In doing this, the members of the Council must, of necessity, be governed by their own judgment, and could not, in the nature of things, have any rule given to them by which they could arrive at any particular result. It must be entirely a matter of opinion whether, if land cleared or uncleared in Township A. is valued at such a sum per acre, land in Township B. ought to be valued at any and what other sum per acre. But when the Council shall have adopted the proportional value which land in one Township bears to land in another, and shall have compared them all by some standard, then they must ascertain and express how much per cent. must be added or deducted from the assessment in each local Municipality to make them all bear just relation to each other. This is not given as a rule or method of proceeding that can guide or assist the Council in adjusting the relation between the different local Municipalities, but as a method by which they are to express to the collectors the effect of the relation they have established, as leading to an addition or deduction of so much per cent. to or from the assessment of each individual, according as they have found the assessment that has been made in the particular local Municipality too high or too low, as compared with the standard by which they have resolved to abide. This direction to the collector makes his duty afterwards simple and precise. But the business of the Council in equalizing the assessments is not one that can be accomplished by any arithmetical calculation. No two bodies of men, any more than any two individuals, could be expected to arrive at the same conclusions, if they attempted

aggregate valuation thereof for the whole County as made by the Assessors. 32 V. c. 36, s. 71, (1).

Local municipality may appeal.

2. If any local Municipality is dissatisfied with the action of any County Council in increasing or decreasing or refusing to increase or decrease the valuation of any Municipality, the Municipality so dissatisfied may appeal from the decision of the Council to the Judge of the County Court of the County at any time within ten days after such decision, (*d*) by giving to the Judge and the Clerk of the County Council a notice in writing, under the seal of the Municipality, of such appeal; (*e*) and the County Judge shall appoint a day

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to make the adjustment independently of each other. The Legislature has not attempted to instruct the Council how they are to proceed in order to do equal justice. It has done the best it could in committing the duty to them on general terms of equalizing the assessments, so as to produce a just relation, but have necessarily left it to them, as best they can, to work out the problem. It is a thing more easily talked of than done. *Per* Robinson, C. J., in *Gibson and Huron and Bruce*, 20 U. C. Q. B. 120.

It is not for a Court of law to interfere, as regards the reasonableness of the valuations and the conclusions to be come to on that point, by comparing the value set upon land in one Municipality with the value set upon land in another. It is not for a Court to judge of that. Even if it were, there are various circumstances to be taken into consideration as bearing upon the question of computation and value, of which a Court has not the means of judging, for want of that local knowledge which the members of the County Council, chosen by the people themselves, must be supposed to possess, and doubtless do possess. It is not merely the fact that one Township has been long settled, and another not so long, that should alone influence the judgment in making the comparison, nor yet the number of inhabitants, though these are circumstances that would naturally be taken into consideration. Quality of soil and of timber, abundance or scarcity of water, distance from market, and the description of inhabitants, as well as their numbers, are matters that require to be considered in comparing one Township with another; and when these and all other matters have been considered, the conclusion to which they lead are to be formed by the Council, and not by a Court of law. But so far as the Legislature has assumed to prescribe rules for the guidance of a Municipal body, in the discharge of any duty or exercise of any power, such body must, beyond doubt or question, conform to the rules. And if the Council, where rules have been prescribed for their action, were to go contrary to the rules or in any way violate them, the Court, if this were clearly made out, would interfere by writ of *mandamus*, *The Queen* v. *Middlesex*, 2 E. & B. 694, and the act itself might be held illegal in any proceeding in which its legality would come in question. *Lincoln* v. *Niagara*, 25 U. C. Q. B. 578.

(*d*) See note *a* to sec. 177 of The Municipal Act.

(*e*) See note *g* to sec. 53 of this Act.

for hearing the appeal, not later than ten days from the receipt of such notice of the appeal, and may, at such Court, proceed to hear and determine the matter of appeal, or adjourn the hearing thereof, from time to time; but except as provided in sections forty-four and forty-six, the same shall not be adjourned or judgment deferred beyond the first day of August next after notice of the appeal; and the Judge shall equalize the whole assessment of the County. (*f*) 32 V. c. 36, s. 71 (3); 37 V. c. 19, s. 23. Proviso.

(*f*) In the event of the Judge allowing the appeal and reducing the amount of the aggregate value of assessment of the particular Municipality appealing, the difference between the sum fixed by the County Council and the reduced sum allowed by the County Judge may be added to the aggregate valuations of the other local Municipalities, or some of them, according to the evidence before him, in such a manner that the aggregate valuations of the whole County is not reduced. In *Simcoe v. Norfolk*, 5 U. C. L. J. N. S. 182, the learned Judge, in delivering judgment, said in conclusion: "I therefore allow the appeal of the Town of Simcoe, and equalize their aggregate assessment for County purposes at the said sum of $303,000 (the amount returned on the roll.) This leaves the total aggregate equalization of the County at the sum of $57,000 less; and it devolves upon me, according to the provisions of the statute, to divide and add this sum to or among the several Townships of the County, or some of them. In the absence of any evidence produced before me, and in the absense of any action of the County Council, it appears to me that my proper course is to divide and add the said sum of $57,000 *pro rata*, according to the previous equalization by the County Council, among the several Townships of the said County, thus:—

Townships.	Equalization by County Council.	Added by Judge.	Total.
Townsend	$1,140,000	$13,500	$1,153,500
Windham	735,000	8,800	743,800
Middleton	360,000	4,400	364,400
Houghton	285,000	3,300	288,300
Walsingham	760,000	9,000	769,000
Charlotteville	700,000	8,300	708,300
Woodhouse	825,000	9,700	834,700
Simcoe, say $360,000	360,000	..	..
Deducted by Judge.. 57,000	..	..	303,000
$303,000	$5,165,000	$57,000	$5,165,000

By the Act of last session, 41 Vict. c. 13, it is enacted: "The right of appeal provided for by section sixty-eight of the Revised Statutes respecting 'The Assessment Act' shall exist whether County Valuators have been appointed or not, and upon any such appeal the report of the County Valuators shall be open to review by the County Judge."

Effect of clerk of municipality omitting to send copy of roll.

69. If the Clerk of the Municipality has neglected to transmit a certified copy of the assessment roll, such neglect shall not prevent the County Council from equalizing the valuations in the several Municipalities according to the best information obtainable ; (*g*) and any rate imposed, according to the equalized assessment, shall be as valid as if all the assessment rolls had been transmitted. 32 V. c. 36, s. 72.

Valuators to attest their report on oath.

70. In cases where valuators are appointed by the Council to value all the real and personal property within the County, (*h*) they shall attest their report by oath or affirmation in the same manner as Assessors are required to verify their rolls by the one hundred and tenth section of this Act. 32 V. c. 36, s. 73.

Apportionment of county rates how to be based.

71. The Council of a County, in apportioning a County rate among the different Townships, Towns and Villages within the County, (*i*) shall, in order that the same may be assessed equally on the whole ratable property of the County, make the amount of property returned on the assessment rolls of such Townships, Towns and Villages, or reported by the valuators as finally revised and equalized

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(*g*) It would never do if the neglect of a Clerk of one local Municipality to transmit a certified copy of his roll were to have the effect of delaying the entire proceedings of the County Council, with a view to equalization of assessment, especially as it is provided that the equalization is to be made "not later than the first day of July." Sec. 68. The only remedy is that provided, viz., to proceed to equalize, notwithstanding the absence of a particular roll or rolls.

(*h*) The proper valuators of property, real and personal, in the different local Municipalities, are the assessors. But as these in the several local Municipalities, act independently of each other, and as men, perhaps, differ more widely on the value of property than other matters of opinion, the results so far as the whole County is concerned, are anything but equal or uniform. Before a County rate can be imposed, the valuations in the different local Municipalities must be equalized so as to bear a just relation to each other. Sec. 68. Such equalization has hitherto been effected through the members of the County Council themselves using their local knowledge in order to arrive at as correct a judgment as possible. This section appears to be designed as an aid to them in the exercise of that judgment. It is not declared that the valuation of the County valuators shall be binding on the Council, or their judgment in any way made a substitute for the judgment of the members of the County Council, on whom devolves the duty of making the equalization so as to produce a just relation.

(*i*) See sec. 73 of this Act, and notes thereto.

for the preceding year, the basis upon which the apportionment is made. (*j*) 32 V. c. 36, s. 74.

Case of new municipalities.

72. Where a new municipality is erected within a County, so that there are no assessment or valuators' rolls of the new Municipality for the next preceding year, (*k*) the County Council shall, by examining the rolls of the former Municipalty or Municipalities of which the new Municipalty then formed part, ascertain, to the best of their judgment, what part of the assessment of the Municipality or Municipalities had relation to the new Municipality, and what part should continue to be accounted as the assessment of the original Municipality, and their several shares of the County tax shall be apportioned between them accordingly. 32 V. c. 36, s. 75.

County councils to apportion sums

73. Where a sum is to be levied for County purposes, or by the County for the purposes of a particular locality, the Council of the county shall ascertain, and, by by-law, direct

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(*j*) It is by sec. 68 declared that the County Council, *before imposing* any rate, and not later than the first day of July, shall examine the rolls of the several local Municipalities, in order to equalize them for the current year, so as to bear a just relation to each other. Here it is declared that in *apportioning* a County rate among the different local Municipalities the amount of property returned on the rolls or reported by the valuators as finally revised and equalized *for the preceding year*, shall be the basis of apportionment. See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345. The Council of a County in passing by-laws to levy money for County purposes in 1877 apportioned the assessment of the different Municipalities not upon the basis of the value according to the rolls as finally revised and equalized for 1876, but according to the rolls for 1877; Held illegal; *In re Revell and Oxford*, 42 U. C. Q. B. 337.

(*k*) New as well old Municipalities are liable to contribute to the County rate. See *The Queen* v. *The Mayor, &c., of Birmingham*, 10 Q. B. 116; *Regin* v. *New Windsor*, L. R. 1 Q. B. Div. 152; S. C. 34 L. T. N. S. 172; *The Queen* v. *Monck et al.*, 36 L. T. N. S. 730. The apportionment of a County rate must be on the basis of the rolls as finally revised and equalized for the preceding financial year. Sec. 71. In the case of a new Municipality erected during the current year, it is plain there can be no such roll. But in order that the direction of the statute may be, as nearly as possible under the circumstances, carried out, it is by this section made the duty of the County Council, by examining the rolls of the former Municipality or Municipalities of which the new Municipality formed a part, to ascertain to the best of their judgment—

1. *What part* of the assessment of the Municipality or Municipalities had relation to the new Municipality;

required for county purposes.

what portion of such sum shall be levied in each Township, Town or Village in such County or locality. (*l*) 32 V. c. 36, s. 76.

County Clerk to certify amounts to clerks of local Municipalities.

74. Subject to the provisions of sections forty-four and forty-six the County Clerk shall, before the fifteenth day of August in each year, certify to the Clerk of each Municipality in the County, the total amount which has been so directed to be levied therein for the then current year, for County purposes, or for the purposes of any such locality; and the Clerk of the Municipality shall calculate and insert the same in the Collector's roll for that year. (*m*) 32 V. c. 36, s. 77.

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2. And *what part* should continue to be accounted as the assessment of the original Municipality,

so as to apportion between them "their several shares of the County tax."

(*l*) The sum to be levied may be either for County purposes or for the purposes of a particular locality in the County. If the former, the rate must be levied as nearly as possible equally on each local Municipality in the County. *Tylee* v. *Waterloo*, 9 U. C. Q. B. 575. If the latter, it may be levied in the particular locality, without reference to other localities in the County. The By-law in *Tylee and Waterloo* enacted that the following sums should be levied and collected in the under-mentioned Townships and Incorporated Villages, viz.:

Township of Arthur	£34
Township of Bentinck	22
Town of Guelph	153

—and so on, enumerating twenty-four different localities, and assigning to each a certain sum, ranging from £6 for the Township of Melancthon to £521 for the Township of Waterloo, and that these sums should be levied and collected in the different Municipalities, in accordance with the statute. In giving judgment, Sir J. B. Robinson said: "The last of the By-laws moved against is that of the 14th of June, 1851, which is clearly illegal; for by it the County Council assumes to rate certain Townships (*qr.* Municipalities?) for certain sums, without specifying in the body of the By-law for what purpose the money is required, or authorizing its appropriation to any purpose. Such a mode of taxing is clearly unauthorized by law. For any general purpose of the County, all the ratable property in the County must be assessed ratably, whether in one Township or another. If the Council had a discretion to tax in this manner, they might make one township contribute £5 and another £500 to the same County objects, even where there was no inequality in the population and wealth of the Townships. It imposes no rate per pound, nor directs an equal rate to be assessed."

(*m*) A duty is, by this section, cast upon the County Clerk as well as the Local Clerk. The former must certify *the amount* directed to

75. Nothing in this Act contained shall alter or invalidate any special provisions for the collection of a rate for interest on County debentures, whether such provisions are contained in any Municipal Corporations Act heretofore or still in force in this Province, or in any Act respecting the Consolidated Municipal loan Fund in Ontario or in any general or special Act authorizing the issue of debentures, or in any by-law of the County Council providing for the issue of the same. (*n*) 32 V. c. 36, s. 78.

Act not to affect provisions for rates to raise interest on county debentures.

STATUTE LABOUR.

76. No person in Her Majesty's Naval or Military Service on full pay, or on actual service, shall be liable to perform statute labour or to commute therefor; nor shall any non-commissioned officer or private of the Volunteer force, certified by the officer commanding the company to which such Volunteer belongs or is attached as being an efficient Volunteer; (*a*) but this last exemption shall not apply to any Volunteer who is assessed for property. (*b*) 40 V. c. 27 s. 1. (*Firemen exempted in certain cases.*) *See* R. S. O. c. 178, s. 6.

Certain persons in military service exempt.

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be levied, and whether for County purposes or local purposes (see note *l* to sec. 73); and the latter, on receipt of the certificate, shall make *the necessary calculations* in order to ascertain the necessary rate, and insert the rate, when ascertained, in the collector's roll for the current year. The duty in each case, so far as the officer is concerned, is imperative. See note *g* to sec. 240 of the Municipal Act.

(*n*) No special provision for the collection of a rate for interest on *County debentures* is to be interfered with, whether such provisions be contained:

1. In any Municipal Corporations Act heretofore or still in force in this Province;
2. In any Act respecting the Consolidated Municipal Loan Fund in this Province;
3. In any general or special Act authorizing the issue of debentures; *or*
4. In any By-law of the County Council providing for the issue of the same.

See further, sec. 330 of The Municipal Act, and notes thereto.

(*a*) See note *i* to sub. 1 of sec. 483 of The Municipal Act.

(*b*) The latter part of this section was, by the Act of 1869, added to the corresponding section in the Act of 1866. Its object is to aid in securing the efficiency of the volunteer force. No volunteer is to be entitled to the benefit of the section unless certified by the officer commanding the company to which such Volunteer be-

Who liable and in what ratio, in cities, towns and villages.

77. Every other male inhabitant of a City, Town or Village of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the assessment roll of the City, Town or Village, or whose taxes do not amount to two dollars, shall, instead of such labour, be taxed at two dollars yearly therefor, to be levied and collected at such time, by such person, and in such manner as the Council of the Municipality may, by by-law, direct, (*c*) and such inhabitant shall not be required to have any property qualification. 32 V. c. 36, s. 80.

Where to be performed.

78. No person shall be exempt from the tax in the last preceding section named, unless he produces a certificate of his having performed statute labour or paid the tax elsewhere. (*d*) 32 V. c. 36, s. 81.

Liability of persons not otherwise assessed in townships.

79. Every male inhabitant of a Township, between the ages aforesaid, who is not otherwise assessed, and who is not exempt by law from performing statute labour, shall be liable to two days of statute labour on the roads and highways in the Township, and no Council shall have any power to reduce the statute labour required under this section. (*e*) 32 V. c. 36, s. 82.

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longs or is attached to be "an *efficient* volunteer." But volunteers, like others having property, are bound to perform statute labour in respect of such property, or commute for the same.

(*c*) The *rule* is, that all male inhabitants of a City, Town, or Village, of the age of twenty-one and upwards, and under sixty years of age, and not assessed upon the assessment roll of the City, Town or Village, or whose taxes, if assessed, do not amount to two dollars, shall, instead of statute labour, be taxed two dollars yearly.

The *exemptions* created by the preceding section are:

1. Persons in Her Majesty's Naval or Military Service on full pay or on actual service.
2. Non-commissioned officers or privates of the volunteer force certified by the Officer commanding the company to which they belong or are attached to be efficient volunteers.

See further, note *i* to sub. 1 of sec. 483 of The Municipal Act.

(*d*) Where there is no power to tax there is no need of an appeal to the Court of Revision, and where an appeal is had and fails the person appealing is not according to the most recent authority on the point precluded by the result of the appeal from further contesting his liability to the tax. See note *a* to sec. 47 and note *a* to sec. 57 of this Act.

(*e*) See note *l* to sub. 3 of sec. 483 of The Municipal Act.

Ratio of service in case of persons assessed.

80. Every person assessed upon the assessment roll of a Township shall, if his property is assessed at not more than three hundred dollars, be liable to two days' statute labour; at more than three hundred dollars, but not more than five hundred dollars, three days; at more than five hundred dollars, but not more than seven hundred dollars, four days; at more than seven hundred dollars, but not more than nine hundred dollars, five days; and for every three hundred dollars over nine hundred dollars or any fractional part thereof over one hundred and fifty dollars, one additional day; but the Council of any Township, by a by-law operating generally and rateably, may reduce or increase the number of days' labour to which all the parties, rated on the assessment roll or otherwise, shall be respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed. (*f*) 32 V. c. 36, s. 83 (1).

Council may reduce or increase the number of days proportionately.

Lots subdivided as park lots, etc.

2. In Townships where farm lots have been subdivided into park or village lots, and the owners are not resident, and have not required their names to be entered on the assessment roll, (*g*) the statute labour shall be commuted by the Township Clerk, in making out the list required under the ninetieth section of this Act, where such lots are under the value of two hundred dollars, to a rate not exceeding one half per centum on the valuation; (*h*) but the Council may direct a less rate to be imposed by a general by-law affecting such Village lots. (*i*) 32 V. c. 36, s. 83 (2).

Commutation may be at $1 per day.

81. The Council of any Township may, by by-law, direct that a sum not exceeding one dollar a day shall be paid as commutation of statute labour, in which case the commutation tax shall be added in a separate column in the Collector's roll, and shall be collected and accounted for like other taxes. (*k*) 32 V. c. 36, s. 84; 34 V. c. 28, s. 2; 40 V. c. 7, *Sched.* A (188).

(*f*) See note *l* to sub. 3 of sec. 483 of The Municipal Act.

(*g*) See sec. 3 of this Act, and notes thereto.

(*h*) In the case of non-resident proprietors whose names do not appear on the roll, the charge is made against the lot of land, and not against the proprietor. *Canada Company* v. *Howard*, 9 U. C. Q. B. 654.

(*i*) See note *l* to sub. 3 of sec. 483 of The Municipal Act.

(*k*) See note *l* to sub. 3 of sec. 483 of The Municipal Act.

Commutation may be fixed at any sum not exceeding $1.

82. Any local Municipal Council may, by a by-law passed for that purpose, fix the rate at which parties may commute their statute labour, at any sum not exceeding one dollar for each day's labour, and the sum so fixed shall apply equally to residents who are subject to statute labour, and to non-residents in respect to their property. (*l*) 32 V. c. 36, s. 85.

If no by-law, commutation to be at $1 per day.

83. Where no such by-law has been passed, the statute labour in Townships, in respect of lands of non-residents, shall be commuted at the rate of one dollar for each day's labour. (*m*) 32 V. c. 36, s. 86; 34 V. c. 28, s. 3; 40 V. c. 7, *Sched.* A (189).

Farmers' sons.

84. Every farmer's son rated and entered as such on the assessment roll of any Municipality, shall, if not otherwise exempted by law, be liable to perform statute labour or commute therefor, as if he were not so rated and assessed. 40 V. c. 9, s. 7; c. 10, s. 5 (2).

Payment of tax in lieu of statute labour may be enforced by distress or imprisonment.

85. Any person liable to pay the sum named in the seventy-seventh section, or any sum for statute labour commuted under the eighty-first section of this Act, shall pay the same to the Collector to be appointed to collect the same, within two days after demand thereof by the said Collector; and in case of neglect or refusal to pay the same, the Collector may levy the same by distress of goods and chattels of the defaulter, with costs of the distress; and if no sufficient distress can be found, then upon summary conviction before a Justice of the Peace of the County in which the local Municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of five dollars with costs, and, in default of payment at such time as the convicting Justice shall order, shall be committed to the Common Gaol of the County, and be there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol are sooner paid. (*n*)

(*l*) See note *l* to sub. 3 of sec. 483 of The Municipal Act.

(*m*) See note *l* to sub. 3 of sec. 483 of The Municipal Act.

(*n*) The seventy-seventh section applies to inhabitants of *Cities*, *Towns* or *Villages* not otherwise assessed, or whose taxes do not amount yearly to $2. Statute labour as to these, after the demand made necessary by this section, may, it seems, be enforced without

2. Any person liable to perform statute labour under the seventy-ninth section of this Act not commuted, shall perform the same when required so to do by the Pathmaster or other officer of the Municipality appointed for the purpose; and, in case of wilful neglect or refusal to perform such labour after six days' notice requiring him to do the same, shall incur a penalty of five dollars, and upon summary conviction thereof before a Justice of the Peace aforesaid, such Justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels, and, in case there is no sufficient distress, such offender may be committed to the Common Gaol of the County and there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol are sooner paid. (*o*)

3. All sums and penalties, other than costs, recovered under this section, shall be paid to the Treasurer of the local Municipality, and form part of the Statute Labour Fund thereof. 32 V. c. 36, s. 87; *and see Rev. Stat.* c. 185, s. 7.

Non-residents when not admitted to perform statute labour.

86. No non-resident who has not required his name to be entered on the roll, (*q*) shall be permitted to perform statute labour in respect of any land owned by him, but a commutation tax shall be charged against every separate lot or parcel according to its assessed value; (*r*) and, in all cases in which the statute labour of a non-resident is paid in money, the Municipal Council shall order the same to be expended in the statute labour division where the property is situate, or where the said statute labour tax is levied (*s*). 32 V. c. 36, s. 88.

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first summoning the defaulter or making any formal conviction. See note *m* to sub. 4 of sec. 483 of The Municipal Act.

(*o*) The seventy-ninth section applies to inhabitants of *Townships* not otherwise assessed. The statute labour as to these may, it is believed, after the necessary demand, be enforced without a previous summons or warrant. See note *m* to sub. 4 of sec. 483 of The Municipal Act.

(*q*) See sec. 3 and notes thereto.

(*r*) See note *i* to sub. 1 of sec. 483 of The Municipal Act.

(*s*) The application of the money must be expended—

1. *Either* in the statute labour division where the property is situate; *or*,
2. Where the statute labour is levied.

When non-residents admitted, but do not perform statute labour.

87. In case any non-resident, whose name has been entered on the resident roll, (*t*) does not perform his statute labour or pay commutation for the same, the Overseer of the Highways in whose division he is placed shall return him as a defaulter to the Clerk of the Municipality, before the fifteenth day of August, and the Clerk shall in that case, enter the commutation for statute labour against his name in the Collector's roll; (*u*) and in all cases both of residents and non-residents, the statute labour shall be rated and charged against every separate lot or parcel according to its assessed value.

Amount of non-residents' statute labour.

Proviso.

2. Whenever one person is assessed for lots or parts of several lots in one Municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labour as if the same were one lot, and the statute labour shall be rated and charged against any excess of said parts in like manner; (*v*) but every resident shall have the right to perform his whole statute labour in the statute labour division in which his residence is situate, unless otherwise ordered by the Municipal Council. 32 V. c. 36, s. 89; 33 V. c. 27, s. 6.

COLLECTION OF RATES.

Clerks of municipalities to make out collectors' rolls; their form, contents, etc.

88. The Clerk of every local Municipality shall make a Collector's roll or rolls as may be necessary, containing columns for all information required by this Act, to be entered by the Collector therein; (*a*) and in such roll or rolls he shall

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(*t*) See secc. 3 and notes thereto.

(*u*) See sec. 89 and notes thereto.

(*v*) The second subsection of this section is an amendment made to this section as it originally stood by statute 33 Vict. cap. 27 sec. 6. "The Assessment Act of 1869" placed the lands of residents and non-residents, as regards the performance of statute labour or payment of statute labour commutation, on the same footing. Such was the law before 1866. *Canada Co.* v. *Howard*, 9 U. C. Q. B. 654. But the Act of 1866 granted a privilege to non-residents which was not enjoyed by residents. The Act of 1869 destroyed it. The Act 33 Vict. cap. 27, sec. 6, to a great extent has restored the privilege.

(*a*) All the directions in this section are to the Clerk, and not to the Council. His authority in the matter is derived solely from the statute. With his duty, under this section, the Council of the Municipality has nothing whatever to do. The duty is a statutory

set down (*b*) the name in full of every person assessed, and the assessed value of his real and personal property and taxable income, as ascertained after the final revision of the assessments, and he shall calculate, and opposite the said assessed value as therein described of each respective person, he shall set down in one column to be headed "*County Rates*," the amount for which the person is chargeable for any sums ordered to be levied by the Council of the County for County purposes, and in another column to be headed "*Township Rate*," "*Village Rate*," "*Town Rate*" or "*City Rate*," as the case may be, the amount with which the person is chargeable in

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obligation which the Clerk is bound to perform. See *per* Mowat, V. C., in *Grier* v. *St. Vincent*, 13 Grant 512, 519.

(*b*) The duty of the Clerk under this section is—

1. To make a collector's roll or rolls as may be necessary containing columns for all information required by this Act to be entered by the collector therein.
2. To set down the name in full of every person assessed, and the assessed value of his real and personal property and taxable income as ascertained after the final revision of the assessments.
3. To calculate, and opposite the said assessed value as therein described of each respective person to set down the amounts for which the party is chargeable
4. To set down in *one* column, to be headed "County Rates," the amount for which the party is chargeable for any sums ordered to be levied by the Council of the County for County purposes.
5. To set down in *another* column, to be headed "Township Rate," "Village Rate," "Town Rate" or City Rate," the amount with which the party is chargeable in respect of sums ordered to be levied by the Council of the local Municipality for the purposes thereof, or for the commutation of statute labour.
6. To set down in *other* columns any special rate for collecting the interest upon debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law, or by any By-law imposing it, to be kept distinct and account for separately.
7. To calculate such last-mentioned rates separately.
8. To head the columns therefor "Special Rate," "Local Rate," "Public School Rate," "Separate School Rate" or "Special Rate for School Debts," as the case may be.

The statement of an aggregate amount where separate amounts are required to be stated would be no compliance with the statute, and the roll itself would be so far defective as to be no justification for a levy under it. *Coleman* v. *Kerr*, 27 U. C. Q. B. 5, 13. But if some of the rates be correctly stated, the distress will be so far legal, in the absence of a tender of the legal rates, that neither can the

respect of sums ordered to be levied by the Council of the local Municipality for the purposes thereof, or for the commutation of statute labour, and in other columns any special rate for collecting the interest upon debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law, or by the by-law imposing it, to be kept distinct and accounted for separately; and every such last mentioned rate shall be calculated separately, and the column therefor headed "*Special Rate*," "*Local Rate*," "*Public School Rate*," "*Separate School Rate*," or "*Special Rate for School Debts*," as the case may be. 32 V. c. 36, s. 90; 40 V. c. 16, s. 13, (2, 4 *b*).

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goods seized be replevied nor trespass maintained for the seizure. *Squire* v. *Mooney*, 30 U. C. Q. B. 531; see also, *Corbett* v. *Johnston et al.*, 11 U. C. C. P. 317. In *Cook* v. *Jones*, 17 Grant 488, 490, Spragge, C., said: "I think that though there are very good reasons for the provision in the statute, that they (the rates) should be kept separate, still the provision is only directory, and under *Connor* v. *Douglass*, 15 Grant 456, the omission to keep them separate would not invalidate a sale for taxes. I say this assuming that the facts in this case are in favour of the objection. I am not satisfied, however, that this is the case, for the aggregate of the different columns which are set out separately agree with the column headed 'Total Taxes.'" A rate having been imposed for the purpose of building a new school house, certain persons in the Municipality, who were not Catholics, but Protestants, signed a notice to the Clerk (he being one of them), that as subscribers to the Roman Catholic separate school they claimed to be exempt from all rates for common schools for the year 1861; and the Clerk in making up the roll, omitted this rate opposite to their names. Held, that the Clerk had acted illegally, and was liable to punishment. *In re Ridsdale* v. *Brush*, 22 U. C. Q. B. 122. Burns, J., in delivering judgment, said: "He (the Clerk) seems to have thought that he, as Clerk of the Municipality, had a right to omit on the collector's roll carrying out the rate to his own name and the [names of the] others who signed that notice. This is a clear violation of his duty as prescribed by the 89th and 90th sections of The Assessment Act, chapter 55 of the Consolidated Acts (similar to this section.) When the Town Council passed the By-law authorizing the levying of such a sum as the school trustees required, it was the duty of the Clerk to calculate the rate that each person should pay, according to the assessed value of his property, and set the sum down on the collector's roll. Whether the individuals named in the collector's roll would be exempt from *payment* of any sum or rate mentioned in the roll depended upon something else, which the Clerk, in the discharge of his duty as far as making out the roll according to law, had nothing to do with." *Ib.* 125. But although the Court in this case, held that the Clerk had acted illegally, in the present defective state of the law on this point they felt that they were powerless to grant any summary relief. Burns, J., said: "Mr. Brush's duty as Clerk of the Municipality ended when he completed the roll and placed it in the hands of the collector for the collection

89. All moneys assessed, levied and collected under any Act by which the same are made payable to the Treasurer of this Province, or other public officer for the public uses of the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the Collector's rolls in separate columns, in the heading whereof shall be designated the purpose of the rate; (*c*) and the Clerk shall deliver the roll, certified under his hand, to the Collector, on or before the first day of October, or such other day as may be prescribed by a by-law of the local Municipality. (*d*) 32 V. c. 36, s. 91.

Provincial taxes to be assessed and collected in same manner as local rates.

90. The Clerk of every local Municipality shall also make out a roll (*e*) in which he shall enter the lands of non-residents whose names have not been set down in the Assessor's roll, together with the value of every lot, part of lot, or

Clerk to make out rolls of lands of non-residents whose

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of the rate. We can nowhere find that it is laid down, either in The Assessment Act or in the Municipal Act, that it is the duty of the Clerk to certify either to the collector or to the Treasurer any errors which may have been made. There are provisions with respect to errors and mistakes made, and that the lands stated shall not exempt from the taxes by reason of the error or mistake; but we can find it nowhere stated to be a duty upon the Clerk of any Municipality to certify to any other person or authority when such error or mistake exists or has been made." *Ib.* 126. And again: "There is no difficulty in pronouncing that the Clerk, in this instance, did not discharge his duty according to law; but the difficulty consists in saying that we can, by a *mandamus*, at this stage of the proceedings, order him to do anything which will have the effect of remedying the defective execution of his duty. After giving the matter much thought and consideration, we have arrived at the conclusion that we must discharge the rule for a *mandamus*." *Ib.* 127. The Clerk, when preparing the roll, ought not to insert in the column headed "County Rate" an allowance for the cost of collecting the County rate, and for abatements and losses which might occur in the collection of it.

(*c*) The local machinery is the best adapted for the collection of taxes, and therefore is made available for more than local purposes. See note *b* to sec. 88.

(*d*) It is here made the duty of the Clerk to deliver the roll, certified under his hand, to the collector, on or before the first day of October, or such other day as may be prescribed by a By-law of the local Municipality. Unless the roll be *certified* as directed, the Collector is not bound to act under it. *Vienna* v. *Marr*, 9 U. C. L. J. 301.

(*e*) It is the duty of the Clerk, under this section:

names not in assessment rolls, etc.

parcel, as ascertained after the revision of the rolls; and he shall enter opposite to each lot or parcel, all the rates or taxes with which the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the Collector's roll, (*f*) and shall transmit the roll so made out, certified under his hand, to the Treasurer of the County in which his Municipality is situate, or to the Treasurer of the City, or Town, as the case may be, (*g*) on or before the first day of November. (*h*) 32 V. c. 36, s. 92; 40 V. c. 7, *Sched.* A. (190).

COLLECTORS AND THEIR DUTIES.

Duties of collectors.

91. The Collector, upon receiving his collection roll, shall proceed to collect the taxes therein mentioned. (*i*) 32 V. c. 36, s. 93.

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1. To enter the lands of non-residents whose names have not been set down in the assessors roll, together with the value of every lot, part of lot, or parcel, as ascertained after the revision of the roll.
2. To enter opposite to each lot or parcel all the rates or taxes with the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the collectors' roll.
3. To transmit the roll so made out, certified under his hand, to the Treasurer of the County, City or Town, as the case may be, on or before the 1st November.

(*f*) The non-residents' roll must show:

1. The lands of non-residents whose names have not been set down in the assessor's roll.
2. The value of every lot, part of lot, or parcel.
3. All the rates or taxes with which the same is chargeable.

(*g*) *Not* like the roll mentioned in the preceding section, sec. 89, because on the non-resident land roll there cannot legally be the names of any persons on whom the collector can or may call for payment of taxes.

(*h*) The Treasurer would not, it is apprehended, be bound to accept the roll unless certified as directed. See note *d* to sec. 89. But the neglect of the Clerk either to transmit the copy directed, or his transmission of it in an imperfect form, would not invalidate a sale of non-resident land for taxes. *Allan* v. *Fisher*, 13 U. C. C. P. 63.

(*i*) The collector is to proceed to collect the taxes—that is, the money due in respect of taxes. He has no right to accept promissory notes or securities of any kind in lieu of money. The acceptance of such a security could in no way interfere with the right to distrain. See *Spry* v. *McKenzie*, 18 U. C. Q. B. 161. Where a collector is charged with the collection of taxes for several years consecutively, he has the right to apply money made or money paid for taxes to

92. He shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of business, if within the local Municipality in and for which such Collector has been appointed, and shall demand payment of the taxes payable by such person, (*k*) and shall, at the time of such demand, enter the date thereof on his collection roll opposite the name of the person taxed; and such entry shall be *prima facie* evidence of such demand. (*l*) 32 V. c. 36, s. 94. To demand payment of rates.

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the taxes in arrear during the first of the years. *McBride* v. *Gardham*, 8 U. C. C. P. 296. It is, among other things, the duty of the collector, upon receipt of his roll, to call upon the person charged, sec. 92, and if taxes not paid, to levy therefor, sec. 95, and for that purpose make diligent enquiry to discover sufficient goods and chattels belonging to or in possession of the person charged, whereon a levy may be made. Secs. 94, 104. If none can be found after diligent search, the collector may relieve himself by oath from further accountability in regard to taxes unpaid. Sec. 104.

A collector of taxes legally qualified acting within the scope of his powers is protected from all illegalities but his own, and this although there was no jurisdiction to tax the person assumed to be taxed. *Nowell* v. *Tripp*, 14 Am. 572. In the absence of some statutory provisions regarding the giving of receipts for money paid the collector is not obliged to give receipts. *Stiles* v. *Hitchcock*, 19 Am. 121.

(*k*) The demand is essential to the validity of subsequent proceedings authorized by the statute. *Campbell* v. *Elma*, 13 U. C. C. P. 296; see further, *Grece* v. *Hunt*, L. R. 2 Q. B. Div. 389; see as to non-resident land, *De Blaquiere* v. *Becker et al.*, 8 U. C. C. P. 167. It must, it is presumed, be made by the collector himself, for it is said —"*he* shall call at least once," &c. Apparently it need not be made personally of the person liable to pay, for it is said the call is to be "on the person taxed, *or* at the place of his usual residence or domicile, *or* place of business if within the local municipality, so that a demand made of some person at the place of residence, domicile, or place of business of the party liable would, it seems, be sufficient. *Ib.* The distress cannot be made for fourteen days after the demand. Sec. 93. If the demand be legally made upon the person taxed, no subsequent demand, in the event of change of occupation, is necessary to enable the collector to distrain the goods of the subsequent occupant. *Anglin* v. *Minis*, 18 U. C. C. P. 170. And *per* Wilson, J.: "If the collector be required to make a fresh demand fourteen days before he can distrain, upon every change of ownership or occupancy, he may be baffled for ever. Besides he cannot tell whether there has been a change of ownership or not, though he might be better able to know of a change of occupancy." *Ib.* 178. But the person in possession, whether the person assessed or not, may be looked upon as the person "who ought to pay the taxes," so as to make a demand on him sufficient without showing a demand on the person assessed. See note *r* to sec. 93 of this Act.

(*l*) This is a most important provision. Without it, the entry certainly would not be evidence of the demand in the lifetime of the

When payment is not made, collectors to

93. In case any person neglects to pay his taxes for fourteen days after such demand as aforesaid, (*m*) the Collector may, by himself or by his agent, (*n*) levy the

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collector. See *Barton* v. *Dundas*, 24 U. C. Q. B. 273. But with it, the bare fact of the entry appearing on the production of the roll is evidence of the *fact* of the demand, and, it is believed, *the date* of the demand. There was no such provision in the Act of 1866. It first appeared in the "Assessment Act of 1869." See further, note *p* to sec. 100, and note *s* to sec. 101 of this Act.

(*m*) *As aforesaid.* See note *k* to sec. 92.

(*n*) The collectors of taxes are officers annually appointed to collect the taxes, which, in far the greater number of instances, they are able to do by merely calling upon those against whom they are charged. In cases where they may have to resort to compulsory measures although the Legislature has enabled them to levy in person and without the authority of any process, yet it was scarcely contemplated that the collectors themselves would, as a matter of course, act the part of bailiffs and auctioneers in seizing and selling. *Per* Robinson, C. J., in *Fraser* v. *Paye et al.*, 18 U. C. Q. B. 336; see also, *Newberry* v. *Stephens*, 16 U. C. Q. B. 69. So that while power is given to the collector by himself to levy, it is also said he may by his agent levy. But when a bailiff or agent is appointed, he ought, strictly speaking, to receive a warrant, which may be in the following form :

CITY OF ——
to wit. } To A. B., my Bailiff.

You are hereby authorized and required to distrain the goods and chattels of C. D. of, &c., which you shall find on the premises of the said C. D. at, &c., or any goods and chattels in his possession, wherever the same may be found within the County of, &c., for the sum of, &c., rated against him for taxes on the collector's roll of, &c., for the year, &c., and now in arrear and unpaid, and in default of payment of such arrears of taxes and the lawful costs of the said distress, to sell and dispose of the said distress according to law, for the recovery of the said arrears of taxes together with the said costs, and for your so doing this shall be your sufficient authority.

Given under my hand at, &c., this——day of ——, A.D. 187—.

E. F., *Collector.*

Of course the collector would be liable for anything done by the bailiff, which he had authorized the bailiff to do. *Corbett* v. *Johnston et al.*, 11 U. C. C. P. 317 ; *S. C.* 7 U. C. L. J. 319. Whether he would, like a sheriff, be liable for anything done by the bailiff, without the authority of or contrary to the direction of the warrant, is a question which has never yet been determined. The late Chief Justice McLean was of opinion in the affirmative, but the late Sir John Robinson expressed grave doubts on the question. See *Fraser* v. *Paye et al.*, 18 U. C. Q. B. 336, 338. If there be several rates,

same (*o*) with costs, (*p*) by distress of the goods and chattels (*q*) of the person who ought to pay the same, (*r*) or of any goods or chattels in his possession, wherever the same may be found within the County in which the local Municipality lies, or of any goods or chattels found on the premises, the property of, or in the possession of, any other occupant of the premises; (*s*) and the costs chargeable shall be those pay- levy the tax by distress and sale. Rev. Stat. c. 47.

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the legal separable from the illegal rates, unless the sums due in respect of the legal rates be paid or tendered, an action of replevin or trespass will not lie. See note *b* to sec. 88 of this Act. Should the person distrained upon, by his own misconduct, prevent the distress from being realized, it would seem that a second distress may be lawfully made. *Lee* v. *Cooke*, 3 H. & N. 203.

(*o*) Where a collector of taxes having seized more chattels than sufficient to pay the tax and costs of sale after selling enough for that purpose, proceeded further and sold all the remainder of the distress consisting of distinct and separate articles, it was held that he was a trespasser only as to the goods in excess of the amount of the tax and expenses. *Scekins* v. *Goodale*, 14 Am. 568.

(*p*) *With costs.* Until this Act became law, there was no scale or tariff of costs, see *Murray* v. *McNair*, 2 Local Courts Gazette 14, but by this section it is provided that "the costs chargeable shall be those payable to bailiffs under the Division Courts Act.

(*q*) A planing machine standing by its own weight on the floor, without fastening, with belts and an engine to work it, has been held to be a chattel liable to seizure for taxes. *Hope et al.* v. *Cumming*, 10 U. C. C. P. 118. So an engine and boiler detached from the freehold by a fire, have been held to be chattels. *Walton et al.* v. *Jarvis*, 14 U. C. Q. B. 640. So temporary floors, scantling, partitions, presses, shafting, vats, cocks, and other such things. *Hughes et al.* v. *Towers*, 16 U. C. C. P. 287. So machinery of different kinds detached from the freehold, *Carscallen* v. *Moodie*, 15 U. C. Q. B. 304, unless perhaps for a temporary purpose, with the intention of again replacing it in its former position. *Grant* v. *Wilson et al.*, 17 U. C. Q. B. 144; see also, *The Great Western Railway Co.* v. *Bain*, 15 U. C. C. P. 207; *Prongney* v. *Gurney*, 37 U. C. Q. B. 473.

(*r*) What is the meaning of the expression "who ought to pay the same?" Is it to be considered with reference to the time during which it may be said the collector's roll is in force for each year's taxes? or is it to be understood as extending to any length of time and to any person who may happen at the time of the distress to be in possession? The former appears to be the proper construction of the Act according to *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297. But the latter would seem to be sanctioned by *Anglin* v. *Minis*, 18 U. C. C. P. 170; *Squire* v. *Mooney*, 30 U. C. Q. B. 531; see further, *The Plumstead Board of Works* v. *Ingoldby et al.*, L. R. 8 Ex. 63; *S. C. Ib.* 174, in appeal.

(*s*) It is evident that the Legislature intend the taxes to be paid in

able to bailiffs under *The Division Courts Act.* (*t*) 32 V. c. 36, s. 95.

Proceedings in case of non-residents.

94. If any person whose name appears on the roll is not resident within the Municipality, the Collector shall transmit to him by post, addressed in accordance with the notice given by such non-resident, if notice has been given, a statement and demand of the taxes charged against him in the roll, (*a*) and shall at the time of such transmission enter the date thereof on the roll opposite the name of such person; and

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some way, and think it better to make *any* goods in the possession of the party, whether belonging to himself or not, liable, without doubt, for the taxes, than that the collector should be at the risk and expense of contesting title with every one who might claim title to the goods seized. *Per* Burns, J., in *Frazer* v. *Paye et al*, 18 U. C. Q. B. 340. If the distress be made on the goods and chattels on the person "who ought to pay the taxes," it may be made on his goods and chattels in his possession, although not on the assessed premises, provided made within the County. *Anglin* v. *Minis*, 18 U. C. C. P. 170, 179. By an agreement between the Great Western Railway Co. and the Erie and Niagara Railway Co., the former were working the latter line of railway with their own engines and cars, and the defendant, as collector, seized one of such cars on the line of railway for taxes due by the Erie and Niagara Railway Co. in respect of other land belonging to the Company. Held, that the seizure was illegal, for the car, when taken, was in the possession of the Great Western Railway Co. and their own property. *Great Western Railway Co.* v. *Rogers*, 29 U. C. Q. B. 245. No action will lie against a collector or bailiff for distraining the goods of a stranger without necessity, upon the allegation that there were goods enough of the person assessed to pay the taxes to satisfy the demand. *McEtheron* v. *Menzies*, 7 U. C. L. J. 244.

(*t*) See note *p* to this section.

(*a*) When the collector proceeds to enforce payment, he is to deal with those whose names appear on the roll. If they are *within* the Municipality, he is to call upon them, or at their residence or place of business, and demand payment. See note *k* to sec. 92. If they are *without* the Municipality, he is, under this section to transmit to them by post a statement of the taxes charged against them on the roll, and demand payment. In *Anglin* v. *Minis*, 18 U. C. C. P. 170, 175, Mr. Justice Wilson said: "This last provision as to not being within the Municipality applies, I think, as well to the owners of non-resident lands who have requested to be assessed, as to the persons who were residents at the time the assessment was made, and who were assessed as owners or occupants, but who have since removed from the Municipality." *Anglin* v. *Minis*, was decided under the Consolidated Statute, cap. 55. Section 95 of that Act had not as here, the words "addressed in accordance with the notice given by such non-resident, if notice has been given." Their introduction shows that the section now beyond question applies to non-resident owners who have requested to be assessed.

such entry shall be *prima facie* evidence of such transmission and of the time thereof. (*b*) 32 V. c. 36, s. 96.

When Collector may distrain for rates on non-residents' land.

95. In case of the land of non-residents, who have required their names to be entered on the roll, the Collector, after one month from the date of the delivery of the roll to him, and after fourteen days from the time such demand as aforesaid has been so transmitted by post, (*c*) may make distress of any goods and chattels (*d*) which he may find upon the land; (*e*) and no claim of property, lien or privilege shall be available to prevent the sale, or the payment of the taxes and costs out of the proceeds thereof. (*f*) 32 V. c. 36, s. 97.

(*b*) See note *l* to sec. 92 of this Act.

(*c*) In the case of non-residents, the transmission of the statement and demand, under the 16 Vict. cap. 182, was held not to be a condition precedent to the power of distress. *De Blaquiere* v. *Becker et al*, 8 U. C. C. P. 167. But now it is clear, under this section, that the demand or statement is a condition precedent to the distress. See note *k* to sec. 92 of this Act.

(*d*) *Goods and chattels.* See note *q* to sec. 93 of this Act.

(*e*) The collector has no legal power to go out of his County for the purpose of making a distress. He may under section 90 make a distress of the goods and chattels of the person who ought to pay the taxes in his possession wherever the same may be found in the County within which the local Municipality lies. But in the case of a non-resident the power of distress is only as to such good and chattels *which he may find upon the land.* Any goods found upon the land, whether belonging to the party who ought to pay the taxes or to a stranger, are liable to be so distrained. See note *s* to sec. 93 of this Act.

(*f*) It is probable that under these words a distress by a collector for taxes would supersede a prior seizure by the sheriff under execution. *Adshead* v. *Grant*, 4 U. C. P. R. 121. But a mere notice by the collector to the sheriff of the amount due for taxes is not a distress so as to supersede the prior claim of the sheriff under this section *Ib.* In the absence of a *distress*, the execution creditor is entitled to the entire proceeds of the sale, to the exclusion of the tax collector. *Ib.* Chattels in possession of a receiver of the Court of Chancery were seized and sold by a bailiff for taxes. Neither the bailiff nor the purchaser was aware until after the completion of the sale that the property was in the receiver's possession, or was intended to be effected by the order appointing a receiver, and both had been informed to the contrary in good faith by the party in charge. Held that the sale was valid. *Gibson* v. *Lovell*, 19 Grant, 197. In delivering judgment, Mowat V. C., said: "The principal ground of objection to Mr. Bacon's (the purchaser) claim was that the sale was void in equity by reason of the property having been in the custody of the Court through the receiver at the time of the sale. The answer to this objection is, neither the purchaser nor even the

Public notice of sale to be given, and in what manner.

96. The Collector shall, by advertisement posted up in at least three public places in the Township, Village or Ward wherein the sale of the goods and chattels distrained is to be made, give at least six days' (*g*) public notice of the time and place of such sale, and of the name of the person whose property is to be sold; (*h*) and, at the time named in the notice, the Collector or his agent shall sell at public auction the goods and chattels distrained, or so much thereof as may be necessary. (*i*) 32 V. c. 36, s. 98.

Surplus, if unclaimed, to be paid to party in

97. If the property distrained has been sold for more than the amount of the taxes and costs, and if no claim to the surplus is made by any other person, on the ground that the

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bailiff was informed of this until after the sale was completed. On the contrary, they had been expressly told, on what might well seem to them to be competent authority, that the engine and boiler (the goods and chattels sold) were not affected by the Chancery proceedings, and were not in the possession of the receiver." *Ib.* 202. And again: "No doubt, if the Court had been applied to before the sale, the bailiff's proceedings would have been restrained and nullified, because the Court does not permit any interference with property in the hands of its officers without the leave of the Court. But such leave, if asked for in the present case, would have been granted at once, unless the parties were prepared with the money. The knowledge of that was probably one reason why the plaintiff or her son did not apply to the Court before the sale." *Ib.* 203. The establishment in which these chattels were, being afterwards sold by the order of the Court in one lot as a going concern, it was held that the purchaser of such chattels at the tax sale was entitled to a corresponding part of the purchase money realized at the Chancery sale. *Ib.*

(*g*) At *least* six days', &c. See note *a* to sec. 111 of The Municipal Act.

(*h*) Errors or defects in the advertisement of sale would not, it is believed, affect the title of the purchaser to the goods and chattels by him purchased at the collector's sale. See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Patterson* v. *Todd*, 24 U. C. Q. B. 296; *Haslitt* v. *Hall*, *Ib.* 484; *Lee Howes* 30 U. C. Q. B. 292; *Connor* v. *Douglas*, 15 Grant 456; *Gibson* v. *Lovell*, 19 Grant 197.

(*i*) The collector, after sale, would, it is apprehended, be in a position to sue the purchasers for the price of the things sold. See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282. But in order to bind the collector as against the purchaser, there should probably be some memorandum in writing on delivery of the goods sold, so as to bind the sale. See *Mingaye* v. *Corbett*, 14 U. C. C. P. 557. It is not necessary for the purchaser, in order to the maintenance of his title, to show a strict and literal compliance by the bailiff with the directions of the Act. *Gibson* v. *Lovell*, 19 Grant 197. See further, note *i* to sec. 91 of this Act.

property sold belonged to him, or that he was entitled by lien or other right to the surplus, (*j*) such surplus shall be returned to the person in whose possession the property was when the distress was made. (*k*) 32 V. c. 36, s. 99. whose possession the goods were;

98. If any such claim is made by the person for whose taxes the property was distrained, (*l*) and the claim is admitted, the surplus shall be paid to the claimant. (*m*) 32 V. c. 36, s. 100. or to admitted claimant.

99. If the claim is contested, such surplus money shall be paid over by the Collector to the Treasurer of the local Municipality, who shall retain the same until the respective rights of the parties have been determined by action at law or otherwise. (*n*) 32 V. c. 36, s. 101. When the right to such surplus contested.

100. 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, (*o*) in which case the production of a Taxes not otherwise recoverable to be recovered by action.

(*j*) The goods and chattels of *any* person in the possession of the person who ought to pay the taxes, sec. 93, or *any* goods on the land of a non-resident who has required his name to be entered on the roll, sec. 95, may be distrained and sold for taxes; but if a surplus, that surplus, if the goods and chattels were really not the property of the person for whose taxes they were sold, must belong to the owner of the goods and chattels so sold. It is hard that any part of his goods should be sold to pay the liability of another, with whom he has no privity, but it would be still more hard if he could not claim any surplus that might be left after payment of the arrears of taxes and costs.

(*k*) The receipt of the surplus by the owner of the goods would not, unless accepted in satisfaction, be any condonation, so as to prevent an action being brought to recover the value of the goods if the sale were from any cause illegal. See *Evans* v. *Wright*, 2 H. & N. 527; *Robinson* v. *Shields*, 15 U. C. C. P. 386.

(*l*) See note *j supra*.

(*m*) If the claim be disputed, the collector may pay over the money to the Treasurer of the local Municipality, who may retain the same until the rights of the parties have been determined by action at law or otherwise. Sec. 99.

(*n*) It is not said that the collector, on payment of the money to the Treasurer, would be thereby discharged or relieved from acting at the suit of the rival claimants, or either of them—but such is the fair intendment of the section; and where the sale itself is legal, such would probably be the construction put upon the section by the Courts.

(*o*) The right to sue for taxes is, apparently, only given when the

copy of so much of the Collector's roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the Clerk of the local Municipality, shall be *prima facie* evidence of the debt. (*p*) 32 V. c. 36, s. 102.

Collector to return his roll and pay over proceeds by the day

101. On or before the fourteenth day of December in every year, or on such day in the next year not later than the first February, as the Council of the Municipality may appoint,

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taxes "cannot be recovered in any special manner provided by this Act,"—such as distress and sale in the case of resident taxpayers, and sale of lands in the case of non-resident proprietors who have requested their names to be put on the roll. *Berlin* v. *Grange*, 5 U. C. C. P. 211. In order to entitle a Municipal Corporation to sue for a tax imposed in the ordinary manner upon resident ratepayers, the Corporation must be able to show, in the first place, that the defendant's name is on the roll, see *Sargant* v. *Toronto*, 12 U. C. C. P. 185; *McCarral* v. *Watkins*, 19 U. C. Q. B. 248, and in the next place, that they have done what would be necessary to entitle them to distrain by warrant for the same tax, if the person sued had goods that might be seized, except perhaps there would be no occasion to made the previous demand mentioned in section 94, (93) *per* Robinson, C. J., in *London* v. *The Great Western Railway Co.*, 16 U. C. Q. B. 502; and neither by distress nor by action can a ratepayer be compelled to pay a tax of which such notice has not been given to him as the law has provided in the 48th (41st) section of this Act. *Ib.* By this is not meant that the plaintiffs in such an action are bound to set forth in the declaration that they have given such notice as the law requires before the assessment roll was finally completed—that may perhaps be assumed till the contrary is shown—but it must be open to the defendant to deny that such notice was given and to put plaintiffs to the proof of it. *Ib.* In order to entitle the Corporation to sue a non-resident sident owner of lands, it must not only appear that the special remedies provided by the Act are unavailable, and that the defendant's name is on the roll, but, besides, it must be distinctly averred and proved that the owner had requested his name to be placed on the roll. *Berlin* v. *Grange*, 1 E. & A. 279.

(*p*) The former part of the section provides for the action, and this part for the evidence to sustain it. The *production* of a copy of *so much* of the collector's roll as relates to the taxes payable by such person, *purporting* to be certified as a true copy by the Clerk of the local Municipality, shall be *prima fac'e*, evidence of the debt. No proof of the signature of the Clerk is apparently made necessary. If the certificate produced purports to be signed by him, it will be received on production. But when received, it is only *prima facie* evidence; in other words, its accuracy, or the facts it represents, may be disputed and disproved. See *Hesketh* v. *Ward*, 17 U. C. C. P. 190.

every Collector shall return his roll to the Treasurer, (*q*) and shall pay over the amount payable to such Treasurer, specifying in a separate column on his roll how much of the whole amount paid over is on account of each separate rate; (*r*) and shall make oath before the Treasurer that the date of the demand of payment and transmission of statement and

to be appointed by Council.

(*q*) It is the duty of the collector, under this section, on or before a day named or appointed for the purpose, not later than the 1st of February; see note *g* to sec. 240 of The Municipal Act, to return his roll, and pay over the amount payable, specifying in a separate column on his roll how much of the whole amount is paid over on account of each separate rate. Does the collector at any time, and if so, when, become incapable of exercising his functions as collector? Suppose the Municipal Council does not extend the time beyond the 14th of December, does he on that day become *functus officio*? No doubt he may receive moneys on account of taxes after that day, provided he has not made his return, and no doubt his sureties would be liable for moneys so received. *Whitby* v. *Harrison*, 18 U. C. Q. B. 606; *Todd* v. *Perry et al.*, 20 U. C. Q. B. 649. But whether he may exercise the *compulsory powers* with which he is invested, is another question. The enactments which provide for the appointment of collectors, see sec. 250 of The Municipal Act, and secs. 10 and 11 of this Act, contain no limitation as to the time they shall hold office; and it is declared by sec. 274 of The Municipal Act, that all officers appointed by a Council shall hold office until removed by the Council. See *Beverley* v. *Barlow et al.*, 7 U. C. L. J. 117; *In re McPherson and Beeman*, 17 U. C. Q. B. 99. The better opinion seems to be, that the collector does not become *functus officio* so long as he holds the office, and so long as his roll is not returned; in other words, that his authority to collect taxes on the roll is co-extensive with the term of his office, provided in the interval he has not returned his roll. The different provisions for the enlargement of the time for his making his return are in favour of the collector, and provisionally in favour of the ratepayers. This was the opinion of Robinson, C. J., and Burns, J., McLean, J., *dissentiente*, in *Newberry* v. *Stephens*, 16 U. C. Q. B. 65, and was in fact the decision of the Court in that case, since recognized in *McBride* v. *Gardham*, 8 U. C. C. P. 296; and *McLean* v. *Farrell*, 21 U. C. Q. B. 441. In *Coleman* v. *Kerr*, 27 U. C. Q. B. 5, Draper, C. J., said: "The Court acted upon *Newberry* v. *Stephens*, or at least in accordance with its principle, in *The Chief Superintendent of Schools* v. *Farrell*, 21 U. C. Q. B. 441; and the Court of Common Pleas recognized its authority in *McBride* v. *Gardham*, 8 U. C. C. P. 296. On these authorities we think this objection, the right to distrain after time fixed for return of the roll, is untenable.

(*r*) If a collector refuse or neglect to pay to the proper Treasurer or other person legally authorized to receive the same, the sums contained in his roll, or duly account for the same as uncollected, then not only may the ordinary remedy by action against his sureties be applied, but the Treasurer may, within twenty days after the time the payment ought to have been made, issue

demand of taxes, required by sections ninety-two and ninety-four in each case, has been truly stated by him in the roll. (*s*) 32 V. c. 36, s. 103; 33 V. c. 27, s. 7.

Other persons may be employed to collect taxes which Collector does not collect by a certain day.

102. In case the Collector fails or omits to collect the taxes or any portion thereof by the day appointed or to be appointed as in the last preceding section mentioned, the Council of the City, Town, Village or Township may, by resolution, authorize the Collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes. (*t*)

2. No such resolution or authority shall alter or affect the duty of the Collector to return his roll, or shall, in any manner whatsoever, invalidate or otherwise affect the liability of the Collector or his sureties. (*u*) 32 V. c. 36, s. 104.

Proceedings where taxes are unpaid, and cannot be collected.

103. If any of the taxes mentioned in the Collector's roll remain unpaid, and the Collector is not able to collect the same, he shall deliver to the Treasurer of his Municipality an account of all the taxes remaining due on the roll; and, in such account, the Collector shall show, opposite to each assessment, the reason why he could not collect the same by inserting in each case the words "*Non-Resident*" or "*Not sufficient property to distrain*," or "*Instructed by Council not*

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a warrant under his hand and seal, directed to the Sheriff of the County or High Bailiff of the City, as the case may be, commanding him to levy of the goods and chattels, lands, and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the Treasurer the sum so unaccounted for, and to return the warrant within forty days after the date thereof. Sec. 195.

(*s*) The latter part of this section first appeared in The Assessment Act of 1869. As the entries to which reference is made are constituted evidence on their production, the oath here required is intended to be a guarantee for the truthfulness of the entries.

(*t*) This section is intended to give the Council power, by resolution, to authorize the same collector, or any other person in his stead, *to continue* collections which are being made, but not completed, at the time appointed for the return of the collector's roll. The power, however, cannot be exercised *after the final return of the roll* by the collector, and after the lapse of several years. *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297. But the land is not thereby excused; the arrears of taxes are a special lien on the land. Sec. 105.

(*u*) See sec. 101 and notes thereto.

to collect," as the case may be. (*a*) 32 V. c. 36, s. 105; 40 V. c. 7, *Sched.* A (191).

When thus not collected, collectors to be credited with amount.

104. Upon making oath before the Treasurer that the sums mentioned in such account remain unpaid, and that he has not, upon diligent enquiry, been able to discover sufficient goods or chattels belonging to or in possession of the persons charged with or liable to pay such sums, or on the premises belonging to or in the possession of any occupant thereof, whereon he could levy the same, or any part thereof, the Collector shall be credited with the amount not realized. (*b*) 32 V. c. 36, s. 106.

Taxes to be a lien upon land.

105. The taxes accrued on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrance of any party except the Crown, and shall not require registration to preserve it. (*c*) 32 V. c. 36, s. 107.

(*a*) It is the duty of the collector to return his roll by a day named or appointed for the purpose. Sec. 101. It is also his duty under the section here annotated, when unable to collect any taxes, to deliver an account of all taxes remaining due on the roll, and in such account he is required to show the reason why he could not collect the same. If he fail in the performance of these duties, proceedings by action may be had against himself, or his sureties and himself; proceedings also of a very summary character. See sec. 195. If these remedies be of no avail, and not till then, a court of law may interfere by *mandamus*. *In re Quin and the Treasurer of the Town of Dundas*, 23 U. C. Q. B. 308.

(*b*) This appears to intend that the proper course is, for the Municipal Council in the first instance to debit the collector with all the taxes on his roll, and from time to time, as he pays over moneys, credit him therewith, until he find himself unable to collect the balance, and then accept from him the oath here required, and credit him with the amount not realized, so as to close the account.

(*c*) The effect of this provision will make it necessary for every intending purchaser to search not only the Registry Office for deeds or conveyances affecting land, but the office of the County or other Treasurer who would be able to give information as to the taxes, if any, due upon it. See remarks of Burns, J., in *Holcomb et al.* v. *Shaw*, 22 U. C. Q. B. 104. But apparently it is no part of an attorney or solicitor's duty, under an ordinary retainer, for the investigation of title, to make such a search. *Ross* v. *Strathy*, 16 U. C. Q. B. 430. The lien is not only made special, but one having preference over any claim, lien, privilege or incumbrance of any party except the Crown; but even in the case of the Crown, if the lien have attached before the Crown became the owners of the land, the lien holds as against the Crown. *Per* Adam Wilson, J., in *Secretary of War* v. *Toronto*, 22 U. C. Q. B. 555; see further, *Stokes* v. *State of Georgia*, 12 Am. 590. Taxes due upon land at the time of sale are an

YEARLY LISTS OF LANDS GRANTED BY THE CROWN.

Annual lists of lands granted, etc., to be furnished by Commissioner of Crown Lands.

106. The Commissioner of Crown Lands shall, in the month of February in every year, transmit to the Treasurer of every County a list of all the land within the County located as free grants, sold or agreed to be sold by the Crown, or leased, or in respect of which a license of occupation issued during the preceding year. (*d*) 32 V. c. 36, s. 108. *See also Rev. Stat.* c. 23, s. 36.

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incumbrance within the covenant for quiet enjoyment. *Haynes* v. *Smith*, 11 U. C. Q. B. 57; *Harry* v. *Anderson*, 13 U. C. C. P. 476; see also, *Richard* v. *Bent*, 14 Am. 1. But where the vendee of land subject to taxes allows it to be sold for the taxes, and afterwards neglects to redeem, he cannot as of right recover damages to the full value of the land. *McCollum* v. *Davis*, 8 U. C. Q. B. 150. Taxes cannot be said to be due before they are imposed by the Council. *Ford* v. *Proudfoot*, 9 Grant 478; *Kempt* v. *Parkyn*, 28 U. C. C. P. 129. In the case of residents, taxes are not due till the collector has received his roll. *Corbett* v. *Taylor*, 23 U. C. Q. B. 454, and not until the expiration of fourteen days after demand, *per* Wilson, J., in *Bell* v. *McLean*, 18 U. C. C. P. 421; and in the case of non-residents who have required their names to be entered on the roll, not until one month after the collector has returned his roll. *Ib.* Sewerage rate is not an incumbrance on land. *Moore* v. *Hynes*, 22 U. C. Q. B. 107; see further note *i* to sec. 466, sub. 50 of The Municipal Act.

(*d*) All lands in Ontario, subject to certain exceptions, is liable to Municipal taxation. Sec. 6.

One of these exceptions is, all property vested in or held by Her Majesty. Sec. 6, sub. 1.

This exception, however, is qualified by a declaration that when any such property 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. Sec. 6, sub. 2.

Unpatented land, sold or agreed to be sold to any person, or located as a free grant, so far as the interest of the purchaser or locatee is concerned, is made liable to taxation. Sec. 126.

For the purposes of assessment, the motive for requiring a return to the Treasurers of Counties of lands located as free grants, sold or agreed to be sold or leased by the Crown, or in respect of which a license of occupation has issued, is self-evident. *Per* Draper, C. J., in *Street* v. *Kent*, 11 U. C. C. P. 260. When *Street* v. *Kent* was decided, the assessment law had not been extended to lands "sold or agreed to be sold." That was done by the statute 27 Vict. cap. 19, secs. 9, 10, 11, which has been embodied in the section under consideration. See *Street* v. *Simcoe*, 12 U. C. C. P. 284; *Street* v. *Lambton*, *Ib.* 294. Under the old law, the Surveyor's general schedule was the foundation of all subsequent proceedings. *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 598, and it was necessary that the land sold for taxes should be stated on the list to have been described as granted or leased.

107. The County Treasurer shall furnish to the Clerk of each local Municipality in the County a copy of the said lists, so far as regards lands in such Municipality, and such Clerk shall furnish the Assessors respectively with a statement showing what lands in the said annual list are liable to assessment within such Assessor's assessment district. (*e*) 32 V. c. 36, s. 109.

County treasurers to furnish copies of lists to clerks of municipalities.

ARREARS OF TAXES.

Duties of Treasurers, Clerks and Assessors in relation thereto.

108. The Treasurer of every County shall furnish to the Clerk of each Municipality, except Cities and Towns, in the County, and the Treasurer of every City and Town shall furnish to the Clerk of his Municipality, a list of all the lands in his Municipality, in respect of which any taxes have been in arrear for the three years next preceding the first day of January in any year; (*f*) and the said list shall be so furnished on or before the first day of February in every year, (*g*) and shall be headed in the words following: "*List of lands "liable to be sold for arrears of taxes in the year one thousand*

County treasurer to furnish local clerks with lists of lands three years in arrears for taxes.

Doe Bell v. *Orr*, 5 O. S. 433. Land not contained in the list was held not to be taxable, *Peck* v. *Munro*, 4 U. C. C. P. 363, and the list might be shown to be erroneous. *Perry* v. *Powell*, 8 U. C. Q. B. 251; *Street* v. *Kent*, 11 U. C. C. P. 255. Land returned in June, 1820, for assessment, was held to be liable for the taxes for the whole of that year. *Doe d. Stata* v. *Smith*, 9 U. C. Q. B. 658. A sale of land described as granted was held entitled to prevail against a subsequent patentee. *Charles* v. *Dalmage*, 14 U. C. Q. B. 585; *Ryckman* v. *Voltenbury*, 6 U. C. C. P. 385.

(*e*) The County Treasurer is made the medium of communication between the Government and the officers of the local Municipalities. The officers for whom the information is really designed, and who will make the necessary use of it, are the local assessors.

(*f*) "In respect of which any taxes shall have been in arrears," &c. See note *h* to sec. 127 of this Act.

(*g*) "*On or before the first day of February.*" It is by sec. 130 declared that the Treasurer shall not sell any lands which have not been included in the lists furnished by him to the Clerks of the several Municipalities *in the month of February* preceding the sale. In *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 289, Hagarty, C. J., said: "Even if we found it clearly proved (which it is not) that the list was not furnished until *after* the 1st of February, we should hold that its being furnished any time *during* February would be sufficient under these two sections," secs. 118, 130.

"*eight hundred and* ;" (*h*) and, for the purposes of this Act, the taxes for the first year of the three which have expired under the provisions of this Act, on any land to be sold for taxes, shall be deemed to have been due for three years, although the same may not have been placed upon a Collector's roll until some month in the year later than the month of January. (*i*) 32 V. c. 36, s. 110; 40 V. c. 7, *Sched.* A. (192).

Local clerks to keep the lists in their offices open to inspection, give copies to assessors, notify occupants, etc.

109. The Clerk of the Municipality is hereby required to keep the said list, so furnished by the Treasurer, on file in his office, subject to the inspection of any person requiring to see the same, and he shall also deliver to the Assessor or Assessors of the Municipality, in each year, as soon as such Assessor or Assessors are appointed, a copy of such list; (*k*) and it shall be the duty of the Assessor or Assessors to ascertain if any of the lots or parcels of land contained in such list are occupied, or are incorrectly described, and to notify such occupants and also the owners thereof, if known whether resident within the Municipality or not, upon their respective assessment notices, that the land is liable to be sold for arrears of taxes, and enter in a column (to be reserved for the purpose) the words "*Occupied and Parties Notified*," or "*Not Occupied*," as the case may be; and all such lists shall be signed by the Assessor or Assessors and returned to the Clerk with the assessment roll, together with a memorandum

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(*h*) The section gives the heading that is to be on the list. It does not state in terms that the *amount of taxes in arrear* should be stated on the list. *Per* Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 289. Land described as "9 con. S. *or* E. ½ 14, N. *or* W. ½ 14," was held to be a sufficient description of land liable to be sold for arrears of taxes on the list. *Ib. Per* Hagarty, C. J.: "I see no objection to calling it North or West half. The land probably lies North-west or South-east, and nothing was shown that the description would not sufficiently identify it."

(*i*) See note *i* to sec. 127 of this Act.

(*k*) The duty of the Clerk of the local Municipality, in regard to the list furnished to him, pursuant to the requirements of the preceding section, are twofold:

1. To keep the said list on file in his office, subject to the inspection of *any* person requiring to see the same.
2. To deliver to the assessor or assessors, each year, when appointed, a copy of such list.

He has other duties to perform in regard to said list, under sec. 111. Neglect of any of these duties may be summarily punished. See sec. 115.

of any error discovered therein, (*l*) and the Clerk shall file the same in his office for public use; (*m*) and every such list, or copy thereof, shall be received in any Court as evidence in any case arising concerning the assessment of such lands. (*n*) 32 V. c. 36, s. 111; 33 V. c. 27, s. 9; 40 V. c. 7, *Sched.* A. (193). *And see post*, s. 185. Lists to be evidence.

110. The Assessors shall attach to each such list (*p*) a certificate signed by them, and verified by oath or affirmation, (*q*) in the form following:— (*r*) Assessor's certificate.

"I do hereby certify that I have examined all the lots in this list named; and that I have entered the names of all occupants thereon, as well as the names of the owners therof, when known; and that all the entries relative to each lot are true and correct, to the best of my knowledge and belief."

32 V. c. 36, s. 112.

(*l*) The duty of the assessor or assessors, on receipt of the copy of the list, is fourfold:

1. To ascertain if any of the lots or parcels of land contained in such list are occupied, or are incorrectly described.
2. To notify the occupants *and* owners thereof, if known whether resident within the Municipality or not.
3. To enter in a column, reserved for the purpose, the words, "Occupied and parties notified," or "Not occupied," (as the case may be).
4. To sign the list or lists, and return same to the Clerk, with assessment roll;

together with a memorandum of any error discovered therein. See *Stewart* v. *Taggart*, 22 U. C. C. P. 290. *Besides*, the assessors must attach to the list a certificate signed by them, and verified by oath or affirmation. Sec. 110. Neglect of any of these duties may be summarily punished. See sec. 115.

(*m*) Not only is the Clerk to file in his office the original list, "subject to the inspection of any person requiring to see the same," see note *k* to this section, but to file the signed copies returned to him by the assessors "for public use."

(*n*) The list or copy thereof shall be received in evidence. The provision is not for the admission of a certified copy in evidence on its production, as in sec. 100.

(*p*) *Such list.* See note *h* to sec. 108 of this Act.

(*q*) The oath or affirmation may, it is presumed, be made before the head or other members of the Council. See note *m* sec. 271 of The Municipal Act.

(*r*) See note *s* to sec. 320 of The Municipal Act.

Local clerks to certify lands which have become occupied.

111. The Clerk of each Municipality shall examine the assessment roll when returned by the Assessor, and ascertain whether any lot embraced in the said list last received by him from the Treasurer pursuant to the one hundred and eighth section, is entered upon the roll of the year as then occupied, or is incorrectly described; and shall forthwith furnish to the said Treasurer a list of the several parcels of land which appear on the resident roll as having become occupied, or which have been returned by the Assessor as incorrectly described. (*s*)

County treasurer to certify taxes due on them.

2. Except in the cases provided for by sections forty-four and forty-six, on or before the first day of July in the then current year, the County Treasurer shall return to the Clerk of each local Municipality other than a City or Town, and every City or Town Treasurer shall return to the Clerk of the City or Town, an account of all arrears of taxes due in respect of such occupied lands, including the per-centage chargeable under section one hundred and twenty-four of this Act. (*t*)

Clerk to insert such amount on Collector's roll.

3. The Clerk of each Municipality shall, in making out the Collector's roll of the year, add such arrears of taxes to the taxes assessed against such occupied lands for the current year; and such arrears shall be collected in the same manner and subject to the same conditions as all other taxes entered upon the Collector's roll. (*u*) 32 V. c. 36, s. 113; 40 V. c. 7, *Sched.* A (193 and 194).

(*s*) The duties of the Clerk, under this section, are:

1. To examine the assessment roll and ascertain whether any lot embraced in the last list received by him from the County Treasurer, under sec. 108, is entered upon the roll as occupied or is incorrectly described.
2. To furnish the County Treasurer with a list of the several parcels of land which appear on the resident roll as having become occupied, or which have been returned by the assessors as incorrectly described.

(*t*) The list furnished by the local Clerk, under the preceding part of this section, to the County Treasurer, is to enable the latter to report the arrears and per centage due in respect of non-resident land since become occupied, with a view to the collection of taxes thereon by distress and sale of goods and chattels of the occupant.

(*u*) The arrears may be collected in the *same manner*, and *subject to the same conditions*, as all *other* taxes upon the collector's roll. It is provided by sec. 93, that the collector may, after demand, levy the taxes with costs by distress of the goods and chattels of the per-

112. If there is not sufficient distress upon any of the occupied lands, in the preceding section named, to satisfy the total amount of the taxes charged against the same, as well for the arrears as for the taxes of the current year, the Collector shall so return it in his roll to the Treasurer of the Municipality, showing the amount collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made. (*v*) 32 V. c. 36, s. 114.

Where there is not sufficient distress on such lands.

113. The Treasurer of every Township and Village shall, within fourteen days after the time appointed for the return and final settlement of the Collector's

Statement of arrears to be returned by local treasurer, and when.

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son who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the County, &c.; and by sec. 95, in the case of non-residents who have required their names to be entered on the roll the Collector may make distress of any goods and chattels which he may find on the land. There is no doubt, therefore, that goods and chattels on the land, as in the case of non-resident lands, would be liable. But the difficulty of restraining the operation of the section to goods and chattels on the land, as in the case of non-residents, is, that that is only one kind of tax, and the Act says the taxes shall be collected in the same manner and *subject* to the same conditions as *all* other taxes entered upon the roll. Now, upon the roll are the proper taxes of the party charged, which, under sec. 93, may be levied of any goods and chattels in his possession, *wherever the same may be found in the County*. The Court of Queen's Bench, however, have placed upon similar words as used, in the statute 27 Vict. cap. 19, from which this section is taken, the narrow construction of restricting the remedy as to goods and chattels on the land, as being more consistent with reason than the broader construction, which would work great hardships and do great injustice in individual cases, see *Warne* v. *Coulter*, 25 U. C. Q. B. 177; and the construction placed upon these words by the Court is apparently sanctioned by the Legislature in the following section, which provides what the collector shall do "if there shall not be sufficient distress upon any of the occupied lands in the preceding section named," &c.

(*v*) The effect of secs. 109, 110, 111 and 112 seems to be, that the fact of the land being in arrear and liable to be sold shall be communicated by the County Treasurer to the Township Clerk, who shall give a copy of the list to the assessors, who shall ascertain if any of the lots named are occupied, and notify the occupants and owners, if known, that the land is liable to be sold for arrears of taxes, and enter in a column, "Occupied, and parties notified," or "Not occupied." The Clerk is then to ascertain if any lot in the list is entered as occupied. He shall notify the Treasurer thereof, and the latter, by the first of July, shall return to the Clerk an account of all arrears of taxes due in respect of such occupied lands, and the Clerk shall then put the amounts in the collector's roll for the year, to be collected, &c. *Per* Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 290.

roll, (*a*) and before the eighth day of April in every year, (*b*) furnish the County Treasurer with a statement of all unpaid taxes and school rates directed in the said Collector's roll or by School Trustees to be collected.

2. Such return shall contain a description of the lots or parcels of land, a statement of unpaid arrears of taxes, if any, and of arrears of taxes paid, on lands of non-residents which have become occupied, as required by section one hundred and nine of this Act, and generally such other information as the County Treasurer may require and demand, in order to enable him to ascertain the just tax chargeable upon any land in the Municipality for that year; and the County Treasurer shall not be bound to receive any such statement after the eighth day of April in each year. (*c*) 32 V. c. 36, s. 115; 40 V. c. 7, *Sched.* A. (195).

Liability of lands to sale if arrears are not paid, and when.

114. In case it is found by the statement directed by the last preceding section to be made to the County Treasurer, that the arrears of taxes upon the occupied lands of non residents, directed by the one hundred and eleventh section of this Act to be placed on the Collector's roll, or any part thereof, remain in arrear, such land shall be liable to be sold for such arrears, and shall be included in the next or ensuing list of lands to be sold by the County Treasurer, under the provisions of the one hundred and twenty-seventh section of this Act, notwithstanding that the same may be occupied in the year when such sale takes place; and such arrears shall not again be placed upon the Collector's roll for collection. (*d*) 32 V. c. 36, s. 116.

(*a*) See as to computation of time, note *a* to sec. 177 of The Municipal Act.

(*b*) See note *h* to sec. 127 of this Act.

(*c*) The return must contain:

1. A description of the lots or parcels of land.
2. A statement of unpaid arrears of taxes, if any, on lands of non-residents which have become occupied, as required by sec. 109.

And generally such other information as the County Treasurer may require and demand.

This information is to be furnished the County Treasurer to enable him to ascertain the just tax chargeable upon any land in the Municipality for that year.

(*d*) The ordinary way of realizing taxes on non-resident lands, where the owners are not rated at their own request, is by sale of

Penalty on Clerks and Assessors neglecting duties under preceding sections.

115. If the Clerk of any Municipality neglects to preserve the said list of lands in arrears for taxes, furnished to him by the Treasurer, in pursuance to the one hundred and eighth section, or to furnish copies of such lists, as required, to the Assessor or Assessors, or neglects to return to the Treasurer a correct list of the lands which have come to be occupied, as required by the one hundred and eleventh section of this Act, and a statement of the balances which remain uncollected on any such lots, as required by the one hundred and twelfth section of this Act; (*e*) or if any Assessor or Assessors neglect to examine such lands as are entered on each such list, and make returns in manner hereinbefore directed, (*f*) every officer making such default shall, on summary conviction thereof before any two Justices of the Peace having jurisdiction in the County in which such Municipality is situated, be liable to the penalties imposed by sections one hundred and eighty-nine, one hundred and ninety and one hundred and ninety-one of this Act; all fines so imposed shall be recoverable by distress and sale of any goods and chattels of the party making default. (*g*) 32 V. c. 36, s. 117; 40 V. c. 7, *Sched.* A. (196.)

How to be levied.

After return of roll who to receive taxes.

116. After the Collector's roll has been returned to the Treasurer of a Township or Village, and before such Treasurer has furnished the statement to the County Treasurer, mentioned in section one hundred and thirteen, arrears of taxes,

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the lands. *Per* Richards, J., in *Berlin* v. *Grange*, 5 U. C. C. P. 211. But in aid of this remedy, provision is made in the 112th and subsequent sections, for distress of goods and chattels on such lands, when subsequent to the accruing of the arrears they become occupied. If the latter fail, the only course left for the County Treasurer is to fall back upon the principal and ordinary remedy, and that is all that this section directs.

(*e*) The duty to preserve the list and furnish copies to the assessors is imposed by sec. 109.

(*f*) The duty of the assessors to examine the lands and to make a return thereof, is also imposed by sec. 109. See further, note *v* to sec. 112 of this Act.

(*g*) The fine under sec. 189 is a sum not exceeding $100, and the punishment under sec. 191 a fine not exceeding $200, and to imprisonment until the fine is paid, or to imprisonment for a term not exceeding six months, or to both fine and imprisonment in the discretion of the Court; and under the section here annotated, though not according to the sections mentioned, the fines and penalties may be imposed on conviction before any two Justices having jurisdiction in the County in which the Municipality is situate.

may be paid to such local Treasurer; but after the said statement has been referred to the County Treasurer, no more money on account of the arrears then due shall be received by any officer of the Municipality to which the roll relates. (*h*) 32 V. c. 36, s. 118.

After statement under sec. 113, collection of arrears to belong to Count, treasurer only.

2. The collection of the arrears shall thenceforth belong to the Treasurer of the County alone, (*i*) and he shall receive payment of such arrears, and of all taxes on lands of non-residents, and he shall give a receipt therefor specifying the amount paid, for what period, the description of the lot or parcel of land, and the date of payment, in accordance with the provisions of section one hundred and eighty-six of this Act. (*j*) 32 V. c. 36, s. 119 (1).

Municipalities may remit taxes due on non-residents' lands.

117. Any local Municipality may, by by-law, remit, either in the whole or in part, any taxes now due or to become due upon the lands of non-residents within such Municipality, specifying the particular lands upon which the remission is made; (*k*) and, upon the passing of such by-law,

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(*h*) The collection thenceforth belongs to the Treasurer of the County alone, sec. 116, and any distress or other proceeding on the part of the local Municipality for the recovery of the taxes, unless in cases coming under secs. 109 and 111 of this Act, would be illegal. *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297. It would seem that the roll should not only be returned by the collector to the local Municipality, but that the latter should return it to the County Treasurer. See sec. 120 of this Act.

(*i*) After the return of the collector's roll, the duty of collecting is cast upon the Treasurer of the County, and upon him *alone*. The Council of the County has no control over him so far as this duty is concerned. See note *a* to sec. 88 of this Act. In cases of non-resident lands subsequently becoming occupied, he may make use of the officers of the local Municipality in order, if possible, to make the amount of the taxes by distress of goods and chattels on the land. See secs. 109 and 111 of this Act, and notes thereto.

(*j*) It having been declared that the collection of the arrears shall, after the return of the collector's roll, belong to the Treasurer of the County alone, he and he alone is the proper person to receive payment of arrears on lands of non-residents.

The receipts which he may give should specify--

1. The amount paid;
2. For what period;
3. The description of the lot or parcel of land;
4. The date of payment.

(*k*) The rule is, that after the return of the collector's roll, the collection of arrears of taxes appertains to the Treasurer of the County

it shall be the duty of the Clerk forthwith to transmit a copy of the by-law to the Treasurer or other officer having the collection of such arrears, (*l*) who shall then collect only so much of said taxes as are not remitted. 32 V. c. 36, s. 119 (2).

The whole amount to be paid at once, unless the land is sub-divided.

118. The Treasurer shall not receive any part of the tax charged against any parcel of land unless the whole of the arrears then due is paid, or satisfactory proof is produced of the previous payment, or erroneous charge of any portion thereof; but if satisfactory proof is adduced to him that any parcel of land on which taxes are due has been subdivided, he may receive the proportionate amount of tax chargeable upon any of the subdivisions, and leave the other subdivisions chargeable with the remainder; (*m*) and the Treasurer may, in his books, divide any piece or parcel of land which

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alone. This being so, unless there were some provision made to the contrary, neither the Council of the County nor the Council of the local Municipality could legally, in any manner, interfere with the proper performance of that duty. But as the taxes when collected become and are the property of the local Municipality, it has been deemed only right that the Council of the local Municipality shall have power, in some cases, to remit taxes, in whole or in part, due on the land of non-residents. This power can only be exercised by By-law. When so exercised, a certificate of the fact must be sent to the County Treasurer for his guidance. The duty, of course, remains to collect the balance not remitted.

(*l*) As the collection of the taxes after the return of the roll appertains to the Treasurer *alone*, it is not easy to understand "the other officer having the collection of arrears," to whom reference is here made. It may be intended to refer to the collector before the return of his roll. But the first part of the section deals only with the case of the return of the roll. This part, instead of being merely, as it were, an exception to the first part of the section, may be read as an independent section, covering ground not covered by the first part of the section.

(*m*) The rule is for the Treasurer not to receive part payment of arrears of taxes.

The exceptions created by this section are :—

1. Unless the whole of the arrears then due is paid.
2. If satisfactory proof be produced of the previous payment, *or* erroneous charge of any part thereof.
3. If satisfactory proof is adduced that any parcel of land on which taxes are due has been sub-divided.

The proof in each case is to be such as to satisfy the Treasurer; i. e., be satisfactory *to him*. It is presumed that if the proof be reasonable, the proof will be deemed by him to be satisfactory. It is not supposed that any public officer will act otherwise than

has been returned to him in arrear for taxes, into as many parts as the necessities of the case may require. (*n*) 32 V. c. 36, s. 120.

If demanded, treasurer to give a written statement of arrears.

119. The Treasurer shall, on demand, give to the owner of any land charged with arrears of taxes, a written statement of the arrears at that date, and he may charge twenty cents for the search on each separate lot or parcel not exceeding four, and for every additional ten lots, a further fee of twenty cents; but the Treasurer shall not make any charge for search to any person who forthwith pays the taxes. (*o*) 32 V. c. 36, s. 121.

Lands on which taxes unpaid to be entered in certain books by treasurer.

120. The Treasurer of every County shall keep a separate book for each Township and Village, in which he shall enter all the lands in the Municipality on which it appears from

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reasonably in the discharge of any public duty cast upon him by virtue of his office. If the proof offered be a paper purporting to be a receipt of a collector, school trustee or other Municipal officer, the Treasurer is not to accept such proof until he has received a report upon the same from the Clerk of the Municipality interested, certifying the correctness thereof. Sec. 123.

(*n*) The receipt of a proportion of taxes because of a subdivision, and in respect of a subdivided part, necessitates the duty upon the Treasurer of charging the remaining subdivided parts with the remainder of the amount of taxes, and, if convenient or necessary for that purpose, that he should divide the entries of the parcel of land in his books, and he is here authorized to do so. See *In re Secker and Paxton*, 22 U. C. Q. B. 118. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, 451, Draper, C. J. in delivering the judgment of the Court said: "It appears to me that under the 113th section (same as this section) of The Assessment Act, when satisfactory proof is adduced to the Treasurer that an entire lot has been subdivided, that officer must adjudge the question of subdivision, and, finding the fact established, he has the *right* to receive the proportionate sum of the taxes due on the whole in discharge of the particular subdivision so ascertained. When he has in good faith determined that the lot has been subdivided, and then received the due proportion of the taxes, the subdivision is as much discharged from the incumbrance as if the taxes on the entire lot had been paid." See further, *Brooke* v. *Campbell*, 12 Grant 526; *Stewart* v. *Taggart*, 22 U. C. C. P. 284. The section has been held to apply to receive a proportionate part of the redemption money after a sale of the whole lot for taxes. See notes to sec. 147 of this Act.

(*o*) The Treasurer is not bound to submit to the demand of any person, whether interested or not, requiring a statement of arrears of taxes on any particular parcel or parcels of land. But it is his duty to submit to the demand of the owner (or his agent, which is the same thing), and to give him a written statement of the arrears to date, provided his fees for search (there being no fee for certificate or

the returns made to him by the Clerk and from the Collector's roll returned to him, that there are any taxes unpaid, and the amounts so due; and he shall, on the first day of May in every year, complete and balance his books by entering against every parcel of land, the arrears, if any, due at the last settlement, and the taxes of the preceding year which remain unpaid, and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. (*p*) 32 V. c. 36, s. 122.

Proceedings where any land is found not to have been assessed in any year.

121. If, at the yearly settlement to be made on the first day of May, it appears to the Treasurer that any land liable to assessment has not been assessed, he shall report the same to the Clerk of the Municipality; thereupon, or if it comes to the knowledge of the Clerk in any other manner that such land has not been assessed, the Clerk shall, under the direction of the Council, enter such land on the Collector's roll next prepared by him thereafter, or on the roll of non-residents, as the case may be, as well for the arrears omitted of the year preceding only, if any, as for the tax of the current year: and the valuation of such land so entered shall be the average valuation of the three previous years, if assessed for the said three years, but if not so assessed, the Clerk shall require the Assessor or Assessors for the current year to value such lands; and it shall be the duty of the Assessor or Assessors to value such lands when required, and certify the valuation in writing

How land to be valued.

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statement) be paid or tendered, *or* provided the person making the demand be authorized to do so, and *forthwith* pays the taxes.

(*p*) The duties of the Treasurer under this section are:

1. To keep a separate book for each Township or Village.
2. To enter therein all the lands in the Municipality on which it appears, from returns made to him by the Clerk, *and* from the collector's roll returned to him, that there are any taxes unpaid.
3. To enter therein the amounts so due.
4. To complete and balance his books on the first day of May in every year. See note *g* to sec. 240 of The Municipal Act.
5. To enter therein the total amount of arrears, if any, chargeable upon the lands at that date. See note *u* to sec. 124 of this Act.

The books, when correctly kept, are evidence of the land being five years in arrear, on ejectment brought for the recovery of the land by a vendee on a sale for taxes. See *Hall* v. *Hill*, 22 U. C. Q. B. 578.

Appeal from valuation.

to the Clerk : (*q*) and the owners of such lands shall have the right to appeal to the Council at its next or some subsequent meeting after the taxes thereon have been demanded, but within fourteen days after such demand, which demand shall be made before the tenth day of November ; and the Council shall hear and determine such appeal on some day not later than the first day of December. (*r*) 32 V. c. 36, s. 123 ; 40 V. c. 7 *Sched.* A. 197.

Treasurer to correct errors.

122. The County Treasurer may correct any clerical error which he himself discovers, from time to time, or which may be certified to him by the Clerk of any Municipality. (*s*) 32 V. c. 36, s. 124 (1).

As to pretended receipts, etc.

123. If any person produces to the Treasurer, as evidence of payment of any tax, any paper purporting to be a receipt of a Collector, School Trustee, or other municipal officer, he shall not be bound to accept the same until he has received a report from the Clerk of the Municipality interested, certify-

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(*q*) The object of this section is to make subject to taxes land that ought to have been assessed; but which, from some cause, was not assessed. The procedure provided for the purpose is the best, under the circumstances, that could be devised to meet the exigencies of such a case. The Treasurer may himself at any time correct clerical errors. See sec. 122.

(*r*) It will be observed the appeal is not given to the Court of Appeal, but direct to the Council. The demand for payment of taxes must be made by the collector before the 10th of November, and the appeal must be made within fourteen days after demand, or it cannot be made at all. See as to computation of time, note *a* to sec. 177 of The Municipal Act.

(*s*) A ratepayer from 1858 to 1861 inclusive, occupied as a lessee a house and land adjoining on lot 24, part of which lot, in 1854, had been laid out by his landlord into village lots, and a plan of the subdivisions filed in the Registry Office. He had been regularly assessed, and had paid for the premises thus occupied by him, but the whole of lot 24 had, during these four years, been returned as non-resident. After the Treasurer had issued his warrant for sale to the Sheriff, he was applied to to correct the alleged mistake in the rolls, so as to except the part occupied by the ratepayer above mentioned from that returned, but refused to do more than allow the Sheriff to deduct the amount paid by the ratepayer. A certificate was presented to the Township Clerk for signature, to be addressed to the Treasurer, with a view of notifying him of certain errors in the mode of assessment of the lot No. 24, but the Clerk declined to sign it, alleging that he did not think he would be justified in doing so. The Court of Queen's Bench, on an application for a *mandamus*, refused to interfere. *In re Secker and Paxton*, 23 U. C. Q. B. 118.

ing the correctness thereof, or until he is otherwise satisfied that such tax has been paid. (*t*) 32 V. c. 36, s. 124 (2).

Ten per cent. to be added to arrears yearly.

124. If, at the balance to be made on the first day of May in every year, it appears that there are any arrears due upon any parcel of land, the Treasurer shall add to the whole amount then due ten per centum thereon. (*u*) 32 V. c. 36, s. 125.

(*t*) Before the Treasurer is to give any credit for taxes, he must be satisfied by evidence of the payment. The production of a paper *purporting* to be a receipt for the taxes is *some* evidence of payment. But the Treasurer must be satisfied of the genuineness of the receipt, and of the fact that the taxes really were paid. The receipt, even if genuine, is not conclusive evidence of payment. See note *m* to sec. 119 of this Act.

(*u*) The Treasurer under sec. 120 is required to keep books, in which he shall enter all the lands on which it appears from the Clerk's return and the collector's rolls there are any taxes unpaid, and *the amount so due*. He is under the same section required, on 1st of May in every year, to complete and balance his books by entering against every parcel of land the *arrears*, if any, at the last settlement, and the taxes of the preceding year *which remain unpaid*. He is by the same section required to ascertain and enter in his books the *total amount* of arrears, if any, chargeable upon the land at that date. By this section it is declared, if, at the balance to be made on first of May in every year, it appears that there are *any arrears* due upon any parcel of land, he is required to *add* to the *whole amount then due* ten per centum thereon.

In *Gillespie et al.* v. *Hamilton*, 12 U. C. C. P. 427, it appeared that on 1st May, 1862, the Chamberlain of the City entered in his books against the lands of the plaintiffs the arrears of taxes chargeable thereon, at the sum of $855 25, made up as follows :

Taxes for 1859	$250 00	
1860, May 1, 10 per cent	25 00	
		$275 00
Arrears, May 1, 1860	275 00	
Taxes for 1860	250 00	
	525 00	
1861, May 1, 10 per cent	52 50	
		577 50
Arrears, May 1, 1861	577 50	
Taxes for 1861	200 00	
	777 50	
1862, May 1, 10 per cent	77 75	
		855 25

It was contended by plaintiffs that this statement was erroneous, and that the following should have been the statement :—

When there is distress upon lands of non-residents, treasurer may

125. Wherever the County Treasurer is satisfied that there is distress upon any lands of non-residents in arrear for taxes, (*a*) in a Township or Village Municipality, he may issue a warrant under his hand and seal to the Collector of

Taxes for 1859	$250 00	
1860, May 1, 10 per cent.....	25 00	
		$275 00
Arrears, May 1, 1860	275 00	
Taxes for 1860	250 00	
10 per cent. on $500.....	50 00	
		575 00
Arrears, May 1, 1861	575 00	
Taxes for 1861	200 00	
10 per cent. on $700.....	70 00	
		845 00

The Court held the *former* to be the correct statement.

Draper, C. J., in giving the judgment of the Court, said (p. 429): "The question is, if the ten per cent. should be charged on the gross amount of arrears appearing due at each annual settlement, or only on the amount of taxes due for the several years. In other words, whether the amount on which the ten per cent. is to be calculated on 1st of May, 1862, is to include the preceding addition of ten per cent. made on 1st of May, 1860 and 1861, respectively. I think the Legislature have used language very clearly indicating an intention that ten per cent. should be added every year, calculated on the whole amount which is in arrear and due upon the lands at the time the charge is made. In the present case the lands were liable to satisfy a given sum on 1st of May, 1862, which sum included taxes for preceding years and ten per cent. added thereto at the preceding 1st of May. To that sum, which constituted the whole amount due on the lands, the statute, as I read it, directs that ten per cent. should be added."

(*a*) It is not made the duty of the Treasurer to search for a distress on lands; but if satisfied there is a distress, he may issue a warrant of distress. In order, to render the Treasurer liable for not making a distress, it would be necessary to aver and prove that he had notice of the distress. See *Foley* v. *Moodie*, 16 U. C. Q. B. 254. The neglect of a collector whose duty it was to search for distress, was held not to invalidate a sale subsequently made of the land for arrears that might in whole or in part have been satisfied by such distress. *Allen* v. *Fisher*, 13 U. C. C. P. 63. The old law was formerly otherwise, especially if it could be shown that there was a sufficient distress on the land at the time of the sale. See *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Dobie* v. *Tully*, 10 U. C. C. P. 432. But proving that there were a few pieces of timber on the lot, cut down by trespassers, and left by them to be prepared for market in a lot, or that some persons were in the habit of making sugar on the lot, leaving kettles and sap-troughs thereon, were held not sufficient evidence of a distress being on the land to invalidate the sale of it for taxes. See *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Doe d. Powell* v. *Rorison*, 2 U. C. Q.

such Municipality, (*b*) who shall thereby be authorized to levy the amount due, upon any goods and chattels found upon the land, in the same manner, and subject to the same provisions, as are contained in the sections ninety-three to

authorize collector to levy.

B. 201; *Fraser* v. *Mattice et al.*, 19 U. C. Q. B. 150. The old law as to the necessity of a distress, and the omission to distrain invalidating a sale, was altered by the statute 13 & 14 Vict. cap. 67. See *Hamilton et al.*, v. *McDonald*, 22 U. C. Q. B. 136; *McDonell et al.* v. *McDonald*, 24 U. C. Q. B. 74; *Weegan* v. *McDiarmid*, 12 U. C. C. P. 499. In *Allan* v. *Fisher*, 13 U. C. C. P. 70, Draper, C. J., said: "It appears to me impossible to hold that the collector's neglect to search for goods which with diligence he might have found, or to enquire with sufficient care for the address of the party assessed on his roll, in order to transmit a statement to him by post, under the 41st section can have that effect." This was quoted approvingly by the present Chancellor in *The Bank of Toronto* v. *Fanning*, 17 Grant 517. *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 288, Hagarty, C. J., said: "I am of opinion that if the land was assessed and the taxes in fact unpaid, an omission by the collector to levy the amount from property which, by due diligence, he might have found liable thereto, cannot, in the present state of the law, avoid the sale. It cannot be, in my judgment, that the validity of the sale is to depend on the diligence or want of diligence in a collector in some previous year." In *Allan* v. *Fisher*, 13 U. C. C. P. 63, it was, however, held that when the lot was occupied and the owner known, and full distress thereon, it was the duty of the assessor to enter the owner's name, and the name also of the known occupant. Instead of this, he entered the lot on the roll as land of a non-resident, without any name. The result was that during that year no officer but the Treasurer could receive the rates, and would be the only officer who could distrain, and the Court held the assessment for that year bad, and avoided the sale. Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 289, referring to the decision on this point, said: "This decision was in 1863, under (apparently) 16 Vict. cap. 182. The present case is very different. The assessment for 1865, 1866, and 1867, are, I think, regular for reasons stated. In 1868, the first year that distress is alleged to have been on the lot, Stewart was the person assessed, and was on the resident roll, and returned as not collected on the absentee list. Therefore it seems to fall within the case of *Allan* v. *Fisher*, as being merely a case of neglect to search for distress or to notify the absent owner. The omission of duty did not, as in the case cited, cause the land to be placed on the non-resident roll, and thus take the collection out of the hands of the local officer." It is by the section, amended by 40 Vict. cap. 7 Sched. A. (198), discretionary with the Treasurer to issue his warrant, for by that enactment the word "may" was substituted for the word "shall."

(*b*) Where the warrant was tested "Given under my hand and seal, being the corporate seal," and the seal bore the same form, emblem, legend, &c., as the County seal, it was held that the County was not liable in trespass or trover. *Snider* v. *Frontenac*, 30 U. C. Q. B. 275.

section ninety-nine inclusive of this Act, with respect to distresses made by Collectors. (*c*) 32 V. c 36, s. 126; 40 V. c. 7 *Sched.* A. (198).

From what period unpatented lands shall be liable to taxation.

126. Unpatented land vested in or held by Her Majesty which may be hereafter sold, or agreed to be sold, to any person, or which may be located as a free grant, shall be liable to taxation from the date of such sale or grant; (*d*) and any such land which has been already sold, or agreed to be sold, to any person, or has been located as a free grant, prior to the first day of January, one thousand eight hundred and sixty-three, (*e*) shall be held to have been liable to taxation since the first day of January, one thousand eight hundred and sixty-three; and all such lands shall be liable to taxation thenceforward under this Act, in the same way as other land, whether any license of occupation, location ticket, certificate of sale, or receipt for money paid on such sale, has or has not been, or is or is not issued, and, in case of sale, or agreement for sale by the Crown, whether any payment has or has not been, or is or is not made thereon, and whether any part of the purchase money is or is not overdue and unpaid; (*f*) but such taxation shall not in any way affect the rights of Her Majesty in such lands. (*g*) 32 V. c. 36, s. 127.

Rights of the Crown saved.

SALE OF LANDS FOR TAXES.

When lands to be sold for taxes.

127. Wherever a portion of the tax on any land has been due for and in the third year, or for more than three years

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(*c*) The power of the County Treasurer by warrant to levy is limited to non-resident lands, so long as they remain as such under his control. That control ceases as soon as, under the provisions of the 109th and following sections of this Act, it becomes his duty to take the steps preliminary to the amount of the arrears being placed upon the roll of the Township collector for the purpose of being collected by him under his roll out of the property of the occupant. *Snyder* v. *Shibley*, 21 U. C. C. P. 518, 529.

(*d*) Land vested in Her Majesty, the Queen, is, in general, exempt from taxation. Sec. 6, sub. 1. But though not patented, if "sold or agreed to be sold," or "located as a free grant," the interest of the purchaser or locatee is liable to taxation and sale. Sec. 138.

(*e*) This was the date fixed by the Act 27 Vict. cap. 19, sec. 9, of which this section is substantially a re-enactment.

(*f*) This part of the section is intended to cover a defect which was pointed out in *Street* v. *Kent*, 11 U. C. C. P. 255.

(*g*) See note *l* to sec. 138 of this Act.

preceding the current year, the Treasurer of the County shall, unless otherwise directed by a by-law of the County Council, submit to the Warden of such County a list in duplicate of all the lands liable under the provisions of this Act to be sold for taxes, with the amount of arrears against each lot set opposite to the same, and the Warden shall authenticate each of such lists by affixing thereto the seal of the Corporation and his signature, and one of such lists shall be deposited with the Clerk of the County, (*h*) and the

Arrears due for three years to be levied by warrant of Warden to treasurer.

(*h*) It is declared that "Whenever *a portion* of the tax on any land has been due for *and in the third year*, or for *more* than three years *preceding* the current year, the Treasurer of the County shall," &c. The words in Consol. Stat. U. C. cap. 55, sec. 124, were: "Whenever a *portion* of the tax on any land has been due for *five years*, or for such longer period," &c. The statute authorizes a sale upon a contingency. The taxes must be in arrear for the period mentioned before any legal sale can take place. A sale for arrears for a less period than mentioned is the same as a sale where no taxes are in arrear. All the proceedings are in such case void. *Ford* v. *Proudfoot*, 9 Grant 478; *Kelly* v. *Macklem*, 14 Grant 29; *Bell* v. *McLean*, 18 U. C. C. P. 416; see also *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Munro* v. *Grey*, 12 U. C. Q. B. 647; *Errington* v. *Dumble*, 8 U. C. C. P. 65; *Harbourn* v. *Boushey*, 7 U. C. C. P. 464. In *Ford* v. *Proudfoot*, 9 Grant 478, which was decided under that Act, the arrears of taxes for non-payment of which the land was sold were for the years 1853-4-5-6-7. The Treasurer's warrant for sale was issued on the 25th of February, 1858, and the sale took place on the 13th of July in the same year. There were therefore five years' taxes due at the date of the warrant and of the sale. But it was held that the taxes were not due for five years within the meaning of the Act. Spragge, V. C., in giving judgment, said: "It is clear, from the sections to which I have referred, that no taxes for a year or part of a year are made payable until the collector's roll is placed in his hands, because until then there is no hand to receive them. This may be as late as the 1st day of October. It is also clear that the year's taxes cannot be due in any sense until after the time for appealing from the assessment roll is expired, and the Municipality has fixed the rate which shall be imposed. This must be done, under the statute, before the 1st of August. It may be done before. It is quite impossible that it should be done so early in the year as the 23rd of February, the date of this warrant; and taking the periods given for the different proceedings, the latter part of July would be the more probable time. But it is said that a *portion* of the year's tax is due after the 1st of January, and that *other* portions grow due from day to day until the whole is due, and that all the statute requires is that a *portion* shall be due for five years. I cannot accede to this view. . . . . To apply my construction of the Act to this case, the taxes for 1853—the earliest year of the arrear—were due and payable, say, sometime between 1st of August and 1st of October in that year. The treasurer's warrant was issued a little more than *four years and a half* after the earliest of these dates and the sale took place *within* five

other shall be returned to the Treasurer, with a warrant thereto annexed, under the hand of the Warden and the seal of the County, commanding him to levy upon the land for the arrears due thereon, with his costs. (*i*) 32 V. c. 36, s. 128.

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years; consequently the sale was premature." In *Kelly* v. *Macklem*, 14 Grant 29, it was determined that there must be the full period of arrears due before the issue of the warrant to sell. In *Bell* v. *McLean*, 18 U. C. C. P. 416, 423, Wilson, J., went further than the learned Chancellor, and said: "I incline to think very strongly that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiry of the year in which they are imposed. It is only after that time the County Treasurer has anything to do with them. The fiscal year is clearly correspondent with the calendar year in this respect, and the *preceding* year's taxes are those unpaid at the end of the year. By fixing this definite time the computation is made easy for all parties, and there is nothing inconsistent in holding that taxes may be due to enable a distress or suit to be maintained for them at one period, and that they may be considered as due at another period for the purposes of a sale of the land itself. The Treasurer's books will certainly not show five years' arrears if any warrant for sale be issued by him, unless the time be computed from the first of the year after the preceding year's taxes have been imposed." In *Bell* v. *McLean*, the collector got his roll on the 26th of August, 1852, and the County Treasurer issued his warrant on the 11th of August, 1857; so that according to the decision in *Ford* v. *Proudfoot*, and without going as far as suggested by Mr. Justice Wilson, the five years had not expired, and the sale was void. So in *Connor* v. *McPherson*, 18 Grant 607, where the collector's roll was not delivered till after August, 1852, and the Treasurer's warrant dated 10th July, 1857, the sale, on the authority of the cases already mentioned, was held invalid. When, owing to land being patented in July, taxes are charged thereon only for half a year, yet this is in effect a taxation for the whole fiscal year; and so long as the patent issues before the assessment is completed, taxes for the whole of the year wherein such patent issues may be properly imposed, and the land sold therefor if unpaid. *Cotter* v. *Sutherland*, 18 U. C. C. P. 357. Besides reducing the period of arrears from five to three years before the issue of the warrant to sell, the Legislature, by the use of the words "*for* and *in* the third year," have endeavoured to avoid some of the difficulties which presented themselves in the decided cases to which reference has been made. See further, sec. 347 of The Municipal Act, and notes thereto.

(*i*) In *Hall* v. *Hill*, 2 E. & A. 572, the late Chancellor Van-Koughnet said: "The Treasurer's warrant is the foundation of the subsequent proceedings, irregularities in which, where they have occurred in acts merely ministerial or executive, the Courts have gone a long way to excuse. . . . I look upon the act of the Treasurer, in determining what lands are in arrear for taxes and liable to sale, as a *quasi* judicial act, and one which must be performed in accordance with the statute." So where the statute

Council may extend time for payment.

128. The Council of a County, City or Town shall have power from time to time to extend beyond the term of three years, the time for the enforced collection by sale of non-resident taxes by by-law passed for that purpose. (*k*) 32 V. c. 36, s. 129; 40 V. c. 7, *Sched.* A. (199).

Treasurer's duty on receiving warrant to sell.

129. It shall not be the duty of the Treasurer to make inquiry before affecting a sale of lands for taxes, to ascertain whether or not there is any distress upon the land; (*l*) nor shall he be bound to inquire into or form any opinion of the value of the land; (*m*) 32 V. c. 36, s. 130, *first part.*

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required the Treasurer, in his warrant, to distinguish between lands patented and those under lease or license of occupation, the warrant was held to be a nullity. *Hall* v. *Hill*, 22 U. C. Q. B. 578; *S. C.*, 2 E & A. 569. A description of the lands as "*all* patented" is however, sufficient. *Brooke* v. *Campbell*, 12 Grant 526. So where the words used were "*all* deeded." *Cook* v. *Jones*, 17 Grant 488. The warrant should show the particular land that is to be sold. *Townsend* v. *Elliott*, 12 U. C. C. P. 217. A description in the warrant of a particular piece of land as "Pt. of s. pt. 111, 1st Con. Tay, 40 acres, $12 95," was not sufficient. *Grant* v. *Gilmour*, 21 U. C. C. P. 18. It would be sufficient if the identity of the piece of land sold could be established. *McDonell* v. *McDonald*, 24 U. C. Q. B. 74. It must be under the seal as well as the signature of the proper officer, *Morgan* v. *Quesnel*, 26 U. C. Q. B. 539; *Morgan* v. *Saubourin*, 27 U. C. Q. B. 230; *McDougall* v. *McMillan*, 25 U. C. C. P. 75; and founded on the Treasurer's return, when a return was required. *Doe Bell* v. *Beaumore*, 3 O. S. 243; see also, *Errington* v. *Dumble*, 8 U. C. C. P. 65. A mistake in representing the taxes as due from 1st July, 1820, to 1st July, 1828, in place of from 1st January of these years, was held not to hurt. *Doe Statia* v. *Smith*, 9 U. C. Q. B. 658. It was held, under the provisions of a particular statute, that after a separation of Counties, the warrant should go to the Sheriff of the junior County to sell for arrears due both Counties. *Doe Mountcashel* v. *Grover*, 4 U. C. Q. B. 23. A warrant issued in 1837 and postponed by 1 Vict. cap. 20, was held to have been properly acted on in 1839. *Todd* v. *Werry*, 15 U. C. Q. B. 614; see also, *Hamilton* v. *McDonald*, 22 U. C. Q. B. 136. This section is only directory *Fenton* v. *McCollum*, 41 U. C. Q. B. 239; *Church* v. *Fenton*, 28 U. C. C. P. 384.

(*k*) See note *h* to sec. 127 of this Act.

(*l*) See note *a* to sec. 125 of this Act.

(*m*) In *Henry* v. *Burness*, 8 Grant 345, 357, Spragge, V. C., in speaking of the duty of a Sheriff conducting a tax sale (Sheriffs at that time being the authorized officers to do so), said: "Mr. Cameron put it that the Sheriff cannot be taken to know that the value of a whole lot necessarily so greatly exceeds the arrears of taxes that a sale of the the whole is improper. This implies that the Sheriff is not bound to acquaint himself with what he is selling; that he may properly remain ignorant of the improvements, the quality of the

What lands only the treasurer shall sell.

130. The Treasurer shall not sell any lands which have not been included in the lists furnished by him to the Clerks of the several Municipalities in the month of February preceding the sale, nor any of the lands which have been returned to him as being occupied under the provisions of the one hundred and eleventh section of this Act, (*q*) except the lands, the arrears for which had been placed on the collection roll of the preceding year and again returned unpaid and still in arrear in consequence of insufficient distress being found an the lands. (*r*) 32 V. c. 36, s. 131.

County treasurer to prepare list of lands to be sold and advertise in *Gazette*.

131. The County Treasurer shall (*s*) prepare a copy of the list of lands to be sold, required by section one hundred and twenty-seven of this Act, and shall include therein, in a separate column, a statement of the proportion of costs chargeable on each lot for advertising, and for the commissions authorized by this Act to be paid to him, distinguishing the lands as patented, unpatented, or under lease or license of occupation from the Crown, and shall cause such list to be published four weeks in the *Ontario Gazette*, and once a week, for thirteen weeks, in some newspaper published within the County, and, in the case of a Union of Counties, in each County of the Union, if there be one published in each County, and if not, in such County or Counties of the Union in which a newspaper is published, or, if none be so published

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soil, and of every particular beyond the number of the lot and the assumed quantity. I by no means concede that he can be properly ignorant of these particulars," &c. The declaration made in this section to the effect that the Treasurer shall not be *bound* to inquire into or form *any opinion* of the value of the land, was so made because of the decision in *Henry* v. *Burness*.

(*q*) The statute is prohibitory. The Treasurer shall not sell any lands which have not been included in the lists. There is no authority therefore in such a case to sell at all, and the sale, if any attempted, will be void. *Fenton* v. *McWain*, 41 U. C. Q. B. 239.

(*r*) See note *d* to sec. 114 of this Act.

(*s*) The duties of the County Treasurer, under this section, are the following :

1. To prepare a copy of the list of lands to be sold, required by sec. 127 of this Act.
2. To include therein, in a separate column, a statement of the proportion of costs chargeable on each lot for advertising, and for the commissions authorized by this Act to be paid to him, distinguishing lands as patented, unpatented, or under lease or license of occupation from the Crown.

in some other newspaper published in some adjoining County. 32 V. c. 36, s. 132; 33 V. c. 27, s. 11.

Proceedings when lands in arrear for taxes in Junior County separated from Union of Counties.

2. When a junior County is separated from a Union of Counties after a return is made to the Treasurer of the United Counties of lands in arrear for taxes, but such lands have not been advertised for sale by the Treasurer of the United Counties, or senior County, such Treasurer shall return to the Treasurer of the junior County a list of all the lands within the junior County returned as in arrear for taxes, and not advertised; and the Treasurer and Warden of the junior County shall have power respectively to take all the proceedings which Treasurers and Wardens, under this Act, can take for the sale and conveyance of lands in arrear for taxes; (t)

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3. To cause such list to be published four weeks in the Ontario *Gazette*, and once a week for thirteen weeks in some newspaper published within the County, and in the case of a union of Counties, in each County of the union, if there be one published in each County, and if not in such County or Counties in the union in which a newspaper is published, or if none be so published, in some other newspaper published in some adjoining County.

It was, under the 13 & 14 Vict. cap. 67, held that the omission of the Sheriff to advertise did not affect the validity of a sale for taxes, but should be treated merely as a direction of the statute which the officer was bound to observe at his peril. *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Jarvis* v. *Brooke*, 11 U. C. Q. B. 299. Such is now the law in the case of a sale by a Sheriff under writ of execution. *Paterson* v. *Todd*, 24 U. C. Q. B. 296. But in a case decided under the 16 Vict. cap. 182, it was held that an advertisement in a local paper was equally necessary with an advertisement in the official *Gazette*, and for want of it the sale was held invalid. *Williams* v. *Taylor*, 13 U. C. C. P. 219. And in a case decided under Consol. Stat. U. C. cap. 55, the Court of Queen's Bench, in referring to *Williams* v. *Taylor*, said, "If it were necessary for the decision of this case, we should, as at present advised, arrive at the same conclusion." *Hall* v. *Hill*, 22 U. C. Q. B. 584. But such an irregularity was held not to void the sale in *Cotter* v. *Sutherland*, 18 U. C. C. P. 357, and afterwards in *Connor* v. *Douglass*, 15 Grant 456, by the Court of Appeal. The law is now settled according to the decision of the Court of Appeal. *McLauchlin* v. *Pyper*, 29 U. C. Q. B. 526.

(t) Before this subsection, there was a doubt as to the proper officer—the Treasurer of the new County, or the Treasurer of the old County—to proceed to the sale of lands situate in a junior County, subject to arrears of taxes due to the union. By analogy to procedure after the separation of united Townships, it was generally supposed that all power as to the collection of assets, &c. (the power to collect involving the power to sell, see note *i* to sec. 185), would remain with the senior County, unless expressly diverted in favour of the junior County by Act of Parliament. See secs. 172, 173. This sub-

but, in case the lands in such junior County have been advertised by the Treasurer of the United Counties before such separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place. 32 V. c. 36, s. 132 (2).

Notice to be given in such advertisement.

132. The advertisement shall contain a notification, that unless the arrears and costs are sooner paid, the Treasurer will proceed to sell the lands for the taxes, on a day and at a place named in the advertisement. (*u*) 32 V. c. 36, s. 133.

Time of sale.

133. The day of sale shall be more than ninety-one days after the first publication of the list. (*v*) 32 V. c. 36, s. 134.

Notice to be posted up.

134. The Treasurer shall also post a notice similar to the said advertisement, in some convenient and public place at the Court House of the County, at least three weeks before the time of sale. (*w*) 32 V. c. 36, s. 135.

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section appeared to have been based upon such an assumption, for it makes a transfer of the power to the junior County under certain circumstances. It is declared if the separation be after a return is made to the Treasurer of the united Counties of lands in arrears for taxes, *but such lands have not been advertised for sale* by the Treasurer of the united Counties or senior County, such Treasurer shall return to the Treasurer of the junior County a list of all the lands within the junior County returned as in arrear for taxes but not advertised, and the Treasurer of that County is authorized to proceed to sell. But in case the lands in the junior County *have been advertised* by the Treasurer of the united Counties before the separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place. In *Canada Permanent Building Society* v. *Agnew*, 23 U. C. C. P. 200, it was held that until the passing of this enactment there was no power either in the Treasurer of the senior or junior County, or in any other officer, to sell lands for taxes that accrued due before the separation; and that the power can only now be exercised under this enactment, which is held to be retrospective.

(*u*) This is directory—not imperative; therefore the omission of it will not invalidate the sale. See note *s* to sec. 131 of this Act.

(*v*) The expression is not that there shall be "ninety-one days" at least between the first publication and the sale, but that there shall be "*more* than ninety-one." See note *a* to sec. 111 of The Municipal Act.

(*w*) The omission to do as here directed would not invalidate the sale. The enactment is directory—not imperative. See note *s* to sec. 131 of this Act.

135. The Treasurer shall, in each case, add to the arrears published his commission and the costs of publication. (*x*) 32 V. c. 36, s. 136. Expenses added to arrears.

136. If, at any time appointed for the sale of the lands, no bidders appear, the Treasurer may adjourn the sale from time to time to time. (*a*) 32 V. c. 36, s. 137. Adjourning sale, if no bidders.

137. If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, (*b*) the Treasurer shall sell by public auction so much of the land as is sufficient to discharge the taxes and all lawful charges incurred in and about the sale and the collection of the taxes, (*c*) selling in preference such part Mode in which the lands shall be sold by the treasurer.

(*x*) So that a person intending to pay the arrears may, by inspection of the advertisement and without further or other inquiry, ascertain how much he must pay to prevent the sale. The amount of taxes stated in the advertisement is in all cases to be held the correct amount. Sec. 137.

(*a*) Even though bidders appear, it the Treasurer discover a combination among them, or has reason to believe that a combination exists, to prevent fair competition, it seems to be his duty to adjourn. See note *c* to sec. 155 of this Act.

(*b*) There can be no valid sale after payment of the taxes. See note *c* to sec. 155 of this Act.

(*c*) The sale of part of a whole lot which lay in two concessions, for arrears alleged to be due on half, was held to be illegal. *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594. Where lots are included in one grant, but described by separate numbers, a portion of each lot must be sold to pay the taxes thereon. *Monroe et al.* v. *Grey*, 12 U. C. Q. B. 647. A grant having been issued for lot number 8 and three-quarters of lot number 7, the latter of which was not returned by the Government to the District Treasurer, as described, for grant, and the taxes on the whole of the grant having been paid, the Treasurer credited it to the *west* three-quarters, and returned the *east* quarter as in arrear for taxes: Held, that the taxes having been paid on all the land in the grant, the sale of the east quarter was illegal. *Peck* v. *Munro*, 4 U. C. C. P. 363. Lot 18 and the west part of lot 19, containing together two hundred acres, were granted to B. in one patent, and in the same year the east part of lot 19, described as containing one hundred and fifty-six acres, was granted to one S. B.'s land, being in arrear for the requisite period, was returned to the Treasurer as lot 18 and the west part of lot 19, (two hundred acres,) and the Sheriff, in 1848, sold and conveyed one hundred and thirty-five acres of lot 19, which included part of the land granted to S. The sale was held illegal. *McDonald* v. *Robillard*, 23 U. C. Q. B. 105. It was held that the sale could not be upheld even as to that portion granted to B.; for lot 18 and the west part of lot 19 should each have been separately charged and sold for arrears. *Ib.* The east and west halves of lot 1, each containing one hundred acres,

as he may consider best for the owner to sell first; (*d*) and, in offering or selling such lands, it shall not be necessary to describe particularly the portion of the lot which is to be sold, but it shall be sufficient to say that he will sell so much of the lot as may be necessary to secure the payment of the taxes due; (*e*) and the amount of taxes stated in the Treas-

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were granted by the Crown at different times and to different persons. The taxes being in arrear, lots 1 and 2 (four hundred acres) were returned as in arrear for £6 10s. taxes, without distinguishing that one portion of the taxes was on lot 1, and the remainder on lot 2, or upon the separate halves of lot 1. The sheriff put up and sold the whole of lot 1 for the sum of £3 12s. 6d., being half the taxes on the whole, and 7s. 6d. for expenses. Held, the sale was void because a portion of the east-half of the lot had been sold for taxes, a portion whereof had accrued on the west-half of the lot, and there were no means of apportionment. *Ridout et al.* v. *Ketchum*, 5 U. C. C. P. 50. So where the north and south half of a lot of land were assessed separately, and different amounts charged against each half lot, which amounts were afterwards added together and charged against the whole lot, and a portion of the whole lot sold for the combined amounts, the sale was held illegal. *Lautenborough* v. *McLean*, 14 U. C. C. P. 175; see also, *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91; *Black* v. *Harrington*, 12 Grant, 175; *Christie* v. *Johnstone*, 12 Grant, 534. The patent granted a lot by the north and south halves. The patentee, in 1853, conveyed the lot as a whole, and it continued in one owner till the sale of the 35 acres in 1858. In 1858 and 1859, each half was assessed separately. For the next three years it was assessed in two parcels of 165 acres and 35 acres, and for the succeeding two years the north half 100 acres and the west part south half 65 acres were assessed with a valuation of $330 on the whole. Held, right. *Edinburgh Life Assurance Co.* v. *Ferguson et al.*, 32 U. C. Q. B. 253. In 1865, the 165 acres were sold for the taxes due for six years, including 1858, which was not covered by the warrant under which the 35 acres were sold for that year. Held, that the sale was bad. *Ib.* Certain land assessed for taxes were described in the assessment as the north part of a certain lot, which part contained 30 acres: Held, a sufficient description of the northerly 30 acres of the lot, and that it and no other part of the lot was effected by the assessment. *Ley* v. *Wright*, 27 U. C. C. P. 522. After a sale for taxes for 1859 and following years, a subsequent sale for taxes for 1858 was held invalid. *Mills* v. *McKay*, 15 Grant, 192. Where the sale was on the 5th of February, 1867, of taxes for 1859 and 1860, a subsequent sale for the taxes of 1862, 1863, 1864, 1865 and 1866, was sustained. *Thompson* v. *Colcock*, 23 U. C. C. P. 505. Where a warrant contained two different entries of the same lot for taxes due in two successive years, and the sheriff at one sale sold for one year's taxes, and at a subsequent adjourned sale, sold the same lot for the second year's taxes, both sales were held void. *Schaefer et ux.* v. *Lundy*, 20 U. C. C. P. 487.

(*d*) See note *c* to sec. 155.

(*e*) In *Knaggs* v. *Ledyard*, 12 Grant, 322, Mowat, V. C., said: "I must presume that the intention of the Legislature was, that a

urer's advertisement shall, in all cases, be held to be the correct amount due. (*f*) 32 V. c. 36, s. 138 (1); 40 V. c. 7, *Sched.* A. (200).

When land does not sell for full amount of taxes.

2. If the Treasurer fails at such sale to sell any land for the full amount of arrears of taxes due, he shall at such sale adjourn the same until a day then to be publicly named by him, not earlier than one week, nor later than three months thereafter, (*g*) of which adjourned sale he shall give notice by public advertisement in the local newspaper, or in one of the local papers in which the original sale was advertised, (*h*) and on such day he shall sell such lands unless otherwise

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sheriff should let bidders know what part he is selling and they are buying. This is the reasonable course. And I find in the statute no trace whatever of an opposite course having been contemplated." This case was affirmed on appeal, 32 U. C. Q. B. 270, *note*. Now, by the statute, an opposite course is not only contemplated, but expressly authorized. *Knaggs* v. *Ledyard* was decided before this amendment on the statute. Since the statute the objection was renewed but Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 290, said: "As to the objection that at the sale no particular 89 acres was sold, it is cured by the statute 1868-9, secs. 138." (137 of this Act.

(*f*) An extract from the Treasurer's book showing the amount of taxes imposed, was held not to be sufficient evidence of the fact in an action of ejectment by a person claiming under a tax title. *Munro* v. *Grey*, 12 U. C. Q. B. 647; see *Hall* v. *Hill*, 22 U. C. Q. B. 578; *S. C.* 2 E. & A. 569.

(*g*) Under certain circumstances, the Sheriff *may* adjourn a sale. See note *c* to sec. 155 of this Act. But under the circumstances here stated, he *shall* adjourn; that is, where he fails to sell *any* land for the *full* amount of the arrears of taxes due. Where a person attended a tax sale and offered to take twenty-nine acres of the lot and pay the full amount of taxes and expenses, and he was declared the highest bidder, but failed to pay the amount, and at an adjourned sale had the whole lot knocked down for the same amount, the sale was held to be void. *Todd* v. *Werry et al.*, 15 U. C. Q. B. 614. But the better opinion appears to be that, in such a case, the legal estate, after a deed has been executed by the Sheriff, passes, and the sale can only be voided in equity. *Raynes et ux* v. *Crowder et ux*, 14 U. C. C. P. 111; *McAdie* v. *Corby*, 30 U. C. Q. B. 349. If the purchaser fail immediately to pay the purchase money, it is the duty of the Treasurer forthwith again to put up the property for sale. Sec. 139. It would seem that the Sheriff may sue a purchaser for the amount of taxes, but in such an action it should be expressly averred that the defendant promised to pay for the land and accept a certificate within a reasonable time. *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; but see *Mingaye* v. *Corbett*, 14 U. C. C. P. 557.

(*h*) The sale will not be held invalid because of a defective notice of sale. See note *s* to sec. 131.

directed by the local Municipality in which they are situate for any sum he can realize, and shall accept such sum as full payment of such arrears of taxes ; (*i*) but the owner of any land so sold shall not be at liberty to redeem the same, except upon payment to the County Treasurer of the full amount of taxes due, together with the expenses of sale; (*k*) and the Treasurer shall account to the local Municipality for the full amount of taxes paid. 33 V. c. 27, s. 8.

When treasurer sells land the fee of which is in Crown, he shall only sell the interest of lessee, etc.

138. If the Treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee, licensee or locatee, and it shall be so distinctly expressed in the conveyance to be made by the Treasurer and Warden, and such conveyance shall give the purchaser the same rights in respect of the land as the original lessee, licensee or locatee enjoyed, (*l*) and shall be valid, without requiring the assent of the Commissioner of Crown Lands. 32 V. c. 36, s. 139.

When purchaser fails to pay purchase money.

139. If the purchaser of any parcel of land fails immediately to pay to the Treasurer the amount of the purchase money, the Treasurer shall forthwith again put up the property for sale. (*m*) 32 V. c. 36, s. 140.

Certificate of Sale—Tax Deed.

Treasurer selling to give a purchaser

140. The Treasurer, after selling any land for taxes, shall give a certificate under his hand to the purchaser, (*n*) stating

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(*i*) The power to sell at the first sale is only for the full amount of taxes. But at the adjourned sale the Treasurer may sell "for *any* sum he can realize." Neither the Treasurer nor the Corporation is responsible for the title of the land sold. *Austin* v. *Simcoe*, 22 U. C. Q. B. 73.

(*k*) See sec. 147 of this Act.

(*l*) Land vested in the Queen is exempt from taxation. Sec. 6, sub. 1. But where land is leased, sold, or agreed to be sold by the Crown, or located as a free grant, the interest of the purchaser or locatee is liable to taxation. Sec. 126. Being liable to taxation, it is liable to sale, but the sale of course only passes the rights in respect to the land which the original lessee or locatee enjoyed. Such a sale, when followed by a deed, would, however, prevail against a patent subsequently issued to the original lessee or locatee, or a person claiming under him. *Ryckman* v. *Van Voltenburgh*, 6 U. C. C. P. 385 ; *Charles* v. *Dulmage*, 14 U. C. Q. B. 585.

(*m*) See note *g* to sec. 137 of this Act.

(*n*) The certificate must—

distinctly what part of the land, and what interest therein, have been so sold, (*o*) or stating that the whole lot or estate has been so sold, and describing the same, and also stating the quantity of land, (*p*) the sum for which it has been sold, and the expenses of sale, (*q*) and further stating that a deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold, with reference to the one hundred and thirty-seventh and one hundred and thirty-eighth sections of this Act, will be executed by the Treasurer and Warden on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land is not previously redeemed. (*r*) 32 V. c. 36, s. 141.

Purchaser a certificate of land sold.

141. The purchaser shall, on the receipt of the Treasurer's certificate of sale, become the owner of the land, so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value. (*s*)

Purchaser of lands sold for taxes to be deemed owner thereof, for certain purposes, on receipt of Treasurer's certificate.

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1. State whether the whole or part, and if part, what part of the land has been sold.
2. State what interest therein has been sold.
3. Describe the same.
4. State the quantity sold.
5. State the sum for which it was sold.
6. State the expenses of sale, including commission. See sec. 144.
7. State that a deed conveying the same to the purchaser or his assigns will be executed on demand at any time after the expiration of one year from date, if land not previously redeemed. See sec. 148.

When a certificate is given, the land must be properly described in it, and be the same land as afterwards conveyed. *Burgess* v. *Bank of Montreal*, 42 U. C. Q. B. 212.

(*o*) See sec. 138 of this Act.

(*p*) See note *a* to sec. 145 of this Act.

(*q*) See note *i* to sec. 137 of this Act.

(*r*) See sec. 147 of this Act.

(*s*) The certificate confers a qualified ownership on the purchaser. He becomes the owner so far as to have all the necessary rights of action and powers for protecting the land from spoliation and waste.

Proviso.

2. The purchaser shall not be liable for damage done without his knowledge to the property during the time the certificate is in force. 32 V. c. 36, s. 142.

Effect of tender of arrears etc.

142. From the time of a tender to the Treasurer of the full amount of redemption money required by this Act, the said purchaser shall cease to have any further right in or to the land in question. (*t*) 32 V. c. 36, s. 143.

Treasurer's commission.

143. Every Treasurer shall be entitled to two and one-half per centum commission upon the sums collected by him as aforesaid. (*u*) 32 V. c. 36, s. 144.

He is not knowingly to permit any person to cut timber growing upon the land; nor can he himself cut timber on the land, or otherwise injure it. But he may use the land, so long as he does not deteriorate its value. If he injure the land or knowingly permit it to be injured, no doubt he would be responsible to the owner in the event of the land being redeemed. But it is expressly declared that he is not to be held responsible for damage done without his knowledge. Under such a certificate the purchaser is entitled to the possession of the land sold, and being in possession he can avail himself of the certificate as a defence to an action of ejectment by the owner of the land. *Cotter* v. *Sutherland*, 18 U. C. C. P. 357. So it would seem that under such a certificate he may maintain ejectment against any one in possession under the former owner. *Ib.* In *McLauchlan* v. *Pyper*, 29 U. C. Q. B. 528, Wilson, J., said: "After the time for redemption has gone by, the certificate still continues in force, and the owner has lost his power to redeem. Between that time and the giving of the deed to the purchaser, could the purchaser take possession of the land or eject the former owner by authority of the certificate, or defend his possession against an action by a former owner? I think he could. Yet there is no greater right given to him by the statute to do any of these acts under the certificate, after the time for redemption has gone by, than while it is continuing. If the purchaser were to enter on a vacant lot for the purpose of using the land without detiorating its value, could the owner, while he had still the right to redeem, eject the purchaser? I think he could not. The purchaser cannot use the land while another person is using it, and claims the right to use it adversely to him. The use referred to is the *usus fructus*, as distinguished from the *fidei commissum*, or what is technically called a use as allied with trusts. 2 Bl. Com. 327. So it is like that kind of *use* of land for which an action for use and occupation will lie.

(*t*) The rights of the purchaser are described in note *s* to the preceding section. It is here declared that these rights shall cease "from the time of a tender to the Treasurer of the full amount of the redemption money required by this Act," but no provision is made for communicating the fact of such tender to the purchaser.

(*u*) The commission is "a lawful charge," within the meaning of sec. 137, so as to entitle the Treasurer to sell for it as well as the taxes in arrear. See sec. 144 of this Act.

144. Wherever land is sold by a Treasurer, according to the provisions of the one hundred and thirty-first and following sections of this Act, he may add the commission and costs which he is hereby authorized to charge for the services above mentioned, to the amount of arrears on those lands in respect of which such services have been severally performed, (*v*) and in every case he shall give a statement in detail with each certificate of sale, of the arrears and costs incurred. (*w*) 32 V. c. 36, s. 145.

Fees, etc., on sales of land.

145. The Treasurer shall, in all certificates and deeds given for lands sold at such sale, give a description of the part sold with sufficient certainty, and if less than a whole lot, then by such a general description as may enable a Surveyor to lay off the piece sold on the ground; (*a*) and he

Expenses of search in Registry Office for description, etc.

(*v*) The commission is in the nature of poundage, to be levied over and above the amount of taxes, and the Treasurer is only entitled to it when he has made the money. See *Buchanan* v. *Frank*, 15 U. C. C. P. 196; *S. C.*, 1 U. C. L. J. N. S. 124; see further, *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262; *Nash* v. *Dickenson*, L. R. 2 C. P. 252; *Bissicks* v. *Bath Colliery Co.*, 36 L. T. N. S. 800.

(*w*) See note *n* to sec. 140 of this Act.

(*a*) The method prescribed by 6 Geo. IV. cap. 7, sec. 13, was, to begin at the front angle of the lot on that side whence the lots are numbered, and measure backwards, taking a proportion of the width, corresponding in quantity with the proportion of the particular lot in regard to its length and breadth, according to the quantity required to make the sum demanded. A deed thereunder of "thirty acres of lot, &c., to be measured according to the statute," was held to contain a sufficient description. *Fraser* v. *Mattice et al.*, 19 U. C. Q. B. 150; see also, *McIntyre* v. *Great Western Railway Co.*, 17 U. C. Q. B. 118. But a description as "twenty-five acres of lot," &c., without more, was held insufficient. *Cayley et al.* v. *Foster*, 25 U. C. Q. B. 405. So where the deed, under the 6 Geo. IV., of 120 acres of a lot of land, contained two descriptions—the first a description by metes and bounds, which was not in accordance with the statute and the other a general description in accordance with the statute, the latter was held to govern. *McIntyre* v. *Great Western Railway Co.*, 17 U. C. Q. B. 118. But the statute 13 & 14 Vict. cap. 67. which succeeded the 6 Geo. IV., which was repealed by 13 & 14 Vict. cap. 66, required a description by metes and bounds, and a deed, since that statute, of land sold under it not containing a description by metes and bounds, was held invalid. *McDonell et al.* v. *McDonald*, 24 U. C. Q. B. 74. "West part of lot 31, in the 2nd con. of the Township of Enniskillen; that is to say, 185 acres thereof," held insufficient. *Knaggs* v. *Ledyard*, 12 Grant 320. Affirmed on appeal. "South part of west half of lot 17, in 9th con. Rawdon, 75 acres," insufficient. *Booth* v. *Girdwood*, 32 U. C. Q. B. 23. "Part of south part 111, in 1st con. Tay, 40 acres," not sufficient. *Grant* v. *Gilmour*, 21 U. C. C. P. 18. "N. ½ and W. pt. S. ½, 165 acres,"

may make search, if necessary, in the Registry Office, to ascertain the description and boundaries of the whole parcel, and he may also obtain a Surveyor's description of such lots, to be taken from the Registry Office or the Government maps, where a full description cannot otherwise be obtained, such Surveyor's fee not to exceed one dollar; and the charge so incurred shall be included in the account and paid by the purchaser of the land sold, or the party redeeming the same. (*b*) 32 V. c. 36, s. 146.

Treasurer entitled to no other fees.

146. Except as before provided, the Treasurer shall not be entitled to any other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. (*c*) 32 V. c. 36, s. 147.

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and "N. ½ 100 and W. pt. S. ½, 65 acres," held bad on the authority of *Knaggs* v. *Ledyard*. *Edinburgh Life Assurance Co.* v. *Ferguson*, 32 U. C. Q. B. 253. Wilson, J., said in the last case (p. 270): "I was one of the affirming Judges in that case (*Knaggs* v. *Ledyard*); but I have since, in the case of *Booth* v. *Girdwood*, 32 U. C. Q. B. 23, expressed my opinion that the judgment I then gave was not the one which I ought to have given, for that the west part of the south half of a lot containing 65 acres, is a defined portion of land, namely, the west 65 acres of a particular block of 100 acres." "West half" of the lot has been held good and sufficient. *Bell* v. *McLean*, 18 U. C. C. P. 416, 419. So "the N. *or* W. ½ 14," in a list under sec. 118 of this Act. *Stewart* v. *Taggart*, 22 U. C. C. P. 284. "Thirty acres north part of lot 33," is sufficient. *Ley* v. *Wright*, 27 U. C. C. P. 522. "Rice Lands Paris Hydraulic Company," not sufficient. *Greenstreet* v. *Paris*, 21 Grant 229. "The easterly 14 acres of the westerly 90 acres of the north half of lot No. 2 in 10th con. of the said Township of Innisfil butted and bounded as follows, &c.," sufficient. *Austin* v. *Armstrong*, 28 U. C. C. P. 47. This section requires a "description of the part sold *with sufficient certainty*." This in the same section is defined as being "such *a general description* as may enable *a surveyor to lay off the piece sold on the ground*." A description by metes, bounds, and courses, having relation to the boundaries and courses of the original lot, would be the best description. It would be prudent for the Treasurer in all cases, before making his deed, to obtain a Surveyor's description of the piece sold. This, no doubt, would be sufficient to enable the same, if not any surveyor, to lay it off on the ground. Such a description could be made out by an examination of the boundaries of the whole lot, and the examination, if necessary, of the Registry Office. The government maps may be examined where a full description cannot otherwise be obtained. Allowance is made by the section for a surveyor's fee, not to exceed $1, to be included in the Treasurer's account, and paid by the purchaser.

(*b*) See sec. 146 of this Act.

(*c*) It is a general principle that every fee to a public officer must have a legal origin, *Askin* v. *The London District Council*, 1 U. C.

147. The owner of any land which may hereafter be sold for non-payment of arrears of taxes, or his heirs, executors, administrators or assigns, or any other person, (*d*) may, at any time within one year from the day of sale, exclusive of that day, (*e*) redeem the estate sold by paying or tendering to the County Treasurer, (*f*) for the use and benefit of the

Owners may within one year, redeem estate sold by paying purchase money and 10 per cent. thereon.

Q. B. 292; and where a statute allows certain specified fees to a public officer, none others are in general allowed. See *Hooker et al. v. Gurnett*, 16 U. C. Q. B. 180; *In re Davidson and Waterloo*, 22 U. C. Q. B. 405; see further, note *c* to sec. 273 of The Municipal Act.

(*d*) The right to redeem is given to the owner of the land or his heirs, executors or administrators, or to any other person, whether claiming title or not. *McDougall* v. *McMillan*, 25 U. C. C. P. 75. Such was the law before the passing of this Act. *Boulton* v. *Ruttan*, 20 S. 362; *Gilchrist* v. *Tobin*, 7 U. C. C. P. 141.

(*e*) The time for redemption is, "any time within one year from the day of sale, exclusive of that day." Where the sale took place on the 7th of October, 1840, payment of the redemption money on the 8th of October, 1841, was held too late. *Proudfoot* v. *Bush*, 12 U. C. C. P. 52. But payment on the 7th of October, 1841, would have been sufficient. *Ib.*

(*f*) In *Allan* v. *Hamilton*, 23 U. C. Q. B. 109, the land was sold in October, 1860. The land was sold for the taxes of 1855-6-7 and 1859, under a warrant dated 11th June, 1860. The amount paid by the purchaser was $31 51. In January, 1861, the owner of the land applied to the Treasurer to know the amount of taxes then due on the lot, and was told $37 48 for the years 1855 to 1860 inclusive. This was paid, and a receipt was taken for the taxes for those years. The Treasurer, in March, 1861, went to the Sheriff's office, and caused an entry to be made in the book of sales, opposite to the lot, that the taxes had been paid within two months after the sale, that he would pay the purchaser the redemption money, and that no deed was to be given. The purchaser was afterwards, and before any deed was given, told what had been done. But for some unexplained reason, a deed was, notwithstanding, given. Held, invalid. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, an entire lot having been sold for taxes, a person paid the redemption on the east half, and a different person the redemption on the west half. It was afterwards represented to the Council that the last mentioned payment was a mistake, and the Treasurer having been ordered to refund, applied the money to a wholly different lot. Held, that the east half was properly redeemed. In giving judgment, Draper, C. J., said: "The power to sell land was created in order to collect a tax, and the same reason that influenced the Legislature to enable the true owner of a part to pay his proper part of the taxes on the whole lot, would exist in his favour to permit him to redeem (that part). . . We think it more in accordance with the spirit and intention of the Act to hold that the benefit conferred on owners of land, under the circumstances stated in the 113th (118th) section, should be treated as extending to owners similarly circumstanced as owning a subdivision of a lot, and to

purchaser or his legal representatives, the sum paid by him, together with ten per centum thereon ; (*g*) and the Treasurer shall give to the party paying such redemption money, a receipt stating the sum paid and the object of payment ; and such receipt shall be evidence of the redemption. (*h*) 32 V. c. 36, s. 148.

Deed of sale, if not redeemed.

148. If the land is not redeemed within the period so allowed for its redemption, being one year exclusive of the day

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enable them to redeem on adducing satisfactory proof to the Treasurer of the subdivision. In our opinion, therefore, the payment received by the Treasurer of *the proportion* of the arrears of taxes for which lot 13 was sold—which would be, and in fact were, due in respect of the east half only—was an effectual redemption of *that half of the lot*. And we prefer to rest our conclusion in favour of the defendants on this ground, to entering upon the (to my apprehension) more doubtful question—on the payment made by mistake in the west half of the lot,—a payment which, at first glance, can hardly be said to have redeemed the lot, without holding that the form, not the substance, is to be considered by the Court," &c. If the owner, instead of paying the redemption money to the County Treasurer for the vendee, pays it to the latter personally, and he accepts it, the payment is in equity as effectual to save the property as payment to the Treasurer would have been. *Cameron* v. *Barnhart*, 14 Grant 661. So if the vendee verbally agrees to accept payment personally at a distance from the County Town, in lieu of its being made to the Treasurer for him, and the owner acts on this agreement, the other cannot afterwards, to the owner's prejudice, require payment of the money to the Treasurer, refuse to receive it himself when it is too late to pay it to the Treasurer, and insist on the land being forfeited. *Ib.* Where such an agreement was proved by a credible witness, but there was contradictory evidence as to whether what took place amounted to an agreement, the Court, holding that the presumption in a case of doubt must be in favour of fair dealing and not of forfeiture, gave the owner relief. *Ib.*

(*g*) When the redemption money is paid, it becomes the money of the purchaser, and not of the Municipality, *Wilson* v. *Huron and Bruce*, 8 U. C. L. J. 135 ; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21, and all rights of the purchaser in regard to the land cease from the time the money is paid or tendered to the Treasurer. Sec. 142. Where the purchaser, after the time for redemption is past, succeeds in equity in having the sale avoided, he will be made to do equity and pay the purchase money and ten per cent. thereon. *Massingberd* v. *Montague*, 9 Grant 92.

(*h*) The receipt must state :

1. The sum paid.
2. The object of the payment.

And when these things are stated in it, and not otherwise, the receipt is made evidence of the redemption. The words are, "*such*

of sale as aforesaid, (*i*) then, on the demand of the purchaser, or his assigns, or other legal representative, at any time afterwards, and on payment of one dollar, (*k*) the Treasurer shall prepare and execute with the Warden, and deliver to him or them, a deed in duplicate of the land sold, in which deed any number of lots may be included at the request of the purchaser or any assignee of the purchaser. (*l*) 32 V. c. 36, s. 149.

Meaning of words Treasurer and Warden.

149. The words "Treasurer" and "Warden" in the foregoing section shall mean the persons who at the time of the execution of the deed in such section mentioned hold the said offices. (*m*) 37 V. c. 19, s. 7.

Contents of deed and effect thereof.

150. The deed shall be in the form or to the same effect as in Schedule K. to this Act, (*n*) and shall state the date and cause of the sale, and the price, and shall describe the land according to the provisions of section one hundred and forty-five

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(not *any*) receipt shall be evidence of the redemption." See *Smith et al.* v. *Blakey*. L. R. 2 Q. B. 326.

(*i*) See note *e* to sec. 147 of this Act.

(*k*) On the demand of the purchaser, &c., and on payment of one dollar, it is incumbent on the Treasurer to prepare and execute (with the Warden) and deliver a deed in duplicate of the land sold. If he refuse to comply, an action will lie against him, at the suit of the purchaser, for the recovery of damages. See *Spafford* v. *Sherwood*, 3 O. S. 441; see also *Boulton* v. *Ruttan*, 2 O. S. 362. The deed may be in the form mentioned in schedule K. to this Act, and shall have the effect mentioned in sec. 150. The deed may be demanded by an assignee of the purchaser. See *Doe d. Bell* v. *Orr*, 5 O. S. 433..

(*l*) Unless the purchaser or his assignee otherwise request or direct, the Treasurer may execute a deed for each separate parcel of land sold, and for each such deed charge the sum of one dollar.

(*m*) The effect of these words will be to enable the successor of the Treasurer, who sells, to execute the deed in connection with the Warden for the time being. See *Strachey* v. *Turley*, 11 East 194; *Bell* v. *McLean*, 18 U. C. C. P. 416. The necessity for such a provision will be apparent on reference to *McMillan* v. *McDonald*, 23 U. C. Q. B. 454, and *Jones* v. *Cowden*, 34 U. C. Q. B. 345. In *Bryant* v. *Hill*, 23 U. C. Q. B. 96, where lands were sold under the 6 Geo. IV. cap. 7, but no deed made until after that Act was repealed it was held that the deed was invalid, as no provision had been made in the Act for such a case. The same point was also ruled in like manner in *McDonald* v. *McDonell et al.*, 24 U. C. Q. B. 424.

(*n*) Whenever the Legislature provides a form of a deed or other conveyance, that form should be as nearly as possible followed. See note *s* to sec. 320 of The Municipal Act.

of this Act, (*o*) and shall have the effect of vesting the land in the purchaser or his heirs and assigns or other legal representatives, in fee simple or otherwise, according to the nature of the estate or interest sold; (*p*) and no such deed shall be invalid for any error or miscalculation in the amount of taxes or interest thereon in arrear, or any error in describing the land as "patented" or "unpatented" or "held under a license of occupation." (*q*) 32 V. c. 36, s, 150; 34 V. c. 28, s. 4.

Deed to be registered within eighteen months to obtain priority.

151. The deed shall be registered in the Registry Office of the Registration Division in which the lands are situate, within eighteen months after the sale, otherwise the parties claiming under such sale shall not be deemed to have preserved their priority as against a purchaser in good faith who has registered his deed prior to the registration of the deed from the Warden and Treasurer. 31 V. c. 20, s. 58. *See also Rev. Stat.* c. 111, s. 76.

Registration of deeds.

2. The Registrar or Deputy Registrar upon production of the duplicate deed, (*r*) shall enter the same in the Registry book, and give a certificate of such entry and registration

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(*o*) The deed must *state*—

1. The date and cause of the sale;

2. The price;

And describe the land in accordance with the provisions of section 145 of this Act, which see, and notes thereto.

(*p*) The form of the deed is one thing; i s effect, another. It is declared that the deed *shall* be in the form given, and when in such form *shall* have the effect of vesting the land in the purchaser in fee simple or otherwise, according to the estate or interest sold. See sec. 138 and notes thereto. It is not declared, as was declared in Con. Stat. U. C. cap. 55, sec. 150, that the deed shall vest the land in the purchaser, "free and clear of all charges and incumbrances thereon;" but, considering that the taxes accrued on any land are by sec. 105 made a special lien thereon, having preference over all claims, liens, privileges, or incumbrances to any party except the Crown, it is reasonable to intend that it shall convey the land free of incumbrances.

(*q*) In other words, the deed, notwithstanding errors or miscalculations such as specified, shall be valid. See further, as to the binding effect of the deed, secs. 155 and 156 of this Act, and notes thereto.

(*r*) The provisions of the Registry Acts are as much applicable to deeds of this kind as any other deeds. See *Doe Brennan* v. *O'Neil*, 4 U. C. Q. B. 8. But no proof of execution is apparently necessary in order to satisfy the Registrar. He is, *upon production* of the

in accordance with "*The Registry Act.*" (*s*) 32 V. c. 36, s. 151. Rev. Stat. c. 111.

On what certificate Registrar to register Sheriff's deeds of lands sold for taxes before 1851.

152. As respects land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, on the receipt by the Registrar of the proper County or place, of a certificate of the sale to the purchaser under the hand and seal of office of the Sheriff, stating the name of the purchaser, the sum paid, the number of acres and the estate or interest sold, the lot or tract of which the same forms part, and the date of the Sheriff's conveyance to the purchaser, his heirs, executors administrators or assigns, (*t*) and on production of

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duplicate deed to enter the instrument in the Registry book. He is bound to give a certificate of the entry and registration. Special provision is also, by this Act, made for the registration of deeds of land sold before the 1st January, 1851, sec. 152, or sold between the 1st January, 1851, and prior to the 1st January, 1866. Sec. 153.

(*s*) It was declared by the Registry Act of 1865, which was passed on the 18th September of that year, that every deed made by a Sheriff or other officer for arrears of taxes should be registered within eighteen months after the sale by such Sheriff or other officer, . . . otherwise the parties claiming under authority of such sale should not be deemed to have preserved their priority against a purchaser in good faith, who may have registered his deed prior to the registration of such deed from the Sheriff or other officer. Stat. 29 Vict. cap. 24, sec. 56. It was, by the same statute, declared that all deeds for lands sold for taxes before the passing of the Act should be registered within one year after the passing of the Act on peril of losing priority as against a purchaser in good faith, who may have acquired priority of registration. *Ib.* sec. 57. This Act was repealed and, in substance, re-enacted by 31 Vict. cap. 20, Ont. Secs. 58 of the last mentioned is a transcript of sec. 56 of the first mentioned Act. So sec. 59 of the last mentioned is a transcript of sec. 57 of the first mentioned Act; and being so, a question may arise under the last mentioned section, whether it had not the effect of extending the period for the registration of all deeds *at any time* made *before* 1868 until one year thereafter, notwithstanding the provision of the Act of 1865, which required registration of all deeds before then (18th September, 1865) executed, to be registered within one year thereafter. In ejectment the plaintiff claimed under a tax title made in 1839. The Sheriff's deed was made on 10th July, 1840, but not registered till 18th July, 1861. The defendant claimed under the heir-at-law of the patentee, by deed dated 18th May, 1855, and registered on 5th July, 1855. Held, that the title being an unregistered one when the Sheriff's deed was given: that the deed did not require registration to preserve its priority: that, having been registered before the 29 Vict. cap. 24, sec. 57, repealed by 31 Vict. cap. 20, sec. 59 Ont., it was unnecessary to re-register it under those Acts. *Jones* v. *Cowden et al.*, 34 U. C. Q. B. 345; affirmed, 36 U. C. Q. B. 495.

(*t*) Deeds of land sold under this Act are to be registered on mere production of the duplicate. Sec. 151, sub. 2. But where the sales took

the conveyance from the Sheriff to the purchaser, his heirs, executors, administrators or assigns, such Registrar shall register any Sheriff's deed of land sold for taxes before the first day of January, one thousand eight hundred and fifty one; and the mode of such registry shall be the entering on record a transcript of such deed of conveyance. (*u*) 32 V. c. 36, s. 152.

Sheriff to give certificate of execution of conveyances since 1st January, 1851, and before 1st January, 1866, for registration.

153. As respects land sold for taxes since the first day of January, one thousand eight hundred and fifty-one, and prior to the first of January, one thousand eight hundred and sixty-six, the Sheriff shall also give the purchaser or his assigns, or other legal representatives, a certificate under his hand and seal of office of the execution of the deed, containing the particulars in the last section mentioned; (*v*) and such certificate, for the purpose of registration in the Registry Office of the proper Registration Division of any deed of land so sold for taxes shall be deemed a memorial thereof; and the deed shall be registered; and a certificate of the registry thereof shall be granted by the Registrar on production to him of the deed and certificate, without further proof; (*w*) and the Registrar shall, for the registry and certificate thereof, be entitled to seventy cents and no more. (*x*) 32 V. c. 36, s. 153.

Treasurer to enter in a book descriptions of lands conveyed to purchaser by him.

154. The Treasurer shall enter in a book, which the County Council shall furnish, a full description of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, and such book, after such entries have been made therein, shall, together with all copies of Collectors' rolls and other documents relating to non-resident

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place before the 1st January, 1851, a certificate under the hand and seal of office of the sheriff is in *addition* required. Such certificate must state:

1. The name of the purchaser;
2. The sum paid;
3. The number of acres, and the estate or interest sold;
4. The lot or tract of land of which the same forms part:
5. The date of the Sheriff's conveyance to the purchaser.

(*u*) See note *r* to sec. 151 of this Act.

(*v*) See note *t* to last section.

(*w*) See note *r* to sec. 151 of this Act.

(*x*) See note *c* to sec. 146 of this Act.

lands, be by him kept among the records of the County. (*y*) 32 V. c. 36, s. 154.

Deed to be binding on all, if land not redeemed in one year. 32 V. c. 36 (O).

155. If any tax in respect of any lands sold by the Treasurer, in pursuance of and under the authority of "*The Assessment Act of* 1869" or of this Act, has been due for the third year or more years preceding the sale thereof, (*a*) and the same is not redeemed in one year after the said sale, (*b*) such sale and the official deed to the purchaser of any such lands (provided the sale be openly and fairly conducted) shall be final and binding upon the former owners of the said lands, and upon all persons claiming by, through or under them (*c*)—it being intended by this Act that all owners of land shall be required

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(*y*) Entries made in such a book, as to the particulars mentioned, might, in the event of the death of the Registrar, be evidence of the facts therein contained. See *Smith et al.* v. *Blakey*, L. R. 2 Q. B. 326.

(*a*) See note *h* to sec. 127 of this Act.

(*b*) See sec. 147 of this Act, and notes thereto.

(*c*) In *Cotter* v. *Sutherland*, 18 U. C. C. P. 390, Wilson, J., said: "We should require strict proof that the tax has been lawfully made; but in promoting its collection we should not surround the procedure with too unnecessary or unreasonable rigour. We should see that the law is honestly and fairly carried out, and that no injustice is done to the owner or the public, and that the claims of purchasers are properly maintained. A substantial rather than a literal compliance with the provisions of the statute will more equally, and quite fairly protect all parties." This language was quoted with approbation by Chief Justice Richards when delivering the judgment of the majority of the Judges of the Court of Error and Appeal in *Connor* v. *Douglass*, 15 Grant 456, 464. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, 451, Draper, C. J., in delivering the judgment of the Court, said: "The primary, it may be said the sole object of the Legislature in authorizing the sale of lands for arrears of taxes was the collection of the tax. The statutes were not passed to take away lands from their legal owners, but to compel those owners who neglected to pay their taxes, and from whom payment could not be enforced by the other methods authorized, to pay by sale of a sufficient portion of their lands." In *Cook* v. *Jones*, 17 Grant 489, the present Chancellor said: "The language of Chief Justice Draper in a previous case, *Payne* v. *Goodyear*, 26 U. C. Q. B. 451, states accurately, as I think, the purpose and character of these statutes.—(He then quoted the language of the Chief Justice as above and proceeded.)—This is the language of a learned judge less disposed than some other Judges of the Courts, and less disposed than the majority of the Court in *Connor* v. *Douglass*, to hold tax sales not vitiated by irregularities. I think that Mr. Justice Wilson, in *Cotter* v *Sutherland*, takes a just view of the objects and nature of these statutes."

to pay the arrears of taxes due thereon within the period of three years, or redeem the same within one year after the

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The section here annotated declares that the sale and the official deed to the purchaser of any such lands (*provided the sale shall be openly and fairly conducted*) shall be final and binding, &c. To allow bidders to buy off each other at such a sale, and so to combine to prevent a fair competition, is illegal. Such conduct is against the policy of the law, as the law regards auction sales as a just and open method of selling property for the best price. It is also against the policy of the assessment laws, which appear to have been framed with an anxious desire that when land is necessarily sold for taxes, as small a quantity as possible should be sold. Where competition is bought off or silenced, it is a misapplication of terms to call a purchase under such circumstances, a purchase at auction. If the Treasurer, when selling lands for taxes, sees that competition—the essential element of an auction sale—is virtually put down, it is his duty to adjourn the sale. The course proper for the Treasurer under such circumstances, may be attended with difficulty; but the law has a right to look for the exercise of sound judgment, firmness and discretion, as well as firmness in the execution of such duties. *Per* Spragge, V. C., in *Henry* v. *Burness*, 8 Grant 357. Where one of the Sheriff's officers conducted the sale at which he knocked down without any competition, to another officer of the Sheriff, a lot of land worth about £350 for less than £7 10s., the sale was declared void. *Massingberd* v. *Montague*, 9 Grant 92; *S. C.* 8 U. C. L. J. 274. Where a lot was put up for sale on the 10th of April, when an intending purchaser offered to take 29 acres and pay the taxes, but afterwards refused to carry out the purchase, and in the July following, at an adjourned sale, the same person purchased the 200 acres for the taxes upon the statement that he had already acquired a title to the land, which he desired to confirm, and with a request not to oppose him, the sale was held illegal. *Todd* v. *Werry et al.*, 15 U. C. Q. B. 614. In such a case the remedy of the owner seems to be to file a bill in Chancery. *Raynes* v *Crowder*, 14 U. C. C. P. 111; *McAdie* v. *Corby*, 30 U. C. Q. B. 349. The section concludes with the declaration of policy on the part of the Legislature, in these words: "It being intended *by this Act* that all owners of land shall be *required to pay the arrears of taxes due thereon*, within the period of three years, or reedeem the same within one year after the Treasurer's sale thereof." If the land sold were not, at the time of sale, subject to assessment and sale for taxes, *Doe Bell* v. *Reaumore*, 5 O. S. 433; *Street* v. *Kent*, 11 U. C. C. P. 255, or, if at any time before sale the taxes be paid, the sale would be invalid. *Howe et ux.* v. *Thompson*, M. T. 6 Vict. MSS., R. & J. Dig. 241; *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Myers* v. *Brown*, 17 U. C. C. P. 307. But the payment to be effective must be, as against the tax deed, proved to have been made to some officer entitled to receive it at the time when paid. *Doe d. Sherwood et al.* v. *Mattheson*, 9 U. C. Q. B. 321; *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Jarvis* v. *Brooke*, 11 U. C. Q. B. 299, and be proved beyond reasonable doubt. *Macdonald* v. *Rowe*, 9 U. C. C. P. 76. If voluntarily paid, the money cannot be recovered back. *Austin* v. *Simcoe*, 22 U. C. Q. B. 73; see also *Street* v. *Simcoe*, 12 U. C. C. P. 284; *S. C.* 2 E. & A. 211; see further, *Hibbard* v. *Hickman*, 2 Withrow 347.

Treasurer's sale thereof. 32 V. c. 36, s. 130. *See ss.* 140, 147, 148.

In *Yokham* v. *Hall*, 15 Grant 335, the late Chancellor held a tax sale for more than was due not to be final and binding under 27 Vict. cap. 19, sec. 4, from which this section was taken. But this decision was not very cordially approved of in *Edinburgh Life Assurance Co.* v. *Ferguson*, 32 U. C. Q. B. 268, where Wilson, J., said: "I do not see why the mere adding together of the two rates, and treating them as a single charge on the whole lot, the sum on each half being exactly alike, and selling a part of the whole lot as for the one rate, so long as the two half lots are owned by the same person, should . . defeat the sale openly and fairly conducted," &c. It is competent, where the sale is openly and fairly conducted, to sell the whole lot for taxes. *Cotter* v. *Sutherland*, 18 U. C. C. P. 357. The Court will not, in such a case, presume against a sale on the supposition that too much land was sold for a small amount. *Ib.* Sales made after the return day of the writ to sell, are valid. *Ib.* So where the sale has been openly and fairly conducted, it will be be considered final, although it be shown that the land, though assessed as unoccupied, was occupied. *Bank of Toronto* v. *Fanning*, 18 Grant 391. It is opposed to the policy of the law as recognized by the Court of Chancery that an officer having such important powers and duties with reference to the sale of land for taxes as the Treasurer, should himself be allowed to become a purchaser at such a sale. *In re Cameron*, 14 Grant 612. But the Court of Common Pleas has held that there is nothing to prevent the party assessed, if desirous for any purpose to obtain a tax title, to omit paying the taxes and himself become the purchaser at such a sale. *Stewart* v. *Taggart*, 22 U. C. C. P. 284. This would not, at all events, avail in Equity, where the person omitting to pay taxes is the tenant for life, designing to acquire the reversion through his own wrong. See *Munro* v. *Rudd*, 20 Grant 55. It is now held, notwithstanding what is said to the contrary in *Ford Proudfoot*, 9 Grant 478, that the Corporation of the local Municipality is not a necessary party to a bill impeaching a tax sale. *Black* v. *Harrington*, 12 Grant 175; *Mills* v. *McKay*, 14 Grant 602. One Tripp, being owner of certain land, executed a marriage settlement under which his wife was entitled to the land for her life. The taxes afterwards fell in arrear, and the land was sold by the Sheriff to pay them. By arrangement with the purchasers, Tripp's widow became entitled to their interests in the property. She having sold to the defendant, the purchaser at Sheriff's sale conveyed to defendant. In a suit by the assignee of Tripp's heirs to set aside this sale, defendant claimed to be a purchaser for value, without notice. The same solicitor acted for vendor and vendee in the transaction of the sale to defendant. This solicitor knew then, and before that Tripp had been the owner, and that he had executed a marriage settlement under which the wife was tenant for life only; but he did not know or suspect she was bound to pay the taxes for which the land was sold and he did not communicate to defendant that she was under such an obligation; Held, that defendant was not affected by constructive notice of the liability. *Munro* v. *Rudd*, 20 Grant 55. It would seem that the Mayor of a Town cannot legally become the purchaser at a sale of lands for taxes in his Town. *Greenstreet* v. *Paris*, 21 Grant 229.

Deed valid against all parties, if not questioned within a certain time.

156. Wherever lands are sold for arrears of taxes, and the Treasurer has given a deed for the same, such deed shall be to all intents and purposes valid and binding, (*a*) except as against the Crown, if the same has not been questioned before some Court of competent jurisdiction by some person interested in the land so sold within two years from the time of sale. (*b*) 32 V. c. 36, s. 155.

Certain Treasurer's deeds not to be invalid, if the sale is valid.

157. In all cases where lands have been validly sold for taxes, the conveyance by the Treasurer who made the sale, or his successors in office, shall not be invalid by reason of the statute under the authority whereof such sale was made having been repealed at and before the time of such conveyance, or by reason of the Treasurer who made the sale having gone out of office. (*c*) 33 V. c. 23, s. 5.

Rights of entry adverse to tax purchaser in

158. In all cases where lands are sold for arrears of taxes, whether such sale is or is not valid, then so far as regards rights of entry adverse to any *bona fide* claim or right,

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(*a*) The section does not make valid a deed made in pursuance of a sale for taxes where there were in fact no taxes in arrears at the time of the sale. *Hamilton* v. *Eggleton*, 22 U. C. C. P. 536; *Proudfoot* v. *Austin*, 21 Grant 566, or where the sale has been made by an officer, who by virtue of his office was not clothed with authority to sell. *Canada Permanent Building Society* v. *Agnew*, 23 U. C. C. P. 200. The Treasurer is, under sec. 130, prohibited from selling lands which have not been included in the lists furnished by him to the Clerks of the several Municipalities prior to the sale, and so, although the sale be by the proper officers, it is an unauthorized sale, and so not within the protection of this section. *Fenton* v. *McWain*, 41 U. C. Q. B. 239. Where the description of the land sold is so uncertain as to be void, the defect is not cured by this section. *Burgess* v. *The Bank of Montreal*, 42 U. C. Q. B. 212.

(*b*) The two years after which the deed is made valid must elapse after the execution of the deed and not from the time of sale. *Hutchinson* v. *Collier*, 27 U. C. C. P. 249; see further, *Church* v. *Lenton*, 28 U. C. C. P. 384, 404; *Carroll* v. *Burgess*, 40 U. C. Q. B. 381. It is doubtful if the section applies to make good a sale otherwise bad, in favour of a purchaser who makes no claim for nearly twenty years, leaving the original owner in possession and in ignorance of the sale. *Austin* v. *Armstrong*, 28 U. C. C. P. 47; *Kempt* v. *Parkyn*, *Ib.* 131; see further, *Carroll* v. *Burgess*, 40 U. C. Q. B. 381.

(*c*) The contrary before the passing of this Act had been held in *Bryant* v. *Hill*, 23 U. C. Q. B. 96; *McDonald* v. *McDonell*, 24 U. C. Q. B. 424; see also, *McMillan* v. *McDonald*, 26 U. C. Q. B. 454; *Jones* v. *Cowden*, 34 U. C. Q. B. 345; *S. C.* 36 U. C. Q. B. 495; *McDougall* v. *McMullan*, 25 U. C. C. P. 75. The 33 Vict. cap. 23, sec. 5, from which this section is taken was framed to prevent the effect being given to such objection as specified.

whether valid or invalid, derived mediately or immediately under such sale, the fifth section of *The Act respecting the Transfer of Real Property* shall not apply, to the end and intent that in such cases the right or title of persons claiming adversely to any such sale shall not be conveyed where any person is in occupation adversely to such right or title, and that in such cases the Common Law and the second, fourth and sixth sections of the statute passed in the thirty-second year of the reign of King Henry the Eighth, and chaptered nine, be revived, and the same are and shall continue to be revived. (*d*) 33 V. c. 23, s. 6.

possession not to be conveyed. Rev. Stat. c. 98, s. 5.

Common Law and 32 H. viii. c. 9, ss. 2, 4 & 6, revived.

159. In all cases, (not being within any of the exceptions and provisions of sub-section three to this section), where lands having been legally liable to be assessed for taxes, are sold as for arrears of taxes, and such sale or the conveyance consequent theron is invalid by reason of uncertain or insufficient designation or description of the lands assessed, sold or conveyed, and the right or title of the tax purchaser is not valid, and the tax purchaser has entered on the lands so liable to assessment or any part thereof, and has improved the same, then in case an action of ejectment is brought against such tax purchaser and he is liable to be ejected by reason of the invalidity of such sale or conveyance, the Judge of Assize before whom such action is tried shall direct the jury to assess, or shall himself (if the case be tried without a jury), assess damages for the defendant for the amount of the purchase money at such sale and interest thereon, and of all taxes paid in respect of the lands since the sale by the tax purchaser and interest thereon, and of any loss to be sustained in consequence of any improvements made before the commencement of such action by the defendant, and all persons through or under whom he claims, less all just allowances for the net value of any timber sold off the land, and all other just allowances to the plaintiff, and shall assess the value of the land to be recovered. (*e*)

Where sale or conveyance void for uncertainty, and purchaser has improved, the value of the land and improvements, &c., to be assessed, and

(*d*) The 32 Hen. VIII. cap. 9 made void the sale by a person not in possession of a mere right of entry. The sections of this Act respecting the transfer of real property which legalized the conveyance of a right of entry is supposed to have superseded the statute of 32 Hen. VIII. cap. 9. The statute of Henry VIII. is for the purposes of this section revived. In *Hill* v. *Long*, 25 U. C. C. P. 265 a conveyance of a right of entry was attacked under the operation of sec. 6 of 33 Vict. cap. 23, from which this section is taken, but the decision of the Court proceeded upon a different ground.

(*e*) Where certain land was assessed and advertised for sale,

The plaintiff to pay for improvements, etc., unless tax purchaser elects to retain the land on paying its value.

2. If a verdict is found for the plaintiff, no writ of possession shall issue until the plaintiff has paid into Court for the defendant the amount of such damages: or, if the defendant desires to retain the land, he may retain it, on paying into Court, on or before the fourth day of the ensuing Term, or on or before any subsequent day to be appointed by the Court, the value of the land as assessed at the trial; after which payment, no writ of possession shall issue, but the plaintiff on filing in Court for the defendant a sufficient release and conveyance to the defendant, of his right and title to the land in question, shall be entitled to the money so paid in. (*f*) 33 V. c. 23, s. 9.

Section not to apply.

3. This section shall not apply in the following cases:—

if taxes paid before sale;

(*a*) If the taxes for non-payment whereof the lands were sold have been fully paid before the sale.

if land were redeemed;

(*b*) If, within the period limited by law for redemption, the amount paid by the purchaser, with all interest payable thereon, has been paid or tendered to the person entitled to receive such payment, with a view to redemption of the lands.

in cases of fraud.

(*c*) Where on the ground of fraud or evil practice by the purchaser at any such sale, a Court would grant equitable relief. 33 V. c. 23, ss. 9 & 1.

When the owner is not tenant in fee, the value of the land to be paid into Chancery.

160. In any of the cases named in the one hundred and fifty-ninth section wherein the plaintiff is not tenant in fee simple or fee tail, the payment into Court to be made as aforesaid, of the value of the land, by the defendant desiring to retain the land shall be into the Court of Chancery, and the plaintiff and all parties entitled to and interested in the said lands, as against the purchase at such sale for taxes, on

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described in the warrant and sold at a tax sale, and conveyed as part of lot *eight*, it being in fact part of lot *five*, and when it appeared that the Treasurer, who conducted the sale, described the locality of the land intended to be sold and the taxes due upon it, the tax purchaser was held to avail himself of the protection of sec. 9 of 33 Vict. cap. 23, Ont., from which this section is taken. *Churcher et al.* v. *Bates et al.*, 42 U. C. Q. B. 466.

(*f*) There should be an assessment at that time not only of the damage but of the value of the land for the purposes of this section. The defendant may retain the land before paying into Court its assessed value. Plaintiff is not entitled to the possession unless he pay the damages assessed. If the plaintiff be not tenant in fee simple or fee tail the payments must be made into the Court of Chancery.

filing in the Court of Chancery a sufficient release and conveyance to the defendant of their respective rights and interests to the land, shall be entitled to the money so paid in such proportions and shares as to the Court of Chancery, regarding the interests of the various parties, seems proper. (*g*)

When the defendant is not tenant in fee, the value of improvements, etc., to be paid into Chancery.

2. In any of such cases wherein the defendant is not tenant in fee simple or fee tail, then the payment of damages into Court to be made as aforesaid by the plaintiff, shall be into the Court of Chancery. 33 V. c. 23, s. 10.

Any other person interested may pay in value assessed if defendant does not.

161. If the defendant does not pay into the Court wherein such action is brought, the value of the land assessed as aforesaid, on or before the fourth day of the said Term, or on or before such subsequent day as may be appointed by the Court, then any other person interested in the lands under the sale or conveyance for taxes may, before the end of the said Term, or before the expiry of ninety days from any subsequent day to be appointed by the Court for payment by the defendant, pay into Court the said value of the lands; and till the expiration of the time within which such payment may be made, and after such payment no writ of possession shall issue. (*h*)

The payer to have a lien for such proportion as exceeds his interest.

2. The defendant, or other person so paying in shall be entitled as against all others interested in the lands under the sale or conveyance for taxes, to a lien on the lands for such amount as exceeds the proportionate value of his interest in the lands, enforceable in such manner and in such shares and proportions as to the Court of Chancery, regarding the interests of the various parties, and on hearing the parties, seems fit. 33 V. c. 23, s. 10.

How the owner can obtain the value of the land paid in.

162. In case the defendant or any other person interested pays into Court in manner aforesaid, the plaintiff shall be entitled to the amount so paid in, on filing in Court a sufficient release and conveyance to the party so paying in, of all his right and title to the lands, in which release and conveyance it shall be expressed that the same is in trust for such party, to secure his lien as aforesaid. (*i*) 33 V. c. 23, s. 10.

(*g*) See note *f* to sec. 159.

(*h*) See note *f* to sec. 159.

(*i*) The filing in Court of a sufficient release and conveyance by the plaintiff to the party paying the money into Court of all his, the

How the value of improvements, etc., paid in can be obtained.

163. If the said value of the lands is not paid into Court as above provided, then the amount of the damages paid into the Court of Chancery shall be paid out to the various persons, who, if the sale for taxes were valid would be entitled to the lands, in such shares and proportions as to the Court of Chancery, regarding the interests of the various parties, seems fit. (*k*) 33 V. c. 23, s. 10.

Provision as to ejectment cases where value of the land and improvements, etc., only in question.

164. In all actions of ejectment in which both the plaintiff (if his title were good) would be entitled in fee simple or fee tail, and the defendant (if his title were good) would be also so entitled, if the defendant, at the time of appearing gave notice in writing to the plaintiff in such ejectment or to his attorney named on the writ, of the amount claimed, and that on payment of such amount, the defendant or person in possession would surrender the possession to the plaintiff; or that he desired to retain the land, and was ready and willing to pay into Court a sum mentioned in the said notice as the value of the land, and that the said defendant did not intend at the trial to contest the title of the plaintiff; and if the jury, or the Judge, if there be no jury, before whom such action of ejectment is tried, assess damages for the defendant as provided in the five next preceding sections, and it satisfactorily appears that the defendant does not contest the action for any other purpose than to retain the land on paying the value thereof, or obtain damages, the Judge before whom such action is tried, shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff has been nonsuited on the trial, or a verdict had been rendered for the defendant.

2. If on the trial it is found that such notice was not given as aforesaid, or if the Judge or jury assess for the defendant a less amount than that claimed in the notice, or find that the defendant had refused to surrender possession of the land after tender made of the amount claimed, or (where the defendant has given notice of his intention to retain the said land), that the value of the land is greater than the amount mentioned in the said notice, or that he has omitted to pay

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plaintiff's right and title to the lands is a condition precedent to the obtaining of the money out of Court. See note *f* to sec. 159.

(*k*) The payment is to be made into the Court of Chancery when the plaintiff is not tenant in fee simple or fee tail of the land sought to be recovered. See sec. 160.

into Court the amount mentioned in the said notice for thirty days after the plaintiff had given to the defendant a written notice that he did not intend to contest the value of the land mentioned in such notice, then in any such case the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; and upon the trial of any cause after such notice no evidence shall be required to be produced in proof of the title of the plaintiff. (*l*) 33 V. c. 23, s. 11.

Tax-purchaser without a remedy whose title is invalid, to have a lien on the land for purchase money, etc.

165. In any case in which the title of the tax purchaser is not valid, or in which no remedy is otherwise provided by this Act the tax purchaser shall have a lien on the lands for the purchase money paid at such sale, and interest thereon at the rate of ten per centum per annum, and for the amount of all taxes paid by him or them since such sale and interest thereon at the rate aforesaid, to be enforced against the lands in such proportions as regards the various owners, and in such manner as the Court of Chancery thinks proper. (*m*) 33 V. c. 23, s 13.

(*l*) This section principally relates to costs and these the costs of the defence. The general rule is that the party who succeeds in the recovery of the land in an action of ejectment is entitled to the costs. But this section is an exception to that rule. It enables the defendant, although leaving the land, to obtain his costs of the defence. This can only be where—

1. It appears that defendant at the time of appearing, gave notice in writing such as provided for by the section.
2. It satisfactorily appears at the trial that the defendant did not contest the action for any other purpose than to retain the land on payment of the value thereof, or obtain damages.
3. And the Judge before whom the cause was tried should certify the latter fact upon the back of the record.

The section also incidentally provides a rule of evidence to the effect that "upon the trial of any cause after such notice, no evidence shall be required to be produced in proof of the title of the plaintiff."

(*m*) In *Austin* v. *Simcoe*, 22 U. C. Q. B. 73, it was held that a tax purchaser who paid his money for what at the time of sale all supposed to be an interest in land, was not entitled on it appearing that nothing was sold to recover the purchase money. The object of this section is, in such a case, to create not only a lien for the amount of the purchase money, but to provide for the payment of the interest thereon at the rate of ten per cent. per annum, and for the repayment, with interest of the amount of taxes paid by the tax purchaser.

Contracts between tax purchaser and original owner continued.

166. No valid contract entered into between any tax purchaser and original owner, in regard to any lands sold or assumed to have been sold for arrears of taxes, as to purchase, lease, or otherwise, shall be annulled or interfered with by this Act, but such contract shall remain in force, and all consequences thereof, at Law or in Equity, as to admission of title or otherwise, as if this Act had not been passed. (*n*) 33 V. c. 23, s. 12.

Secs. 157, 166 not to apply where the owner has occupied since sale.

167. Nothing in the ten next preceding sections of this Act contained shall affect the right or title of the owner of any lands sold as for arrears of taxes, or of any person claiming through or under him, where such owner at the time of the sale was in occupation of the land, and the same have since the sale been in the occupation of such owner, or of those claiming through or under him. (*o*) 33 V. c. 23, s. 7.

Other Acts remedial to purchasers continued.

168. Nothing in the eleven next preceding sections of this Act contained shall prejudice the right or title which any purchaser at any sale for taxes, or any one claiming through or under him, has heretofore acquired or hereafter acquires under any other statute. (*p*) 33 V. c. 23, s. 8.

Construction of "Tax purchaser."

169. In the construction of the twelve next preceding sections of this Act, occupation by a tenant shall be deemed the

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(*n*) Before the passing of the 33 Vic. cap. 23, Ont. in 1869, cases aroses in which the former owner and the tax purchaser upon the faith of a valid sale for taxes, which both supposed to have taken place, contracted with each other on the faith thereof but on discovery of the truth, that is, that the sale was invalid, the contract was amended or otherwise put an end to, notwithstanding the apparent admission of title by reason of the dealing between the parties. The object of sec. 12 of the Act of 1869, from which this section is taken, is to continue in force the contracts so made notwithstanding the subsequent discovery of the invalidity of the sale. This is done with all the consequences of a valid sale as to admission of title or otherwise.

(*o*) A person in the occupation of land is supposed to have some knowledge of the assessment and sale of the land or of facts which ought to put him upon enquiry. Where such a person is negligent of his rights, he is not entitled to the protection and benefits by the ten next preceedings sections enforced on persons owning land which has been sold for arrears of taxes.

(*p*) It is not the object of the sections to divest a person of the title which before the passing of the Act he had acquired, or hereafter may acquire under any *other* statute than the one here annotated. The declaration of the Legislature is, that nothing in the eleven next preceding sections "shall prejudice the right or title" of such a person or of any one claiming through or under him.

occupation of the reversioner; and the words "tax purchaser" shall apply to any person who purchases at any sale under colour of any statute authorizing sales of lands for taxes in arrear, and shall include and extend to all persons claiming through or under him; and the words "original owner" shall include and extend to any person who, at the time of such sale, was legally interested in or entitled to the land sold, or assumed to be sold, and all persons claiming through or under him. (*q*) 33 V. c. 23, s. 14. "Original owner."

NON-RESIDENT LAND FUND.

170. The Council may, by by-law, direct that all the moneys received by the County Treasurer on account of taxes on non-resident lands, shall be paid at stated periods to the several local Municipalities to which such taxes were due, or shall constitute a distinct and separate fund to be called the "Non-resident Land Fund" of the County. (*c*) 32 V. c. 36 s. 156. The Non-resident Land Fund.

(2) In the absence of any such by-law, the County Treasurer shall pay over to the local Treasurer all such moneys when so collected. (*d*) 33 V. c. 27, s. 10. If no such Fund.

(*q*) See note c sec. 1 of The Municipal Act as to the effect of an interpretation clause in an Act of Parliament.

(*c*) The Treasurer of the County is the person on whom the law throws the duty of collecting such taxes as are shown to be in arrear by the collector's roll, received by him from the several Townships, after all efforts have failed to collect in the Townships, in consequence of the owner having been a non-resident, or there being no sufficient distress on the land. *Per* McLean, C. J., in *Austin* v. *Simcoe*, 22 U. C. Q. B. 75. All money received by him on account of taxes of non-residents may either, under By-law of the County Council, be at once distributed among the several local Municipalities to which the taxes are due, or constitute a fund known as the "Non-resident Land Fund." Sec. 180. Though subject, for certain purposes, to the control of the County Council, see *Robertson* v. *Wellington*, 27 U. C. Q. B. 336, which may issue debentures on the credit of it, secs. 177 and 178, it is in no sense the money of the Council. *Wilson* v. *Huron and Bruce, Bank of Montreal Garnishees*, 8 U. C. L. J. 135; *same parties, Macdonald garnishee, Ib.* 136; *Austin* v. *Simcoe*, 22 U. C. Q. B. 73; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21. The Treasurer must, when a fund has been created, open an account for each local Municipality with the fund, sec. 171; and in the event of a union of local Municipalities being afterwards dissolved, must open an account with each. Sec. 172.

(*d*) These words were added to the original section by stat. 33 Vict. cap 27, sec. 10, Ont. Before the amendment was made, it was

Treasurer to open an account therefor.

171. The Treasurer shall, when such fund has been created, open an account for each local Municipality with the said fund. (*e*) 32 V. c. 36, s. 157.

Municipalities united and afterwards disunited, etc.

172. If two or more local Municipalities, having been united for municipal purposes, are afterwards disunited, or if a Municipality or part of a Municipality is afterwards added to or detached from any County, or to or from any other Municipality, the Treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land, at the date of the alteration, shall be placed to the credit of the Municipality within which the land after such alteration is situate; (*f*) and, if a Union of Counties is about to be dissolved, all the taxes on non-residents' land imposed by by-laws of the Provisional Council of the junior County, shall be returned to and collected by the Treasurer of the United Counties, and not by the Provisional Treasurer; (*g*) and the Treasurer of the

When any union about to be dissolved.

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held that local Municipalities were not entitled to recover the moneys either from the County, *Mara* v. *Ontario*, 13 Grant 347, or the Treasurer, *Nottawasaga* v. *Boys*, 21 U. C. C. P. 106, until the passage of a By-law properly apportioning the money. It is now by the section as amended made the duty of the *County Treasurer*, in the absence of any such By-law, to pay over to the local Treasurer all moneys received on account of non-resident lands in any local Municipality, *when so collected*. The Corporation of the County is responsible for the due accounting of the fund by the Treasurer. See note *a* to sec. 211 of this Act.

(*e*) See notes to sec. 170 of this Act.

(*f*) The Non-Resident Land Fund represents the several lots of land in respect of which the taxes have been collected. The Municipality in which the lots of land may be situate at the time of the distribution of the money, is to get the money. The Treasurer, in the event of a dissolution of a union of local Municipalities or other alterations, is required by this section to make corresponding alterations in his books, "so that arrears due on account of any parcel or lot of land at the date of the alteration shall be placed to the credit of *the* Municipality within which the land, after such alteration, is *situate*."

(*g*) It was generally supposed that the Treasurer of the senior County would, after a dissolution of the union of Counties, be the proper person to collect taxes due to the union before the dissolution, and to take all proceedings necessary to that end, But the Court of Common Pleas in *Canada Permanent Building Society* v. *Agnew*, 23 U. C. C. P. 200, decided that until the passing of subsection 2 of sec. 132 of 32 Vict. c. 36, there was no officer having the necessary powers to enforce the collection of arrears of taxes in the case supposed by sale of the land in respect to which the arrears were due.

United Counties shall open an account forthwith for the junior County with the Non-resident Land Fund. (*h*) 32 V. c. 36, s. 158.

New municipalities partly in one county and partly in another.

173. In cases where a new Municipality is formed partly, from two or more Municipalities situate in different Counties, the collection of non-resident taxes due at the time of formation shall remain in the hands of the Treasurers of the respective Counties formerly having jurisdiction over the respective portions of territory forming the new Municipality; (*i*) and the respective Treasurers shall keep separate accounts of such moneys and pay the same to the new Municipality; (*k*) and where a new Municipality is formed from two or more Municipalities situate in any one County, the Treasurer shall, in like manner, keep a separate account for such new Municipality. (*l*) 32 V. c. 36, s. 159.

All arrears to form one charge upon lands subject to them, &c.

174. The Treasurer of the County shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears, from whatever rates arising, shall be taken together and form one charge on the land. (*m*) 32 V. c. 36, s. 160.

Deficiencies in certain taxes to be supplied by municipality.

175. Every local Municipal Council, in paying over any school or local rate, or its share of any County rate, or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply, out of the funds of the Municipality,

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See note *t* to sec. 131 of this Act. By this part of the section annotated, it is declared that if a union of Counties is *about* to be dissolved, all the taxes on non-residents' lands imposed by By-laws of the provisional Council of the *junior* County shall be returned to and collected by the Treasurer of the United Counties and not by the Treasurer of the Provisional County.

(*h*) See note *c* to sec. 170 of this Act.

(*i*) See note *f* to sec. 172 of this Act.

(*k*) See note *d* to sec. 170 of this Act.

(*l*) See note *f* to sec. 172 of this Act.

(*m*) The several rates are only needed for the purposes of the local Municipality, and for distribution by it to the several purposes for which the money is raised. The local Municipality often finds it necessary to advance out of its general funds, moneys charged against non-resident lands, and await the collection thereof by the County Treasurer, sec. 175, and when the money is received from the County Treasurer, who knows nothing of the several rates, it may be applied to make good the advance out of the general funds of the local Municipality, and form part of its general funds. Sec. 176.

any deficiency arising from the non-payment of the taxes, but shall not be held answerable for any deficiency arising from the abatements of, or inability to collect, the tax on personal property other than for County rates. (*n*) 32 V. c. 36, s. 161; 40 V. c. 7, *Sched.* A. (201).

Money from Non-resident Land Fund, how appropriated.

176. All sums which may at any time be paid to a Municipality out of the Non-resident Land Fund of the County, shall form part of the general funds of such Municipality. (*o*) 32 V. c. 36, s. 162.

Debentures may be issued on the credit of Non-resident Land Fund.

177. The Council of the County may, (*p*) from time to time, by by-law, authorize the Warden to issue, under the corporate seal, upon the credit of the Non-resident Land Fund, debentures payable not later than eight years after the date thereof, and for sums not less than one hundred dollars each, so that the whole of the debentures at any time issued and unpaid do not exceed two-thirds of all arrears then due and accruing upon the lands in the County, together with such other sums as may be in the Treasurer's hands, or otherwise invested to the credit of the said fund; (*q*) and all debentures issued by the County shall be in the exclusive custody of the Treasurer, who shall be responsible for their safety until their proceeds are deposited with him. (*r*) 32 V. c. 36, s. 163.

Who to have charge of them.

By whom to be negotiated.

178. Such debentures shall be negotiated by the Warden and Treasurer of the County, and the proceeds shall be paid into the said Fund, and the interest on the said debentures, and the principal when due, shall be payable out of such

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(*n*) Real property is fixed; personal property is movable. There is full security for the collection of a moderate rate due in respect of the one, and not much in respect of the other. Hence, while the duty is imposed to supply out of the funds of the Municipality any deficiency arising from non-payment of the former, the rule is not made to extend to deficiencies arising from abatements of, or inability to collect the latter.

(*o*) See note *m* to sec. 174 of this Act.

(*p*) *May*, &c. Permissive—not obligatory. See note *f* to sec. 494 of The Municipal Act.

(*q*) Debentures, when regularly issued, are trsansferable by delivery. See section 386 of The Municipal Act, and notes thereto.

(*r*) The Treasurer being especially and peculiarly the officer entrusted with the collection of the money that constitutes the fund. See note *c* to sec. 170 of this Act.

Fund: (*s*) but the purchaser of any such debentures shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof. 32 V. c. 36, s. 164. Proviso.

179. If at any time there is not in the Non-resident Land Fund, where such Fund has been created, money sufficient to pay the interest upon a debenture or to redeem the same when due, such interest or debenture shall be payable out of the general County funds, (*t*) and the payment thereof may be enforced in the same manner as is by law provided in the case of other County debentures. (*u*) 32 V. c. 36, s. 165. Provision for payment of such debentures.

180. The Council of the County may from time to time pass by-laws apportioning the surplus moneys in the Non-resident Land Fund amongst the Municipalities ratably, according to the moneys received and arrears due on account of the non-resident lands in each Municipality; (*a*) but such apportionmant shall always be so limited that the debentures unpaid shall never exceed two-thirds of the whole amount to the credit of the Fund. (*b*) 32 V. c. 36, s. 166. Surplus of the Non-resident Land Fund to be divided among municipalities.

(*s*) The fund is intended to meet in advance the wants of the local Municipalities, and not in any way to be a source of revenue or gain, to the Corporation of the County. See note *c* to sec. 170 of this Act. But it is very properly here provided, that the purchaser of a debenture shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof.

(*t*) The debenture, though issued on the security of a particular fund, is in reality the promise of the County, and so the County is bound to advance out of general County funds money sufficient to pay interest.

(*u*) The ordinary mode of enforcing payment of debentures is by action. See *Trust and Loan Company* v. *Hamilton*, 7 U. C. C. P. 98; *Anglin* v. *Kingston*, 16 U. C. Q. B. 121; *Crawford et al.* v. *Cobourg*, 21 U. C. Q. B. 113.

(*a*) The Legislature has entrusted the Municipal Council—the County Parliament—with the duty of apportioning the surplus funds among the Municipalities ratably, according to the moneys received and arrears due on account of the non-resident lands in each Municipality. If there were no legislation to the contrary, the Council would be held to have the discretionary power to say by By-law when the money is to be paid over. But it is by statute made the duty of the County Treasurer to pay over to the Treasurers of the local Municipalities all such moneys when collected. See note *d* to sec. 170 of this Act.

(*b*) This is a restriction. A By-law contrary to this restriction could not be supported. The object of the restriction is plainly to afford security for the due payment of unpaid debentures.

Treasurer's percentage salary, how paid.

181: The Treasurer shall not be entitled to receive from the person paying taxes any percentage thereon, (*c*) but may receive from the Fund such percentage upon all moneys in his hands, or such fixed salary in lieu thereof as the County Council by by-law may direct. (*d*) 32 V. c. 36, s. 167.

Annual statements of fund to be submitted to councils.

182. The County Treasurer shall prepare and submit to the County Council, at its first session in January in each year, (*e*) a report, certified by the Auditors, of the state of the Non-resident Land Fund. (*f*) 32 V. c. 36, s. 168.

What it shall show.

183. The said report shall contain (*g*) an account of all the moneys received and expended during the year ending on the thirty-first of December next preceding, distinguishing the sums received on account of, and paid to, the several Municipalities, and received and paid on account of interest or debentures negotiated or redeemed, and the sums invested and the balance in hand; a list of all debentures then unpaid, with the dates at which they will become due; and a statement of all the arrears then due, distinguishing those due in every Municipality; and the amount due on lands then advertised for sale, or which by law may be advertised, during the ensuing year. 32 V. c. 36, s. 169.

(*c*) See note *c* to sec. 146 of this Act.

(*d*) It is left in the discretion of the County Council to pay the County Treasurer either by percentage or by salary. The amount of percentage or salary is also left in the discretion of the County Council.

(*e*) See note *g* to sec. 240 of The Municipal Act.

(*f*) This is to enable the County Council when dealing with the fund with a view to apportionment, to do so safely and intelligently. See note *a* to sec. 180 of this Act.

(*g*) The report must contain—

1. An account of all the moneys received and expended during the year, *distinguishing* the sums received on account of and paid to the several Municipalities, and received and paid on account of interest or debentures negotiated or redeemed *and* the sums invested *and* the balance on hand.
2. A list of all debentures unpaid, with the dates at which they will become due.
3. A statement of all the arrears then due (distinguishing those due in every Municipality) and the amount due on lands advertised for sale, or which may be advertised during the ensuing year.

184. The Warden shall cause a copy of the report to be transmitted to the Provincial Secretary for the information of the Lieutenant-Governor. (*h*) 32 V. c. 36, s. 170. Copy to be transmitted to Provincial Secretary.

ARREARS OF TAXES IN CITIES AND TOWNS.

185. In Cities and Towns arrears of taxes shall be collected and managed in the same way as is hereinbefore provided in the case of other Municipalities; (*i*) and for such purposes the municipal officers of Cities and Towns shall perform the same duties as the like officers in other Municipalities; and the Treasurer and Mayor of every City or Town shall, for such purposes, also perform the like duties as are hereinbefore, in the case of other Municipalities, imposed on the County Treasurer and Warden respectively. 32 V. c. 36, s. 171 & 111, *last part*. *See ante*. s. 109. Collection of arrears of taxes in cities and towns.

186. The Treasurer of every County, City and Town shall keep a triplicate blank receipt book, and on receipt of any sum of money for taxes on land, shall deliver to the party making payment one of such receipts, and shall deliver to the County, City or Town Clerk the second of the set, with the corresponding number, retaining the third of the set in the book, the delivery of such receipts to be made to the Clerk at least every three months; (*k*) and the County, City or Town Clerk shall file such receipts, and, in a book to be kept for that purpose, shall enter the name of the party making payment; the lot on which payment is made; the amount paid; the date of payment, and the number of the receipt; (*l*) and the Auditors shall examine and audit such County treasurer, etc., to keep triplicate blank receipt books. Audit of books, etc.

(*h*) It is not said *when* the Warden shall cause this to be done, but without doubt it is intended that he shall do so within a reasonable time after the receipt of the report.

(*i*) The power given to a City to collect taxes authorizes the sale by the City of non-resident land. *Per* Wilson, J., in *McKay* v. *Bamberger et al.*, 30 U. C. Q. B. 95, 97. But until the passing of sec. 172 of 29 & 30 Vict. cap. 53, of which the above was a re-enactment, a City had no power to sell the land of a resident for arrears of taxes. *Ib.*

(*k*) This is intended not merely as a check upon the person receiving the money, but for the preservation of evidence of payment; so that if one set of receipts should happen to be destroyed or mislaid, the other will be forthcoming.

(*l*) The entries required are—

1. The name of the party making payment;

books and accounts at least once in every twelve months. (*m*) 32 V. c. 36, s. 172.

RESPONSIBILITY OF OFFICERS.

Security by treasurers and collectors.

187. Every Treasurer and Collector, before entering on the duties of his office, shall enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. (*a*) 32 V. c. 36, s. 173.

Bond with sureties.

188. Such bond shall be given by the officer and two or more sufficient sureties, in such sum and such manner as the Council of the Municipality by any by-law in that behalf requires, and shall conform to all the provisions of such by-law. (*b*) 32 V. c. 36, s. 174.

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2. The lot on which the payment is made;
3. The amount paid;
4. The date of the payment;
5. The number of the receipt.

(*m*) See note *g* to sec. 240 of The Municipal Act.

(*a*) Each of the officers named is by virtue of his office connected with the receipt or disbursement of moneys belonging to the Corporation. It is made the duty of each, "before entering upon the duties of his office," to enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. Besides, each must, before entering on the duties of his office, make and subscribe a declaration of office. See sec. 266 of The Municipal Act. The appointment to the office necessarily precedes the obligation to give the bond or make the oath. So soon as the person is appointed, it becomes his duty to do the one and the other. But the omission of either does not *per se* vacate the appointment, unless conditionally made, or render the person appointed incompetent to discharge the other duties appertaining to his office. See *Judd* v. *Read*, 6 U. C. C. P. 362; see further, note *q* to sec. 246 of The Municipal Act.

(*b*) The bond should be made to the Corporation of the Municipality, sec. 187, and in the name of the Corporation, thus: "*The Corporation of the* (County, City, Town, Village, Township or united Counties or United Townships, *as the case may be*) *of* (naming the same. Sec. 5 of The Municipal Act. But it does not follow that bonds taken in any other name or in any other form will be void. A bond by a collector and sureties to "the Treasurer of the Town of," &c., has been held good. *Judd* v. *Read*, 6 U. C. C. P. 362; *Todd* v. *Perry et al.*, 20 U. C. Q. B. 649; see further, *O'Connor* v. *Clements et al.*, 1 U. C. Q. B. 386; *Eastern District Council* v. *Hutchins*, 1 U. C. Q. B. 321. So where it was to "The Municipality of the Township of Whitby," *Whitby* v. *Harrison*, 18 U. C. Q. B. 603, 606; or, "The Provisional Municipal County Council of the County of Bruce," *Bruce* v. *Cromar*, 22 U. C. Q. B. 321, in each case the bond was held good. See also, *The Brock District Council*

189. If any Treasurer, Assessor, Clerk or other officer refuses or neglects to perform any duty required of him by this Act, (*c*) he shall, upon conviction thereof before any Court

Penalty on assessors or clerks failing to perform

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v. *Bowen*, 7 U. C. Q. B. 471; *The Trent and Frankford Road Co.* v. *Scott Marshall*, 10 U. C. C. P. 329. The bond, when given, should have two or more *sufficient* sureties in such sum and in such manner as the Council of the Municipality by any By-law shall require in that behalf. The members of Municipal Councils cannot, as trustees for the ratepayers, evince too much care in seeing that the receipt and expenditure of the money of the ratepayers is properly secured; and in cases of flagrant neglect it is quite possible that the members themselves might be held personally responsible. See *Parks* v. *Davis*, 10 U. C. C. P. 229. The bond, if in general terms for accounting and paying over all moneys collected, will apply as well to moneys collected for County purposes as for any of the purposes mentioned in sec. 204 of this Act. See sec. 206 of this Act; see further, note *r* to sec. 246 of The Municipal Act.

(*c*) This is a wise provision, intended to secure the due execution of the Act by the officers mentioned, whose business it is to learn their duty, and to do it accordingly. Either refusal or neglect is made punishable. The former involves an act of the will, but the latter does not necessarily do so. Any inquiry into the motives or cause of neglect, so far as this section is concerned, would be inexpedient; it would be leaving too much to the lenity of a jury. But mere omission is not necessarily equivalent to neglect. Inability or superior force may excuse the non-performance of a duty by one who is willing to do it. Nor does it follow that every non-compliance with the directions of the Act, in its minor details, will bring the party within the penalty of this section. Neglect, however, may in general be described as the omission to do some duty which the party was able to do, but did not do. Forgetfulness is no excuse. The penal part of the Act may press with more severity in one class of cases than another; but with that the Courts have nothing to do: the law is so written, and the Courts have nothing to do with the consequences. See *King* v. *Burrell*, 12 A. & E. 460. "Neglect" means, in such a statute as this, the omission to do some duty which the party is able to do. *Per* Patteson, J., *Ib.* 468. "Where no *vis major* or inability intervenes, omitting to do what ought to be done is neglect." *Per* Williams, J., *Ib.* 469. "The defendant has contravened the Act without showing any lawful excuse. This is a neglect within the Act. Forgetfulness or carelessness is no such lawful excuse." *Per* Coleridge, J., *Ib.* The neglect may be wholly to do the duty, or do it within the time limited in that behalf. Either is neglect within the meaning of this section. It is of the utmost importance, so far as the administration of the provisions of the Municipal and Assessment Acts is concerned, that things should be done when directed to be done. See *Hunt* v. *Hibbs*, 5 H. & N. 123; *The Queen* v. *Ingall*, L. R. 2 Q. B. Div. 199. This section throughout, so far as neglect is concerned, applies rather to cases of mere neglect than of wilful neglect. The latter are looked upon as still more penal, and especially provided for by subsequent sections. Sec. 191. The words of the sections are: "If *any* Treasurer,

their duty, and how enforced.

of competent jurisdiction in the County in which he is Treasurer, Assessor, Clerk or other officer, forfeit to Her Majesty such sum as the Court may order and adjudge, not exceeding one hundred dollars. 32 V. c. 36, s. 175.

Assessor, &c., refuses or neglects," &c. So the words of the next section are: "If *an* Assessor neglects or omits to perform *his* duties, the *other* Assessors," &c. It would seem that the penalty or forfeiture is a personal one attaching to *each* person in default. See *The King* v. *Share*, 3 Q. B. 31; see also, *Clarke* v. *Gant*, 8 Ex. 252. Each is to be liable for such sum as the Court shall order, not exceeding one hundred dollars. A declaration treating two defendants as jointly liable for a penalty where there was a several duty and a several penalty, was held bad on a demurrer. *Metcalfe q. t.* v. *Reeve et al.*, 6 U. C. Q. B. 263. In giving judgment, Sir John B. Robinson said: "They (the defendants, who were magistrates, sued for not returning a conviction) cannot commit a *joint* offence, and be subject to *one* penalty, because *neither* transmitted it." *Ib.* 264. So where it is the duty of two assessors to return an assessment roll by a fixed day, it would seem that they should not be prosecuted jointly, but severally. *The Queen* v. *Snider et al.*, 23 U. C. C. P. 330. It is a personal penalty for a personal default. *Ib.* It is said that the penalty or forfeiture is to be "upon conviction thereof before any Court of competent jurisdiction in the County." Does this mean a civil or a criminal Court? The words of sect. 176 of the 29 & 30 Vict. cap. 53, were, "Before the Recorder's Court of City, or before the Court of General Quarter Sessions of the County." These words were omitted in the sections here annotated, and more general words substituted, no doubt because of the constitutional difficulty that legislation as to criminal procedure appertains to the Dominion Legislature exclusively. See note *v* to sec. 394 of The Municipal Act. It is by subsection 29 of sec. 8 of The Interpretation Act of Ontario, declared that "whenever any pecuniary penalty or any forfeiture is imposed for any contravention of any Act, then if no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before any Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of any one credible witness other than the plaintiff or party interested." If the forfeiture were by this Act fixed so that an action of debt could be maintained, there would be strong ground for the argument that the amount of the forfeiture under this section is recoverable by action in a Court of civil jurisdiction. But the difficulty in the way of giving full effect to such an argument arises from the fact that the forfeiture is to be "*such sum* as the *Court* may order and adjudge, not exceeding $100." See *Gee* v. *Wilden*, Lutw. 1320; *Wood* v. *Searl*, Bridg. 139; *Butcher's Co.* v. *Bullock*, 3 B. & P. 434; *Piper* v. *Chappell*, 14 M. & W. 624; see further, Grant on Corporations, 84; note *w* to sub. 12 of sec. 454 of The Municipal Act, and *q* to sec. 194 of this Act. If it could be said to be "*summarily* imposed," within the meaning of sec. 216 of

Other assessors may act for those in default.

190. If an Assessor neglects or omits to perform his duties, the other Assessor, or other Assessors (if there be more than one for the same locality), or one of such Assessors, (*d*) shall, until a new appointment, perform the duties, and shall certify upon his or their assessment roll the name of the delinquent Assessor, and also, if he or they know it, the cause of the delinquency; (*e*) and any Council may, after an Assessor neglects or omits to perform his duties, appoint some other person to discharge such duties; (*f*) and the Assessor so appointed shall have all the powers and be entitled to all the emoluments which appertain to the office. (*g*) 32 V. c. 36, s. 176.

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this Act, it might be levied and collected by distress and sale of the offender's goods under authority of a warrant issued by a Justice of the Peace. But it is held that no new offence is cognizable before a Justice of the Peace unless the jurisdiction is expressly conferred by Act of Parliament. See note *h* to sec. 216. The Court of Common Pleas held that, in the absence of further legislation, the omission of assessors to return the roll by the day limited for the purpose is not an indictable offence. *The Queen* v. *Snider*, 23 U. C. C. P. 330. "The defendants in this case are indicted and found guilty not for wilful contravention of any statute, (being acquitted on the counts charging wilful default,) but merely for unlawfully and contrary to the statute neglecting to return the roll by the first of May; in fact for a mere non-feasance. Such an omission—in no way criminal in itself—cannot, we think, be treated as a misdemeanour or any species of criminal offence, unless declared to be such by competent legislative authority." *Per* Hagarty, C. J., *Ib.* p. 336. The Legislature of Ontario has since declared, that "where a pecuniary penalty or forfeiture is imposed by any Act of this Province, and the amount of the penalty or forfeiture is in any respect in the discretion of the Court or Judge, or in case the Court or Judge has the right to impose imprisonment in addition, or in lieu of such penalty or forfeiture, and no other mode is by the Act expressly prescribed for the recovery of the penalty or forfeiture, the same may be recovered upon indictment in any Court of Oyer and Terminer or General Sessions of the Peace." R. S. O. c. 1, s. 8 sub. 30. It remains to be decided whether this enactment is one within the competence of the Legislature of Ontario.

(*d*) The duty is apparently a several—not a joint one. See the last note.

(*e*) The obligation of the "*other* assessor" or assessors, under the circumstances stated, to do what is required of him or them, is as much a duty as any duty primarily imposed on him or them under this Act.

(*f*) The power to appoint involves the power to remove, and neglect or omission to perform specified duties is a just cause of removal. See note *e* to sec. 274 of The Municipal Act.

(*g*) See note *c* to sec. 146 of this Act.

Punishment of Clerks, Assessors, etc., making fraudulent assessments etc.

191. If any Clerk, Treasurer, Assessor or Collector, acting under this Act, makes any unjust or fraudulent assessment or collection, or copy of any Assessor's or Collector's roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or fraudulently omits the name of any person who should be entered, or wilfully omits any duty required of him by this Act, (*h*) he shall, upon conviction

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(*h*) Cases of refusal or mere neglect are provided for by sec. 189. This section is intended for the punishment of misconduct still more reprehensible than any provided against in that section. The acts of misconduct specified are:

1. Making any unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll. See sec. 192 of this Act.
2. Wilfully *and* fraudulently inserting therein the name of any person who should not be entered, *or* fraudulently omitting the name of any person who should be entered.
3. Wilfully omitting *any* duty required by this Act. See note c to sec. 189 of this Act.

In Bac. Abr. "Offices and Officers," 181, it is said that "if an officer acts contrary to the nature and duty of his office, or if he refuses to act at all in these cases, the office is forfeited." In *Philips* v. *Bury*, 1 Ld. Rayd. 5, it was held that contumacy is a good ground for the deposition of an officer. In *The King* v. *Wells*, 4 Burr. 1999, 2004, Lord Mansfield said: "A *general* neglect or *refusal* to attend the duty of such an office is a reason of forfeiture; so a *determined* neglect, a *wilful* refusal." By sec. 6 of 1 W. & M. cap. 21, it is declared that "if any Clerk of the Peace shall misdemean himself in the execution of the said office, and thereupon a complaint and charge, in writing, of such misdemeanour shall be exhibited against him to the Justices of the Peace in their General Quarter Sessions, it shall be lawful for the said Justices, or the major part of them, from time to time, upon examination and due proof thereof, openly, in their said General Quarter Sessions, to suspend or discharge him from the said office." In *Wildes* v. *Russell*, L. R. 1 C. P. 722, 737, Willes, J., said: "The law upon the subject of forfeiture of an office is to be found in Com. Dig. 'Officer, K,' where it is laid down that an officer forfeits his whole office by non-user or abuser of the office by him or his deputy. In some such sense as this, and not merely in a criminal sense, is the word misdemeanour used in this section, sec. 6 of 1 W. & M. cap. 21, and there can be no doubt, therefore, that an absolute and persistent refusal by the Clerk of the Peace to enter an order of Sessions is a misdemeanour in his office. I entirely agree with Mr. Chambers that a mere delay in acting upon such an order, or even a strong remonstrance against it by the Clerk of the Peace, would not amount to a misdemeanour so as to work a forfeiture of the office." By the Dominion Act 31 Vict. cap. 71, sec. 3. "Wilfully" may be here read as meaning wantonly or persistently. See *per* Bramwell, B, in *Smith* v. *Barnham*, L. R. 1 Ex. Div. 423, 424. By

thereof before a Court of competent jurisdiction, (*i*) be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine is paid, in the Common Gaol of the County or City for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. (*k*) 32 V. c. 36, s. 177.

What shall be evidence of fraudulent assessments.

192. Proof, to the satisfaction of the jury, that any real property was assessed by the Assessor at an actual value greater or less than its true actual value by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. (*l*) 32 V. c. 36, s. 178.

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the Dominion Act, 31 Vict. cap. 71, sec. 3, "Any wilful contravention of any act of the Legislature of any of the Provinces within Canada, which is not made an offence of some other kind, shall be a misdemeanour, and punishable accordingly." See *The Queen* v. *Snider et al.*, 23 U. C. C. P. 330, 336.

(*i*) *Competent jurisdiction.* See note *c* to sec. 189.

(*k*) The punishment under this section may be—

1. Fine not exceeding $200, *and* to imprisonment till the fine be paid, in the common gaol for a period not exceeding six months.

2. *Both* such fine and imprisonment, in the discretion of the Court.

See *In re Slater* v. *Wells*, 9 U. C. L. J. 21.

(*l*) This section does not justify an assessor in assessing property thirty per cent. less or more than its true value. True, value is what is required. But where the departure from the value is so great as the per centage indicated, the fact of such a departure is made *prima facie* evidence of an unjust or fraudulent assessment.

The true actual value of real property is, in general, mere matter of opinion; and where the subject of inquiry is a mere matter of opinion, opinions of men will be found widely to differ. One man is sanguine, and fixes present value in hope of future increase; another is gloomy, and is influenced by fears of future decrease. One values for purposes of sale, being able and willing to buy; another values with the like view, being neither able nor willing to buy. Each man has his own stand-point, and his opinion is greatly influenced thereby. See note *y* to sec. 23 of this Act. That the price paid for land, and the money expended upon it, do not constitute its value, is a matter of every-day experience. The value rather depends upon the number of persons who at the moment are willing to purchase, coupled with the unwillingness of the owners to sell, and in a less degree by the amount of capital held for investment in land at the time. The anxiety of the owner to sell, when few are willing to buy, frequently reduces it to a value more nominal than real. Strictly speaking, the value of land, like any other commodity, is the price it will bring in the market at the time it is offered for sale. See *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284.

Punishment of culpable assessors.

193. An Assessor convicted of having made any unjust or fraudulent assessment, (*m*) shall be sentenced to the greatest punishment, both by fine and imprisonment, allowed by this Act. (*n*) 32 V. c. 36, s. 179.

Penalty for not making and completing assessment rolls by the proper time.

Rev. Stat. c. 48.

194. With reference to "*The Jurors' Act*," if any Assessor of any Township, Village or Ward, except in the cases provided for by section forty-four and forty-six of this Act, neglects or omits (*o*) to make out and complete his assessment roll for the Township, Village or Ward, and to return the same to the Clerk of such Township or Village, or of the City or Town in which such Ward is situated, or to the proper officer or place of deposit of such roll, on or before the first day of September of the year for which he is Assessor, (*p*) every such Assessor so offending shall forfeit for every such offence the sum of two hundred dollars, one moiety thereof to the use of the municipality and the other moiety, with costs, to such person as may sue for the same in any Court of competent jurisdiction by action of debt or information; (*q*) but nothing herein contained shall be constructed to relieve any Assessor from the obligation of returning his assessment roll, at the period required elsewhere

Not to impair any other liability.

But before any man can be convicted under this section, the jury must be satisfied of the actual value of the property in question; and when it has been arrived at, a valuation greater or less than it by thirty per cent. is made *prima facie* evidence that the assessment was unjust or fraudulent. It is of course in the power of the accused, by proof of the circumstances under which the assessment was made, to rebut the *prima facie* case so established. See *Churcher* v. *Cousins*, 28 U. C. Q. B. 540.

(*m*) See the last note.

(*n*) See note *k* to sec. 191 of this Act.

(*o*) *Neglects* or *omits*. See note c to sec. 189 of this Act.

(*p*) See note *y* to sec. 240 of The Municipal Act.

(*q*) The County Court has now jurisdiction in penal actions. *Brash q. t.* v. *Taggart*, 16 U. C. C. P. 415. The statute 18 Eliz. cap. 5, prohibits the compromise of such actions without the leave of the Court, *Bleeker* v. *Myers*, 6 U. C. Q. B. 134, and in one case leave was given on paying the Crown's share into Court. *May qui tam* v. *Dettrick*, 5 O. S. 77. Where it clearly appears on the face of the declaration, that the consideration of the defendant's promise was a compromise of such an action without leave of the Court, brought by the plaintiff as a common informer against defendant, the consideration will be held to be illegal, and the declaration bad. *Hart* v. *Myers*, 7 U. C. Q. B. 416. The verdict of a jury for defendant, in a penal action, on a question

by this Act, and from the penalties incurred by him by not returning the same ac gly. (*r*) 32 V. c. 36, s. 180. *See also Rev. Stat.* c. 48, s. 169, (3.)

Proceedings for compelling collectors to pay over moneys collected to the proper treasurer.

195. If a Collector refuses or neglects (*s*) to pay to the proper Treasurer, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same as uncollected, (*t*) the Treasurer shall, within twenty days after the time when the payment ought to have been made, (*u*) issue a warrant, under his hand and seal,

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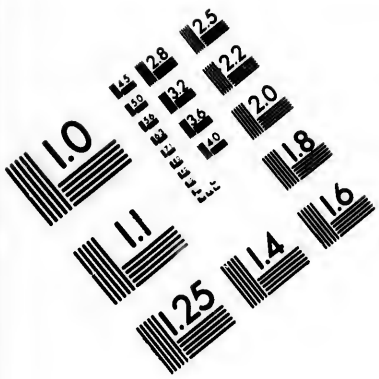
of fact properly left to them, is final and conclusive. See *Hall* v. *Green*, 9 Ex. 247; *Gough* v. *Hardman*, 6 Jur. N. S. 402; *McLellan qui tam* v. *Brown*; 12 U. C. C. P. 542; *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284. No damages are recoverable for the detention of the debt, because the debt is not due till judgment. See *Frederick* v. *Lookup*, 4 Burr. 2018; *Cuming* v. *Sibly*, *Ib.*, 2489.

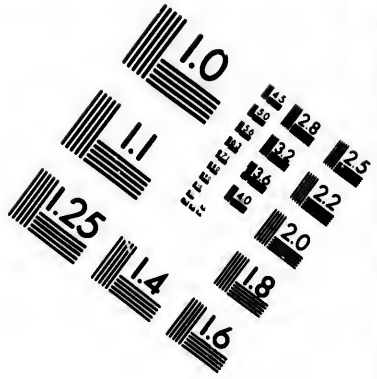
(*r*) See note *g* to sec. 240 of The Municipal Act.

(*s*) Refuses or neglects. See note *c* to sec. 189 of this Act.

(*t*) It is the duty of every collector of taxes, on or before the 14th of December in every year, or on such other day in the next year, not later than the 1st of February, as the Council of the Municipality may appoint, to return his roll to the Treasurer, and pay over the amount payable to such Treasurer specifying in a separate column in his roll how much of the whole amount paid over is on account of each separate rate. Sec. 101. If any of the taxes mentioned in the collector's roll remain unpaid, and the collector be not able to collect the same, he must deliver to the Treasurer of his Municipality an account of all taxes remaining due on the roll, and in such account must show opposite to each assessment the reason why he could not collect the same, by inserting in each case the words "non-resident" or "not sufficient property to distrain" or "Instructed by the council not to collect," (as the case may be). Sec. 103.

(*u*) *i. e.* "*Within* twenty days *after the time* when the payment *ought to have been made.*" These words are the same as used in the corresponding sections 177 of Con. Stat. U. C. cap. 55, and sec. 182 of 29 & 30 Vict. cap. 53. The time within which the warrant must, under this section, be issued, is involved in considerable doubt. In *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94, the only case in which the question has arisen, the only two Judges who expressed opinions on the point very materially differed in their views. The collector, in that case, was appointed for the years 1864 and 1865. In January, 1865, he was authorized to continue the collection of the taxes for 1864 until 1st May, 1865, and in January, 1866, was authorized to continue "so long as he should be recognized by the Municipality of the said Township." He did not return the rolls until April, 1867. A large sum for each of the years 1865 and 1366 appeared to be unaccounted for. On 2nd April, the Township Treasurer, under a resolution of the Council, demanded payment, and on 6th of same month issued his warrant. The question raised was, as to the





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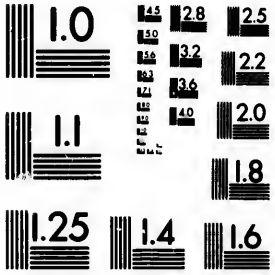

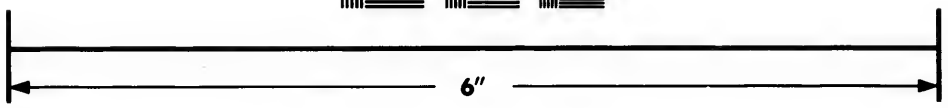

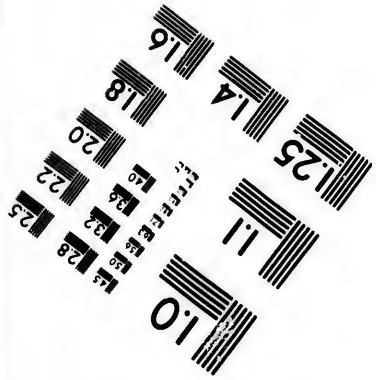

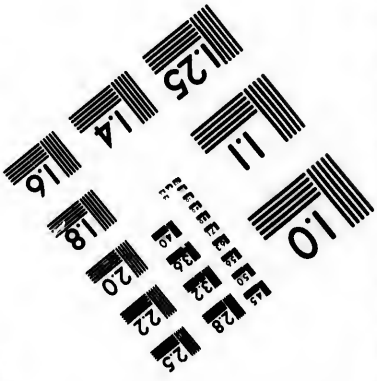

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directed to the Sheriff of the County or City (as the case may be), commanding him to levy of the goods, chattels, lands and tenements of the Collector and his sureties, such sum as

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validity of the warrant. Chief Justice Richards, in delivering judgment, said: "The cases referred to by Mr. Harrison decide that the collector, while he retained the roll, had power to collect the taxes unpaid that were to be levied under it after the time mentioned in the statute (14th December) for the return of the roll, when the time had not been enlarged by the Council of the Municipality when the distress of the taxes was made. The effect of the decisions seems to be that as long as the collector retained the roll, and was an officer of the Municipality, he might collect the taxes mentioned in it, and having collected the taxes he and his sureties were liable on their bond for not paying them over. The question here is, whether the warrant authorized by the 182nd section of the statute 29 & 30 Vict. c. 53 and C. S. U. C. cap. 55, sec. 177, can be issued at any time when *more* than twenty days have passed after the collector was *bound* to return his roll . . . . To wit, the 14th December, or the 1st April or May of the year for which the taxes were to be collected, or in the following year as to the last mentioned days. The section speaks of the collector refusing or neglecting to pay to the proper Treasurer or other person legally authorized to receive the same, the sums contained on his roll, or duly to account for the same as uncollected. Then the Treasurer or Chamberlain shall, '*within twenty days after the time* when the payment ought to have been made, issue a warrant to levy such sum as remains unpaid and unaccounted for.' What is the *time* when the payment ought to have been made to enable the Municipality to exercise the large and unusual powers conferred on them by the section referred to? The only *time* mentioned in the statute then in force was the 14th day of December, or such other day as the Municipal Council of the County may appoint, not later than the 1st day of May in the next year. Now, here no other day than the 14th of December was appointed for the return of the rolls or the paying over of the money, and the power to issue the warrant was not exercised within twenty days of that time. . . . Another question to be considered is, what do the words 'within twenty days after the time when the payment ought to have been made,' mean? Are they to be interpreted *literally*? or is the true meaning that the warrant is not to issue until *the expiration* of the twenty days from the time? . . . I think the safest rule to lay down, and the one more in accordance with the true meaning of the statute, and the general doctrine as to the view taken of extraordinary and unusual remedies given to enforce the collection of money, is, to hold the parties to the *strict letter* of the law on the subject." *Ib.* 101, 102, 103, 104. Mr. Justice Wilson held a contrary view. He said: "It is provided by 29 & 30 Vict. cap. 53, sec. 182, that if a collector refuses or neglects to pay the proper Treasurer the sums contained in his roll, the Treasurer shall, 'within twenty days after the time the payment ought to have been made," issue a warrant. Here, no precise day being fixed for paying over the collections, a demand was required to be made on him to pay over before he could be considered as in default. The demand on the 2nd of April fixed the

remains unpaid and unaccounted for, with costs, and to pay to the Treasurer the sum so unaccounted for, and to return the warrant within forty days after the date thereof. 32 V. c. 36, s. 181.

196. The said Treasurer shall immediately deliver (*v*) the said warrant to the Sheriff of the County, as the case may require. 32 V. c. 36, s. 182.

Warrant to be delivered to Sheriff, etc.

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time for payment. For the first time properly under the two rolls the collector made default in payment, according to the extended time. On the 6th April, 1867, the warrant to sell the goods and lands of the collector and his sureties, for defalcations under both rolls, issued and was delivered to the Sheriff. The statute says: 'The Treasurer shall, within twenty days after the time when the payment ought to have been made, issue a warrant.' It issued *within twenty days* after the demand on the 2nd of April. Is that the time when the payment ought to have been made? I think the party would be entitled to a reasonable time after the demand within which to pay. Perhaps three days would be a reasonable time. If so, the warrant on the 6th of April, 1867, is all right, if the warrant is to be issued *not later* than twenty days from the time of default. But does the statute mean that the warrant is to issue only within the twenty days? If so, this warrant may issue the very day after the payment should have been made, and cannot issue after these twenty days have expired. Or does it mean that the warrant shall *not* be issued for twenty days after the default was made? In *The King* v. *Ireland*, 3 T. R. 512. the words on which the question arose were as follows: 'That the prosecutor for the recovery of such costs shall *within ten days* after demand made of the defendant and refusal of payment, have an attachment granted against the defendant.' *Only* eight days had elapsed since the demand. The Court said: 'Though the words of the statute were, *within* ten days," they had always been understood to mean that ten days must elapse before the attachment could be granted; otherwise instead of the indulgence of the ten days supposed to be offered by the Legislature, the party would be liable to an attachment *immediately* after a demand and refusal.' And they refused the motion for the attachment. . . . I am of opinion the collector had until the 2nd April, 1867, within which to pay, the demand on that day determining his right to any further day; and, upon the authorities the warrant by way of execution which issued on the 6th of April, having issued *before* the twenty days after default to pay had elapsed, was improperly, because prematurely, issued." *Ib.* 108, 109, 110. The extraordinary feature of the case is, that one learned Judge held the warrant bad because issued *too late*, and the other because issued *too soon*. Morrison, J., who during the argument referred to *O'Meara* v. *Foley*, Ir. L. R. 4 C. L. 116, concurred in opinion with Wilson, J. The result was, that the warrant was held by the Court to be void, because issued *too soon*.

The warrant must be under the *hand* and *seal* of the Treasurer. See note *i* to sec. 127 of this Act.

(*v*) "*Immediately deliver*," &c. It is of the greatest importance

Sheriff, etc., to execute it, and pay money levied.

197. The Sheriff to whom the warrant is directed shall within forty days, cause the same to be executed and make return thereof to the Treasurer, and shall pay to him the money levied by virtue thereof, (*w*) deducting for his fees the same compensation as upon writs of execution issued out of Courts of Record. (*x*) 32 V. c. 36, s. 183.

Mode of compelling Sheriff, etc., to pay over.

198. If a Sheriff refuses or neglects to levy any money when so commanded, or to pay over the same, or makes a false return to the warrant, or neglects or refuses to make any return, or makes an insufficient return, (*a*) the Treasurer may, upon affidavit of the facts, (*b*) apply in a summary manner to either of the Superior Courts of Law in Term

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that moneys due to a Municipal Corporation for taxes or rates should with as little delay as possible be paid. This is necessary in order to enable the Corporation not merely to pay its officers and keep faith with contractors, but to keep faith with public creditors. Hence it is that sureties are necessary, secs. 187, 188, and that so stringent provisions, are enacted against collectors and others whose duty it is to collect and pay over taxes, and that the very summary remedy of a civil nature is provided by the preceding section, against the goods, chattels, lands and tenements of the collector, *and of his sureties.* See notes to sec. 195.

(*w*) The duties of the officers to w. om the writ is delivered are :

1. To cause the same to be executed.
2. To make return thereof to the Treasurer.
3. To pay over the money levied—deducting his fees.

All apparently *within* forty days.

(*x*) A Sheriff is not entitled to poundage on a writ of execution, unless he actually levy, that is, make the money. *Buchanan et al.* v. *Frank*, 15 U. C. C. P. 196. If the claim be settled by means of the pressure of the writ, the Sheriff is entitled to reasonable compensation in the nature of poundage. See *Michie* v. *Reynolds*, 24 U. C. Q. B. 303 ; *Hamilton and Port Dover Railway Co.* v. *Gore Bank*, 20 Grant 202 ; *Bissicks* v. *The Bath Colliery Co.*, 36 L. T. N. S. 800 ; *S. C.* 2 Ex. 459 ; *S. C.* affirmed in appeal, L. R. 3 Ex. Div. 174 ; *Consolidated Bank* v. *Bickford*, 7 U. C. P. R. 712.

(*a*) The section applies if the Sheriff *refuses* or *neglects*, see note *c* to sec. 189 of this Act,—

1. To levy.
2. To pay over the amount, if levied.
3. To make any return.
4. *Or* makes a false or insufficient return.

(*b*) The application is to be made "upon affidavit of the facts." If the affidavit be deemed sufficient, the Court or Judge will grant a rule or summons, returnable at such time as may be directed, to answer the matter of the affidavit. See sec. 199.

time, or to any Judge of either Court in Vacation, for a rule or summons calling on the Sheriff to answer the matter of the affidavit. 32 V. c. 36, s. 184.

When returnable.

199. The said rule or summons shall be returnable at such time as the Court or Judge directs. (*c*) 32 V. c. 36, s. 185.

Hearing on return.

200. Upon the return of such rule or summons, (*d*) the Court or a Judge may proceed in a summary manner upon affidavit, and without formal pleading, to hear and determine the matters of the application. (*e*) 32 V. c. 36, s. 186.

***Fi. Fa.* to the coroner to levy the money.**

201. If the Court or Judge (*f*) is of opinion that the Sheriff has been guilty of the dereliction alleged against him, (*g*) such Court or Judge shall order the proper officer of the Court to issue a writ of *fieri facias*, (*h*) adapted to the case, directed to a Coroner of the County in which the Municipality is situate, or to a Coroner of the City or Town (as the case may be) for which the Collector is in default. (*i*) 32 V. c. 36, s. 187.

Tenor of such writ.

202. Such writ shall direct the Coroner to levy of the goods and chattels of the Sheriff the sum which the Sheriff was ordered to levy by the warrant of the Treasurer, together

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(*c*) It is to be observed that the application may be made to either of the Superior Courts of Common Law in term, or to any Judge of either Court in vacation. See sec. 198. If to the Court, a rule is obtained; if to a Judge, a summons. Either is, under this section, to "be returnable at such time as the Court or Judge directs.

(*d*) See preceding note.

(*e*) It is enacted that the Court or a Judge may proceed in a summary manner *to hear and determine* the matters of the application. See note *s* to sec. 65 of this Act. Apparently as much power is given to the Judge as the Court. The jurisdiction of each is to hear and determine; and it may be contended that when a Judge determines, though in a matter entitled in the Court, his decision is final. The jurisdiction is a statutable one, and in the absence of a provision for an appeal from the decision of the Judge or the Court, it may be argued there is no appeal. The point is as yet undecided under the statute. See *In re Allen*, 31 U. C. Q. B. 458, under corresponding words in Con. Stat. U. C. cap. 74, sec. 1.

(*f*) See note c to sec. 199 of this Act.

(*g*) See note *a* to sec. 198 of this Act.

(*h*) This writ is against the Sheriff's own proper goods and chattels. See sec. 202 of this Act.

(i) A writ of execution directed to no one it a nullity. *Wood et al.* v. *Campbell*, 3 U. C. Q. B. 269.

Execution thereof.

with the costs of the application and of such writ and of its execution; (*k*) and the writ shall bear date on the day of its issue, whether in Term or Vacation, and shall be returnable forthwith upon its being executed; (*l*) and the Coroner, upon executing the same, shall be entitled to the same fees as upon a writ grounded upon the judgment of the Court. (*m*) 32 V. c. 36, s. 188.

Fees.

Penalty on Sheriff if no other imposed.

203. If a Sheriff wilfully omits (*n*) to perform any duty required of him by this Act, and no other penalty is hereby imposed for the omission, he shall be liable to a penalty of two hundred dollars, to be recovered from him in any Court of competent jurisdiction at the suit of the Treasurer of the County, City or Town. (*o*) 32 V. c. 36, s. 189.

Payment of money collected for the Province.

204. All moneys assessed, levied and collected for the purpose of being paid to the Treasurer of the Province, or to any other public officer, for the public uses of the Province or for any special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied and collected by, and accounted for and paid over, to the same persons, in the same manner, and at the same time, as taxes imposed on the same property for County, City or Town purposes, and shall, in Law and Equity, be deemed and taken to be moneys collected for the County, City or Town, so far as to charge every Collector, or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of moneys assessed, levied and collected for the use of the County, City or Town. (*p*) 32 V. c. 36, s. 190.

(*k*) See note *i* to sec. 201 of this Act.

(*l*) See note *v* to sec. 196 of this Act.

(*m*) See note *x* to sec. 197 of this Act.

(*n*) *Wilfully* omits. See note *h* to sec. 191 of this Act.

(*o*) See note *q* to sec. 194 of this Act.

(*p*) This is a comprehensive and important section, but in language a good deal involved. The declaration is, that

All money assessed, levied and collected for the purpose of being paid—

1. To the Treasurer of the Province,
2. Or to any other public officer,

} For the public uses of the Province, or for any special purpose or use mentioned in the Act under which the same is raised,

205. All moneys collected for County purposes, or for any of the purposes mentioned in the preceding section, shall be payable by the Collector to the Township, Town or Village Treasurer, and by him to the County Treasurer; and the Corporation of the Township, Town, or Village shall be responsible therefor to the Corporation of the County. (*q*) 32 V. c. 36, s. 191.

How money collected for county purposes to be paid over.

206. Any bond or security given by the Collector or Treasurer to the Corporation of the Township, Town or Village that he will account for and pay over all moneys collected or received by him, shall apply to all moneys collected or received for County purposes, or for any of the purposes mentioned in the two hundred and fourth section. (*r*) 32 V. c. 36, s. 192.

Collectors or treasurers bound to account for all moneys collected by them.

Shall be—

1. Assessed,
2. Levied,
3. Collected by,
4. And accounted for and paid over,

} To the same persons, in the same manner, and at the same time, as taxes imposed on the same property for County, City, or Town purposes,

And *shall be*—

Deemed and taken to be moneys collected for the County, City or Town, *so far* as to charge every collector or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, &c. See note *a* to sec. 211 of this Act.

(*q*) The declaration is, that *all moneys* collected—

1. For *County purposes*,
2. Or for *any* of the purposes mentioned in the preceding section,

Shall be—

1. Payable by the Collector to the Township, Town or Village Treasurer,
2. by him to the County Treasurer,

And that—

The Corporation of the Township, Town or Village *shall* be responsible therefor to the Corporation of the County (not saying: "or *other* person or persons entitled thereto.") See sec. 211.

(*r*) It is not every bond or security given by a Collector or Treasurer that will come under this section, but only such as are conditioned or provided for accounting and paying over all moneys collected or received by the officers. These general words, when used, are, by the operation of this section, made to extend not only to moneys collected or received for County purposes, but for any of the purposes mentioned in sec. 204 of this Act. See further, note *b* to sec. 212 of this Act.

Local Treasurer to pay over county moneys to county treasurers.

207. The Treasurer of every Township, Town or Village shall, within fourteen days after the time appointed for the final settle settlement of the Collector's roll, (*s*) pay over to the Treasurer of the County all moneys which were assessed and by by-law required to be levied and collected in the Municipality for County purposes, or for any of the purposes mentioned in the two hundred and fourth section of this Act. (*t*) 32 V. c. 36, s. 193.

Mode of enforcing such payment.

Warrant to sheriff.

208. If default be made in such payment, (*u*) the County Treasurer may retain or stop a like amount out of any moneys which would otherwise be payable by him to the Municipality, or may recover the same by a suit or action for debt against such Municipality, or wherever the same has been in arrear for the space of three months, he may, by warrant under his hand and seal, reciting the facts, direct the Sheriff of the County to levy and collect the amount so due with interest and costs from the Municipality in default. (*v*) 32 V. c. 36, s. 194.

How the sheriff to levy.

Rev. Stat. c. 174, ss. 408 & 409.

209. The Sheriff, upon receipt of the warrant, shall levy and collect the amount with his own fees and costs as if the warrant had been a writ of execution issued by a Court of Law, and he shall levy the amount of costs and fees in the same manner as is provided by "*The Municipal Act*" in case of writs of execution. (*w*) 32 V. c. 36, s. 195.

Treasurer, etc., to account for

210. The County, City or Town Treasurer shall be accountable and responsible to the Crown for all moneys collected for

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(*s*) See note *u* to sec. 195 of this Act.

(*t*) If default be made, summary proceedings may be had against the Treasurer, such as authorized by the Act against the collector. Sec. 208.

(*u*) See sec. 207.

(*v*) The remedies are—

1. Retaining or stopping a like amount of any moneys which would otherwise be payable to the Municipality.
2. Recovering the same by a suit or action for debt against such Municipality.
3. Issue of a warrant whenever in arrears for the space of three months.

There is no limitation as to the time within which the warrant may, can or should be issued, and so the difficulty pointed out in note *u* to sec. 195, has, as to this warrant, been avoided.

(*w*) See sec. 408 of The Municipal Act and notes thereto.

any of the purposes mentioned in the two hundred and fourth section of this Act, and shall pay over such moneys to the Treasurer of the Province. (*x*) 32 V. c. 36, s. 196. and pay over Crown moneys.

211. Every County, City and Town shall be responsible to Her Majesty, and to all other parties interested, that all moneys coming into the hands of the Treasurer of the County, City or Town, in virtue of his office, shall be by him duly paid over and accounted for according to law. (*a*) 32 V. c. 36, s. 197. Municipality responsible for such moneys.

212. The Treasurer and his sureties, shall be responsible and accountable for such moneys in like manner to the County, City or Town; and any bond or security given by them for the duly accounting for and paying over moneys coming into his hands belonging to the County, City or Town, shall be taken to apply to all such moneys as are mentioned in the two hundred and fourth section, and may be enforced against the Treasurer or his sureties, in case of default on his part. (*b*) 32 V. c. 36, s. 198. Treasurer, etc., responsible to County, etc. Bonds to apply.

213. The bond of the Treasurer and his sureties shall apply to school moneys, and all public moneys of the Province; (*c*) and, in case of any default, Her Majesty may enforce the responsibility of the County, City or Town, by stopping a like amount out of any public money which would otherwise be payable to the County, City or Town or to the Treasurer thereof, or by suit or action against the Corporation. (*d*) 32 V. c. 36, s. 199. Bonds to apply to school moneys, etc.

(*x*) The liability of the collector, as declared in sec. 204, is here extended to the County or City Treasurer, so as to make the collection of rates, or rather the paying over the money collected, as safe and expeditious as possible. See note *a* to sec. 211.

(*a*) The Non-Resident Land Fund is money which may be said to come into the hands of the Treasurer within the meaning of this section, so as to make the Corporation of the County responsible for the due payment and accounting of the same. See *Robertson* v. *Wellington*, 27 U. C. Q. B. 336.

(*b*) In an action by the Corporation of a County against their Treasurer, on his bond, where it was proved that Government money, charged by him as paid over to the Government was not so paid, it was held unnecessary to shew a demand of the Government upon him for the money in order to entitle the Corporation to recover. *Essex* v. *Park*, 11 U. C. C. P 473.

(*c*) See the preceeding note.

(*d*) See note *v* to sec. 208 of this Act.

City, etc., responsible for default of Treasurer, etc.

214. Any person aggrieved by the default of the Treasurer, may recover from the Corporation of the County, City or Town, the amount due or payable to such person as money had and received to his use. (*e*) 32 V. c. 36, s. 200.

MISCELLANEOUS.

Penalty for tearing down notices, etc.

215. If any person wilfully tears down, injures or defaces any advertisement, notice or other document, which is required by this Act to be posted up in a public place for the information of persons interested, (*f*) he shall, on conviction thereof in a summary way before any Justice of the Peace having jurisdiction in the County, City or Town, be liable to a fine of twenty dollars, and, in default of payment, or for want of sufficient distress, to imprisonment not exceeding twenty days. (*g*) 32 V. c. 36, s. 201.

Recovery of fines and forfeitures hereby imposed.

216. The fines and forfeitures authorized to be summarily imposed by this Act, (*h*) shall, when not otherwise provided, be levied and collected by distress and sale of the offender's goods and chattels, under authority of a warrant of distress to be issued by a Justice of the Peace of the County, City or Town; and, in default of sufficient distress, the offender

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(*e*) See note *a* to sec. 211 of this Act.

(*f*) It is only when the person charged is proved *wilfully* to have torn down, injured or defaced an advertisement, notice or other document, under the Act, that he can be convicted. Where the act charged can be said to have been the result of mere neglect, see note *c* to sec. 189 of this Act, and not of the will, there is no offence under this section.

(*g*) Direct imprisonment as a punishment under this section would be illegal. The only punishment authorized is a fine, to be collected by distress, and, failing distress, imprisonment not exceeding twenty days. See the following note:

(*h*) The authority of a Justice of the Peace summarily to try a new offence must be conferred by some statute. *Agard* v. *Candish*, Saville, 135. The authority, when so conferred, is not to be enlarged by inference, *Ex parte Martin*, 6 B. & C. 80, not even in the case of an obvious omission. *Underhill* v. *Longridge*, 29 L. J. M. C. 65; see also, *Re Wainwright*, 12 L. J. Chan. 426: *S. C.* 1 Phil. 261. Thus an authority summarily to settle disputes between masters and servants is not, in the absence of express legislation, to be extended to the settlement of disputes between masters and household servants. See *The King* v. *Hulcott*. 6 T. R. 583; *Branwell* v. *Penneck*, 7 B. & C. 536; *Hardy* v. *Ryle*, 9 B. & C. 603; *Lancaster* v. *Greaves*, *Ib.* 628; *Ex parte Johnson*, 7 Dowl. 702; *Kitchen* v. *Shaw*, 6 A. & E. 729.

shall be committed to the Common Gaol of the County, and be there kept at hard labour for a period not exceeding one month. (*i*) 32 V. c. 36, s. 202.

Application of penalties.

217. When not otherwise provided all penalties recovered under this Act shall be paid to the Treasurer to the use of the Municipality. (*k*) 32 V. c. 36, s. 203.

SCHEDULE "A."

(*Section* 3.)

FORM OF NOTICE BY NON-RESIDENT OWNER OF LAND REQUIRING TO BE ASSESSED THEREFOR.

To the Clerk and Municipality of

Take notice, that I (*or* we) own the land hereunder mentioned, and require to be assessed, and have my name (*or* our names) entered on the Assessment Roll of the Municipality of (*or* Ward of the Municipality of) therefor.

That my (*or* our) full name (*or* names), place of residence and Post Office address, are as follows :—

A. B., of the Township of York, shoemaker, Weston Post Office, (*as the case may be*). Description of land (*here give such description as will readily lead to the identification of the land*).

Dated the day of , 18 .

C. D.

Witness, G. H.

32 V. c. 36, *Sched* A.

(*i*) Where a fine or pecuniary forfeiture is imposed, the object to be attained is the collection of the money. If that object can be attained by distress of goods and chattels, it would be unlawful to imprison. The imprisonment is only authorized in default of sufficient distress, and then for a period not exceeding one month at hard labour. See *In re Slater and Wells*, 9 U. C. L. J. 21.

(*k*) This section also applies to all penalties recovered under the Act. All such, when not otherwise provided, must be paid to the Treasurer, to the use of the Municipality. The fine authorized by sec. 189 to be imposed on an assessor or Clerk who refuses or neglects to perform any duty under the Act, is to be forfeited "to Her Majesty." See further, notes to sec. 403 of The Municipal Act.

SCHEDULE "B."

(*Section* 41.)

TOWNSHIP OF (*or* CITY, TOWN OR VILLAGE) OF

STREET, SIDE

	NAMES AND DESCRIPTION OF PERSONS ASSESSED.					DESCRIPTION AND VALUE OF REAL PROPERTY.						PERSONAL PROPERTY AND TAXABLE INCOME.			AGGREGATE VALUE OF ALL PROPERTY.	STATUTE LABOUR.	DOGS.	STATISTICS.					DATE OF DELIVERY OF NOTICE UNDER SECTION 41.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
Number on roll.	Name of occupant or other taxable party.	Occupation.	Freeholder, householder, tenant, or Farmer's Son.	Age of occupant.	Name and address of owner when person named in column two is not the owner.	School section, R. (Public school) S. (Separate School.)	Concession, street, square or other designation.	Number of Lot, house, etc.	Number of acres, feet, etc.	Number of acres cleared in townships. Vacant or built on, in cities, towns and villages.	Value of each parcel of real property.	Total value of real property.	Value of personal property other than income.	Taxable income.	Total value of personal property and taxable income.	Total value of real and personal property and taxable income.	Number of persons from 21 to 60 years old. Total number of days' labour.	Dogs. Bitches.	Number of persons in family of person rated as resident.	Religion.	Number of cattle.	Number of sheep.	Number of hogs.	Number of horses	

Take notice that you are assessed as above specified, for the year 18 . If you deem yourself overcharged, or otherwise improperly assessed you or your agent may notify the Clerk of the Municipality (*or* Assessment Commissioner) in writing of such overcharge or improper assessment, within fourteen days after the day of (*insert date on which the Assessment Roll was returned*), and your complaint shall be tried by the Court of Revision for the Municipaliiy of

(ENDORSED.)

SIR,—Take note that I intend to appeal against this assessment, for the following reasons:—

I am Sir, your obedient servant,

A. B.,
Township Clerk
or Assessment Commissioner.

37 V. c. 19, s. 12; 40 V. c. 16, s. 13 (2.)

SCHEDULE "C."

(*Section* 56, *sub-section* 14.)

FORM OF DECLARATION BY PARTY COMPLAINING IN PERSON OF OVERCHARGE ON PERSONAL PROPERTY:

I, A. B. (*set out name in full, with place of residence, business, trade, profession, or calling*), do solemnly declare that the true value of all the personal property assessable against me (*or as the case may be*), as trustee, guardian or executor, etc., without deducting any debts due by me in respect thereof, is [*In case debts are owed in respect of such property: add*, that I am indebted on account of such personal property in the sum of]; and that the true amount for which I am liable to be rated and assessed in respect of personal property, other than income, is .

32 V. c. 36 *Sched.* D.

SCHEDULE "D."

(*Section* 56, *sub-section* 14.)

FORM OF DECLARATION OF PARTY COMPLAINING IN PERSON OF OVERCHARGE ON ACCOUNT OF TAXABLE INCOME:

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), do solemnly declare that my gross income, derived from all sources not exempt by law from taxation, is .

32 V. c. 36 *Sched.* E.

SCHEDULE "E."

(*Section* 56, *sub-section* 14.)

FORM OF DECLARATION BY PARTY COMPLAINING OF OVERCHARGE IN RESPECT OF PERSONAL PROPERTY AND TAXABLE INCOME:

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), do solemnly declare that the true value of my personal property, other than income, is [*if there are debts, add:* that I am indebted on account of such personal property in the sum of ;] that my gross income derived from all sources, not exempt by law from taxation, is ; and that the full amount for which I am by law justly assessable, in respect to both personal property and income, is .

32 V. c. 36 *Sched.* F.

I am Sir, your obedient servant,

37 V. c. 19, s. 12; 40 V. c. 16, s. 13 (2.)

(INDORSED.)

SIR,—Take note that I intend to appeal against this assessment, for the following reasons:—

A. B.,
Township Clerk
of Assessment Commissioner.

or your agent may notify the Clerk of the Municipality (*or* Assessment Commissioner) in writing of such overcharge or complaint (*insert date on which the Assessment Roll was returned*), and your complaint shall be tried by the Court of Revision for the Municipality of day of fourteen days after the

SCHEDULE "F."

(*Section* 56, *sub-section* 14.)

FORM OF DECLARATION BY AGENT OF A PARTY COMPLAINING OF OVER-CHARGE ON PERSONAL PROPERTY :

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), agent for C. D. (*set out name in full, with place of residence, and calling of person assessed*), do solemnly declare that the true value of all the personal property assessable against the said C. D. (*or as the case may be*), as trustee, guardian or executor, etc., is [*In case there are debts in respect of the property, add*: The said C. D. is indebted on account of such personal property in the sum of ;] and that the true amount for which the said C. D. is liable to be rated and assessed in respect of personal property, other than income, is ; and that I have the means of knowing, and do know the extent and value of the said C. D.'s personal property and debts in respect thereof.

A. B.

32 V. c. 36, *Sched.* G.

SCHEDULE "G."

(*Section* 56, *sub-section* 14.)

FORM OF DECLARATION BY AGENT OF PARTY COMPLAINING OF OVER-CHARGE ON TAXABLE INCOME :

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), agent for C. D. (*set out name in full, with place of residence, and calling of person assessed*), do solemnly declare that the gross income of the said C. D., derived from all sources not exempt from taxation by law, is ; and that I have the means of knowing, and do know, the income of the said C. D.

32 V. c. 36, *Sched.* H.

SCHEDULE "H."

(*Section* 56, *sub-section* 14.)

FORM OF DECLARATION BY AGENT OF PARTY COMPLAINING OF AN OVER-CHARGE IN RESPECT OF PERSONAL PROPERTY AND TAXABLE INCOME :

I, A. B. (*set out name in full with place of residence, business, trade, profession or calling*), agent for C. D. (*set out name in full, with place of residence, and calling of person assessed*), do solemnly declare that the true value of the personal property of the said C. D., other than income, is ; that the gross income of the said C. D., derived from all sources not exempt by law from taxation, is ; and that the full amount for which

the said C. D. is justly assessable, in respect of both personal property and income, is . [*If there are debts on account of property, add:* That the said C. D. is indebted on account of such personal property in the sum of ;] and that I have the means of knowing, and do know, the truth of the matters hereinbefore declared.

32 V. c. 36 *Sched.* I.

SCHEDULE "K."

(*Section* 150.)

FORM OF TAX DEED.

To all to whom these Presents shall come.

We, , of the of , Esquire, Warden (*or*, Mayor), and of the of Esquire, Treasurer of the County (*or* City *or* Town) of , Send Greeting:—

WHEREAS by virtue of a warrant under the hand of the Warden (*or* Mayor) and seal of the said County (*or* City *or* Town) bearing date the day of , in the year of our Lord one thousand eight hundred and , commanding the Treasurer of the said County (*or* City or Town) to levy upon the land hereinafter mentioned, for the arrears of taxes due thereon, with his costs, the Treasurer of the said County (*or* City *or* Town) did, on the day of , in the year of our Lord one thousand eight hundred and , sell by public auction to , of the of , in the County of , that certain parcel or tract of land and premises hereinafter mentioned, at and for the price or sum of of lawful money of Canada, on account of the arrears of taxes alleged to be due thereon up to the day of , in the year of our Lord one thousand eight hundred and together with costs:

Now know ye, that we, the said and , as Warden (*or* Mayor) and Treasurer of the said County (*or* City *or* Town), in pursuance of such sale, and of "*The Assessment Act*," and for the consideration aforesaid, do hereby grant, bargain and sell unto the said , his heirs and assigns, all that certain parcel or tract of land and premises containing , being composed of (*describe the land so that the same may be readily identified.*

In witness whereof, we, the said Warden (*or* Mayor) and Treasurer of the said County (*or* City *or* Town), have hereunto set our hands and affixed the seal of the said County (*or* City *or* Town), this day of , in the year of our Lord one thousand eight hundred and ; and the Clerk of the County (*or* City *or* Town) Council has countersigned.

A. B. Warden (*or* Mayor). [Corporate Seal.]
C. D., Treasurer.

Countersigned,
E. F., Clerk.

32 V. c. 36, *Sched.* C.

An Act Respecting the Sale of Fermented or Spirituous Liquors.

R. S. O. CAP. 181.

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Liquor License Act.*" (*a*)

INTERPRETATION.

Interpretation.

2. In this Act the words and expressions following shall be construed as folows :—

"Liquors", and "Liquor."

(1) "Liquors" or "Liquor" shall be construed to mean and comprehend all spirituous and malt liquors, and all combinations of liquors and drinks and drinkable liquids which are intoxicating. (*b*) 37 V. c. 32, s. 1.

"Tavern license."

(2) "Tavern license" shall be construed to mean a license for selling, bartering or trafficking by retail in fermented, spirituous or other liquors, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment in which the same liquor is sold. (*c*) 37 V. c. 32, s. 2.

(*a*) The English Statute 24 Geo. II. cap. 40, is not in force in this Province. *Leith* v. *Willis*, 5 U. C. Q. B. O. S. 101; *Heartley* v. *Hearns*, 6 U. C. Q. B. O. S. 452, and the English statute 14 Geo. III. cap. 88 is now superseded, *Andrew* v. *White*, 18 U. C. Q. B. 170.

(*b*) The Act extends to—

1. All spirituous and malt liquors;
2. And all combinations of liquors and drinks and drinkable liquids which are intoxicating.

Spirituous and malt liquors are assumed for the purposes of the Act to be intoxicating. All combinations of drinkable liquids which are intoxicating are placed on the same footing as spirituous and malt liquors. Whether a particular drinkable liquid is intoxicating or not, must be a matter for enquiry upon evidence to be adduced before the Justice or Justices whose duty it is to adjudicate upon the complaint. See *Harris* v. *Jenns*, 9 C. B. N. S. 152.

(*c*) The licenses provided for by the Act are three—

1. Tavern licenses, such as defined in this sub-section;
2. Shop licenses, such as defined in sub-section 3 of this section;
3. Wholesale licenses, such as described in sub-section 4 of this section.

The tavern license authorizes a sale only by retail, that is in a quantity less than one quart, and the liquor so sold may be drunk in or at the place of sale.

(3) "Shop license" shall be construed to mean a license for selling, bartering or trafficking by retail in such liquors in shops, stores, or places other than inns, ale or beer houses, or other houses of public entertainment, in quantities not less than three half-pints at any one time, to any one person, and at the time of sale to be wholly removed and taken away, in quantities not less than three half-pints at a time. (*d*) 37 V. c. 32, s. 3, "Shop license."

(4) "License by wholesale" or "Wholesale license" shall be construed to mean a license for selling, bartering or trafficking, by wholesale only, (*e*) in such liquors in warehouses, stores, shops, or places other than inns, ale or beer houses, or other houses of public entertainment, in quantities not less than five gallons in each cask or vessel at any one time; and in any case where such selling by wholesale is in respect of bottled ale, porter, beer, wine or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen bottles of at least three half-pints each, or two dozen bottles of at least three-fourths of one pint each, at any one time. (*f*) 37 V. c. 32, s. 4. "License by wholesale." Liquor in bottles.

The shop license also authorizes a sale by retail, that is in quantities not less than three-half pints, but the same ought not to be drunk in or at the place of sale.

The wholesale license, as the name indicates, is for a sale by wholesale, that is to say, in quantities not less than five gallons or one dozen bottles of at least three-half pints each, or two dozen bottles of at least three-fourths of a pint each.

The sale intended is of course to be made at one time and not on different occasions on the same or different days.

A sale by any person licensed, in quantities less than authorized by his license is clearly a punishable offence. See *The Queen* v. *Faulkner*, 26 U. C. Q. B. 529; *The Queen* v. *Denham*, 35 U. C. Q. B. 503.

(*d*) See note c to sub. 2 of this section. See also Schedule D, No. 7, at to form of conviction.

(*e*) See note c to sub. 2, of this section. See also, Schedule D, No. 8, as to form of conviction.

(*f*) The Legislature of Ontario by 37 Vict. cap. 32. assumed to make it obligatory upon brewers to take out licenses authorizing them to sell by wholesale. In *Regina* v. *Taylor*, 36 U. C. Q. B. 183, this enactment was held to be *ultra vires*, but the Provincial Court of Appeal. *Ib.* 218, reversed the decision. An attempt was then made to carry the case for decision to the Supreme Court of Canada, but for technical reasons it failed. *Regina* v. *Taylor*, 1 Sup. C. C. 65. The same point was afterwards raised in *The Queen* v. *Severn*, in which the Court of Queen's Bench, following

LICENSE COMMISSIONERS.

Board of License Commissioners.

3. There shall be a Board of License Commissioners to be composed of three persons to be appointed from time to time by the Lieutenant-Governor for each City, County, Union of Counties or Electoral District, as the Lieutenant-Governor may think fit; and any two of the said Commissioners shall be a quorum, and each of them shall cease to hold office on the thirty-first day of December in each year, but he may be reappointed; and the said office shall be honorary and without any remuneration. (*g*) 39 V. c. 26, s. 1; 40 V. c. 18, s. 1.

Powers of the commissioners.

4. The License Commissioners may at any time before the first day of May in each year, pass a resolution or resolutions for regulating and determining the matters following, (*h*) that is to say:

For defining requisites for granting tavern and shop licenses.

(1) For defining the conditions and qualifications requisite to obtain tavern licenses for the retail, within the Municipality, of spirituous, fermented or other manufactured liquors, and also shop licenses for the sale, by retail, within the Municipality, of such liquors in shops or places other than taverns, inns, ale-houses, beer-houses or places of public entertainment;

Limiting number of licenses, etc.

(2) For limiting the number of tavern and shop licenses respectively, and for defining the respective times and locali-

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the ruling of the Court of Appeal, but dissenting from it, gave judgment for the Queen. In *The Queen* v. *Severn*, the Supreme Court afterwards held that the decision of *The Queen* v. *Taylor*, by the Court of Queen's Bench, was correct, and the decision of the Provincial Court of Appeal erroneous. The Legislature of Ontario at its last session made provision for refunding the moneys paid by brewers for licenses and also for repayment of fines and costs to which they had been subjected. 41 Vict. cap. 14, ss. 1, 2, 3, 4.

(*g*) It is difficult for the Municipal authorities to enforce regulations for the orderly keeping of licensed houses as well as to meet the devices parties may resort to for the purpose of evading and contravening them. *Per* Morrison, J., in *Regina* v. *Belmont*, 35 U. C. Q. B. 298, 301. This difficulty on the part of Municipal Councils, was the cause of the passing of 39 Vict. cap. 26, s. 1 of which this and the sections following are a consolidation. See *per* Harrison, C. J., in *In re Brodie and Bowmanville*, 38 U. C. Q. B. 585. See further, sec. 105 of this of Act.

(*h*) It is not as a general rule, intended that the Municipal Councils and the License Commissioners shall have concurrent powers. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580. *In re Arkell and St. Thomas, Ib.* 594.

ties within which and the persons to whom such limited number may be issued within the year, from the first day of May of one year till the thirtieth day of April inclusive of the next year ;

Exemption from having accommodation.

(3) For declaring that in Cities a number not exceeding ten persons, and in Towns a number not exceeding four persons, qualified to have a tavern license, may be exempted from the necessity of having all the tavern accommodation required by law ;

Regulations.

(4) For regulating the taverns and shops to be licensed ;

(5) For fixing and defining the duties, powers, and privileges of the Inspector or Licenses of their District. 37 V. c. 32, s. 9 ; 39 V. c. 26, s. 4.

Penalties may be imposed by regulations.

5. In and by any such resolution of a Board of License Commissioners, the said Board may impose penalties for the infraction thereof. (*i*) 37 V. c. 32, s. 48.

INSPECTOR OF LICENSES.

Inspector of Licenses, his appointment, powers and duty and security.

6. An Inspector of Licenses shall be appointed by the Lieutenant-Governor from time to time for each City, County, Union of Counties, or Electoral District as the Lieutenant-Governor may think fit ; (*j*) and each Inspector shall, before entering upon his duties, give such security as the Treasurer of the Province may require for the due performance of his said duties, (*k*) and for the payment over of all sums of money received by him according to the provisions of this Act ; and the salary of each Inspector shall be fixed by the Lieutenant-Governor in Council. (*l*) 39 V. c. 26, s. 8 ; 40 V. c. 18, s. 1.

(*i*) This section is very loose in its language, and indefinite as to its purpose. The power is to impose penalties, but it is not said whether these penalties are to be pecuniary or otherwise. If pecuniary there is an omission to state any limit as to the amount of the penalty.

(*j*) Although the Inspector of Licenses is appointed by the Executive it is in the power of the License Commissioners, also appointed by the Executive, to pass By-laws for fixing and defining the duties, powers and privileges of the Inspector of Licenses for their District.

(*k*) As to the duties of the Inspector. See sec. 9 and notes thereto.

(*l*) While a salary may be allowed to the office of Inspector, that of Commissioner is honorary. See sec. 3.

ISSUE OF LICENSES.

Issue of licenses.

7. The Lieutenant-Governor in Council may direct the issue of licenses on stamped paper, written or printed, or partly written and partly printed, of the several kinds hereinbefore mentioned; and the said licenses shall be signed by the Treasurer of this Province, and dated as of the first day of May in each year, and shall thence continue in force for one year, and shall expire on the thirtieth day of April in the next ensuing year. (*m*)

After the 1st of May.

2. After the first of May tavern and shop licenses may be issued between the first and fifteenth days of May in each year; and licenses by wholesale may be issued between the first and last days of May in each year; and all such licenses shall be deemed to have been issued on the said first day of May. (*n*)

In special cases.

3. Where special grounds are shewn, the License Commissioners may direct one or more licenses to issue at any time after the said first day of May, if within the limit authorized by this Act. (*o*) 37 V. c. 32, s. 5; 39 V. c. 26, ss. 4 & 24.

Licenses, how issued.

8. Every license shall be issued, under the direction of the respective Boards of License Commissioners, by the Inspector of Licenses for the License District in which the tavern, shop, warehouse or other place to which the license is to apply is situate, except in the case of licenses for vessels, which may

Vessel Licenses.

be issued under the direction of the License Commissioners by the Inspector of Licenses for any License District to or from any port in which the vessel sails, or at any port in

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(*m*) The Temperance Act of 1864, provided that a By-law passed thereunder, should come into force from and after the first of March next, after communication thereof to the collector of inland revenue. The effect of such a By-law was to deprive persons licensed of the right to sell liquors during the last two months of their license. See *O'Neil and Oxford*, 41 U. C. Q. B. 170

(*n*) The license, no matter whether issued between the first and fifteenth days of May, or between the first and last days of May, expires, under any circumstances "on the thirtieth day of April in the next ensuing year."

(*o*) The License Commissioners are to be the judges of "the special circumstances." The license when issued, even under special circumstances, will not be in force beyond the 30th of April next, after the date of its issue.

which she calls. (*q*) 37 V. c. 32, s. 8; 40 V. c. 18, s. 2.

No tavern or shop license to be granted except upon petition and report thereon.

9. A license to sell spirituous, fermented or other manufactured liquors, by retail, in any tavern, alehouse, beer-house, place of public entertainment or shop, shall not be granted (*r*) except upon petition by the applicant to the License Commissioners of the District in which the license is to have effect, praying for the same; nor until the Inspector, to be appointed as hereinbefore provided, has reported in writing to the License Commissioners, that the applicant is a fit and proper person to have a license and (in the case of a tavern license) has all the accommodation required by-law, (*s*) and that the applicant is known to the Inspector to be of good character and repute; (*t*) and every such report shall be duly filed by the License Commissioners and shall remain

Report to be filed.

(*q*) The rule is to issue a license for sale of liquor at some particular place, but a vessel which sails from place to place, is a necessary exception to the rule. In the former case the license can only be issued under the direction of the Board of License Commissioners, having jurisdiction over the place; in the latter, the license may be issued under the direction of the License Commissioners by the inspector for any license district to or from any port in which the vessel sails, or at any port in which she calls.

(*r*) The granting of the license may be conditional. *Regina* v. *Paton*, 35 U. C. Q. B. 442. The granting or refusing of a license, is not a judicial act so as to be subject to review by the Court on *certiorari*. See *The Queen* v. *Salford*, 18 Q. B. 687. If knowingly granted when according to the provisions of the Act, it ought not to have been granted, the persons granting it are subject to prosecution and fine. See sec. 48.

(*s*) A license granted under circumstances which, by the act should prevent its issue, would, in the face of the strong language used in the Act, appear to be void. See *Thompson* v. *Harvey*, 4 H. & N. 254. See further note *a* to sec. 10, Two things are necessary; first, the petition of the applicant; second, the report of the inspector, embodying the details suggested. It is intended that the inspector shall in good faith, make the enquiries necessary to enable him to give the required certificate. See *Regina* v. *Kensington*, 12 Q. B. 654; The duty to inspect is not one which the Court will enforce by mandamus. *In re Baxter* v. *Hesson*, 12 U. C. Q. B. 139.

(*t*) The words, "character and repute," do not mean a man's real conduct and mode of life, but his reputation among his neighbours. He may be living in adultery, but if this fact is not generally known, he may still, by his neighbors to whom this fact is unknown, be esteemed a person of good character and repute. These words were introduced for the purpose of avoiding the evils which have been found to result from the multiplication of houses licensed to sell spirituous and fermented liquors, which in too many instances, were

open to the inspection of any ratepayer of the Municipality or any Provincial officer. (*u*) 37 V. c. 32, s. 13; 39 V. c. 26, s. 9.

When petition for license to be presented.

2. Every petition for a tavern license, which is to take effect on the first day of May in any year, shall be filed with the License Inspector for the District wherein it is to have effect on or before the first day of April next preceding. (*v*) 40 V. c. 18, s. 4.

Report not to be conclusive.

3. The Inspector shall not report in favour of any applicant other than the true owner of the business of the tavern or shop proposed to be licensed, (*w*) and his report shall be for the information only of the License Commisioners, who shall nevertheless exercise their own discretion on each application. (*x*)

May be dispensed with.

4. Where the applicant for a tavern or shop license resides in a remote part of the License District, or where for any other reason the License Commissioners see fit, they may dispense with the report of the Inspector, and act upon such information as may satisfy them in the premises. (*y*) 37 V. c. 32, s. 13; 39 V. c. 26, ss. 11, 13.

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found to be the resort of the profligate and the worthless. See *Leader* v. *Yell*, 16 C. B. N. S. 584. In England a person convicted of felony, is for ever disqualified from selling spirits by retail. *The Queen* v. *Vine*, L. R. 10 Q. B. 195.

(*u*) The report ought to be held confidential, as it is for the use of the Commissioners and of the Commissioners only, but as the effect of so dealing, might be productive of great abuse, provision is made for the inspection of the report by any ratepayer of the Municipality or any Provincial officer.

(*v*) This, it is apprehended, is only directory, in other words, that the Commissioners may, after the day named, if they see fit, receive the petition. The limitation as to time is made for their convenience. If they see fit to waive it, none others can well be allowed to complain.

(*w*) The intention is, that the true owner only shall be licensed; the certificate required is as to his character and repute. If the license were issued to a person other than the owner, there would be no guarantee for the proper conduct of the tavern or shop. See *Thompson* v. *Harvey*, 4 H. & N. 254.

(*x*) It is clear that the Commissioners are not bound by the contents of the certificate, but may exercise their own judgment, making use of their own knowledge as to each application.

(*y*) The report of the inspector is merely the means to an end where the particular means are not readily available; the end may be attained by other means if the Commissioners see fit.

Mode of procedure for obtaining tavern or shop licenses.

10. If upon application of any person requiring a tavern or shop license, it appears that such applicant is the true owner of the business of such tavern or shop, and has complied with the requirements of the law, and of any Municipal by-laws enforce in that behalf, and also of the regulations and requirements of the License Commissioners, and is one of the persons designated or otherwise approved of by the License Commissioners, the said License Commissioners may grant such applicant a certificate under the hands of any two of them, stating that he is entitled to a license for a certain time, and for a certain tavern, inn, house or place of public entertainment or shop within the Municipality, to be mentioned in such certificate. (*a*) *See* 37 V. c. 32, s. 14; 39 V. c. 26, s. 11.

2. The license duty shall then be paid by the applicant into such bank as may be designated by the Provincial Treasurer, to the credit of the "License Fund Account," for the License District; and upon production by the applicant to the inspector of the certificate of the License Commissioners, together with a receipt shewing payment in full of the duty to the credit of the License Fund Account, the Inspector may issue the license authorized by the Commissioners. (*b*) 40 V. c. 18, s. 28.

No license to be granted for certain times and places.

11. The License Commissioners shall not grant any certificate for a license, or any certificate whatsoever, whereby any person can obtain or procure any license for the sale of spirituous, fermented or intoxicating liquors, on the days of the Exhibition of the Agricultural Association of Ontario, or of any Electoral District, or Township, Agricultural Society Exhibition, either on the grounds of such Society, or within the distance of three hundred yards from such grounds. (*c*) 37 V. c. 32, s. 14.

(*a*) It is in the discretion of the Commissioners to grant or refuse the license. Therefore no action lies against them for the simple refusal of the license. *Bassett* v. *Godschall*, 3 Wils. 121, and in the absence of corruption there can be no criminal proceedings taken against them. *Rex* v. *Williams*, 3 Burr. 1317; *S. C. Rex* v. *Hann et al*, 3 Burr. 1716, and there is no provision made for an appeal from their decision. See *Rex* v. *Middlesex*, 3 B. & Al. 938; *Regina* v. *Deane*, 2 Q. B. 96; *Regina* v. *Cockburn*, 4 E. & B. 265; *Regina* v. *Ely*, 5 E. & B. 489; *Drakes Case*, L. R. 5 Q. B. 33. See further note *r* to sec. 9.

(*b*) See sec. 34.

(*c*) A certificate for a license, if any granted in contravention of this section, would, it is presumed, be held void. See *Thompson* v.

No license to be granted to Commissioner or Inspector.

12. A tavern or shop license shall not be granted under the provisions of this Act or any other Act of the Legislature of Ontario respecting the sale of spirituous or fermented liquors to or for the benefit of any person who is a license Commissioner or License Inspector, and every License so issued shall be void. (*d*) 40 V. c. 8, s. 76.

License not to be issued for any premises owned by such person in his district.

13. A tavern or shop license shall not be issued under the provisions of this Act or any such Act for premises within any License District of which any of the License Commissioners or of the License Inspectors for such district is the owner, and every License Commissioner who knowingly issues, and every License Inspector who knowingly recommends the issue of a license for any such premises, contrary to the provisions of this section, shall incur a penalty of five hundred dollars. (*e*) 40 V. c. 8, s. 77.

Last sub-section not to apply to companies in which commissioner, etc., is a shareholder.

2. The preceding sub-section shall not extend or apply to premises owned or occupied by a joint-stock company in which a License Commissioner is a shareholder, but in every such case the License Commissioner shall not, under a penalty of five hundred dollars, vote upon any question affecting the granting of a license to the company, or for premises owned or occupied by it. (*f*) 40 V. c. 8, s. 78.

Harvey 4 H. & N. 254. The Court refused to grant a mandamus to revoke a certificate for a license granted in contravention of a Municipal By-law. See *Regina ex rel. Gamble* v. *Burnside et al.* 8 U. C. Q. B. 263.

(*d*) The Legislature have not here as in the preceding section left the effect of the license granted in contravention to the terms of the section to inference. A license granted where the Act provides it shall not be granted would, it is apprehended, be held void without the use of express language to that effect. See *Thompson and Harvey*, 4 H. & N. 254.

(*e*) The penalty is a severe one, but it can only arise when the conduct of the Commissioner or Inspector is *knowingly* wrong. Where the illegal conduct can be properly said to be the result of ignorance or mere negligence, it is apprehended the section is inapplicable.

(*f*) A similar provision is contained in The Municipal Act under which *Re Baird and Almonte*, 41 U. C. Q. B. 415, was decided. It was there held that, where three out of five of the members of a Municipal Council were disqualified from voting, a By-law passed by them granting a bonus to a stock company in which they were shareholders, was void.

14. Subject to the provisions of this Act as to removals (*g*) and the transfer of licenses, (*h*) every license for the sale of liquor shall be held to be a license only to the person therein named (*i*) and for the premises therein described, (*j*) and shall remain valid only so long as such person continues to be the occupant of the said premises and the true owner of the business there carried on. (*k*) 40 V. c. 18, s. 5.

License limited to person and place for which it was granted, subject to ss. 28-29.

TAVERN LICENSES.

Number.

15. The number of tavern licenses to be granted in the respective Municipalities shall not in each year be in excess of the following limitations: (*l*) in Cities, Towns and incorporated Villages respectively, according to the following scale, that is to say, one for each full two hundred and fifty of the first one thousand of the population, and one for each full four hundred over one thousand of the population; (*m*)

Limitation of licenses.

In cities, towns and villages.

(*g*) See sec. 29.

(*h*) See sec. 28.

(*i*) See note *w* to sec. 9.

(*j*) A license to sell spirituous liquors by retail, includes reasonable additions to the original premises, not diminishing the necessary accommodation, and it is a question of fact, whether after such additions the premises are not substantially the same as those licensed. *Regina* v. *Smith*, 15 L. T. N. S. 178; *Stringer* v. *The Trustees of Huddersfield*, 33 L. T. N. S. 568; *The Queen* v. *Raffles*, L. R. 1 Q. B. Div. 207. In England persons licensed to sell spirituous liquors by retail at particular places, are allowed without the necessity of a magistrates license to sell at public fairs or public races. See *Bonghey* v. *Rowbotham*, 15 L. J. N. S. 222; *Ash* v. *Lynn*, L. R. 1 Q. B. 270; *Hannant* v. *Foulger*, L. R. 2 Q. B. 399, but the law is different in this Province.

(*k*) See note *w* to sec. 9.

(*l*) This section prescribes the maximum number of licenses for each Municipality. License Commissioners have under sub. 2 of sec. 4, power to limit the number of licenses. They may, in the case of a particular Municipality, limit the number to less than the maximum provided for by this section, but cannot exceed it.

(*m*) Take for example a city containing a population of 11,000:

First 1,000	4
Remaining 10,000, divided by 400, equal to	25
Total	29

There are none allowed for a fraction of 400.

but in no case shall this limit authorize any increase in any Municipality in excess of the number of licenses therein issued for the year ending the first day of March, one thousand eight hundred and seventy-six, unless from the future increase of the population the License Commissioners think a larger number has become necessary, but not in any case exceeding the limit imposed by this Act; (*n*)

In villages which are county towns.

2. In incorporated Villages, being County Towns, the limit may be five in number, (*o*) and in the Town of Clifton three hotels near the Falls of Niagara, which may be licensed, may be excluded from the number which would otherwise be the maximum limit under this Act. (*p*) 39 V. c. 26, s. 2.

Manner of determining population with a view to the number of licenses.

16. The number of the population which is to determine the number of licenses at any time under this Act shall be according to the then last preceding census taken under the authority of the Dominion of Canada, except where the License Commissioners are at any time of opinion that, owing to a large increase of population since such census, an increased number of licensed taverns is needed for the convenience and accommodation of travellers; and in that case, if the License Commissioners so certify, and the Council of the Municipality memoralize the Lieutenant-Governor for an increase of the number of licensed taverns, the Lieutenant-Governor in Council may authorize a new census to be taken under the authority of a by-law of the Municipality and at the expense of the Municipality, and the limit for the number of licenses shall thereafter, upon each such new census, be one for each full

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(*n*) The number of licenses authorized in the year ending on 1st March, 1876, is, in the absence of substantial increase of population to be taken as the limit. If there be an increase of population such as to warrant the issue of an additional number and the License Commissioners think a larger number necessary a larger number may be issued provided the maximum authorized by this section be not thereby exceeded.

(*o*) An ordinary incorporated Village falls under the general rule laid down in the first part of the section. Where the Village is the County Town an arbitrary limit of five is fixed as the maximum.

(*p*) The Town of Clifton extends to the Falls of Niagara. The attraction of visitors there during the summer months is so great as to justify, in the opinion of the Legislature, the declaration that "three hotels near the Falls of Niagara, which may be licensed may be excluded from the number which would otherwise be the maximum under this Act." The meaning is that these three hotels may be an addition to the ordinary maximum.

two hundred and fifty of the population under one thousand, and one for each five hundred over one thousand of the population. (*q*)

In case of alteration or formation of municipality.

2. In case of the alteration or formation of any Municipality subsequent to such census of the Dominion of Canada, the population of such Municipality, for the purposes of this Act, may be ascertained by the said Commissioners by reference to the enumeration on which such census took place, or by a new census taken under the provisions of this section. (*r*)

Or municipal census.

3. Where, since the said Dominion census, a census has been taken in any Municipality under the authority of the Council having jurisdiction, the limit may be the same as in the case of a census taken under this section for the purposes of this Act. (*s*) 39 V. c. 26, s. 3.

Council may limit.

17. The Council of every City, Town, Village or Township may, by by-law to be passed before the first day of March in any year, limit the number of tavern licenses to be issued therein for the then ensuing license year, beginning on the first day of May, or for any future license year until such by-law is altered or repealed, provided such limit is within the limit imposed by this Act ; (*t*)

(*q*) Population is made the basis for the calculation of the maximum number of licenses to be issued. The number of the population may be ascertained either by the result of the last general census, or by the result of a special census to be had under the circumstances stated. While the limit under such special census is as under sec. 15, one for each two hundred and fifty under one thousand, there is only one to be allowed for each five hundred over one thousand of the population. The latter differs from the provision of sec. 15, which is one for each four hundred over one thousand.

(*r*) See the last note.

(*s*) See note *q supra*.

(*t*) Power is, under sub-sec. 2 of sec. 4 of this Act, conferred upon the License Commissioners to pass By-laws for limiting the number of tavern and shop licenses respectively. Similar power as to tavern licenses only, is, by this section, conferred on the Council of every City, Town, Village, or Township. A similar power as to Shop Licenses is conferred by sec. 24. The power, if exercised by a Municipal Council, must be exercised before the first day of March in any year. The limit, whether fixed by the License Comissioners or by the Municipal Council, is subject to the maximum prescribed by sec. 15. When created by a By-law of the Municipal Council, it exists as to all future licenses, so long as the By-law is in force.

Copy of by-law limiting to be sent to Commissioners.

2. The Council shall cause a certified copy of such by-law to be sent immediately after the passing thereof to the License Commissioners of the District in which the Municipality is situate. (*u*) 39 V. c. 26, s. 2 (3).

Limited licenses.

18. In any case where the License Commissioners of any License District do not think fit, or are unable to grant a new license to any applicant who has been licensed during the preceding twelve months, or any part thereof, they may, nevertheless, by resolution, provide for extending the duration of the existing license for any specified period of the year, not exceeding three months at their discretion, upon payment by the applicant, of a sum not exceeding the proportionate part of the duty payable for such license for the then next ensuing license year; and such license, when a certificate of the extension aforesaid has been endorsed thereon, under the hand of the Inspector of Licenses for the License District, shall remain valid for the period specified in the resolution of the Commissioners, and no longer: (*a*) but this provision shall not he construed to confer on the License Commissioners any authority to exceed the limit prescribed by this Act as to the number of tavern licenses to be granted in any year, except in Cities, where the License Commissioners may in their discretion, having regard to the particular circumstances of the City, and of each application, grant

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(*u*) This is for the confirmation and guidance of the License Commissioners in the issue of Licenses in the particular Municipality. A By-law limiting the number of Tavern or Shop Licenses to one, would be bad, as creating a monopoly. See *In re Barclay and Darlington*, 12 U. C. Q. B. 86; *In re Greystock and Otanabee*, *Ib.*, 458; *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580, but not so where the limit is two or four. See *Terry* v. *Haldimand*, 15 U. C. Q. B. 380; *In re Gifford and Darlington*, 35 U. C. Q. B. 285.

(*a*) In order to the procurement of a license, which in itself continues only for a year, an expenditure of money is necessary in providing the necessary accommodation. When the license has been obtained, a further expenditure is necessary in providing liquors, &c., for the purpose of the business, most persons so licensed look forward to the renewal of the license, provided they continue of good cond uct and repute. In order that such persons may not be surprised, or prejudiced by the surprise of not obtaining a new license, provision is made for an extension of the license, not exceeding three months upon payment of a proportionate part of the duty. The object of the extension is to enable the persons indulged to make arrangements with as little loss as possible to go out of the business. This is to be done by the endorsement on the license of a certificate of extension.

further tavern licenses, but within the number of such licenses granted for the year ending on the thirtieth day of April, 1877, (*b*) and except in a locality largely resorted to in summer by visitors, where the License Commissioners may, if they think fit, grant one additional tavern license, but not to extend beyond six months, commencing on the first day of May in each year. (*c*) 40 V. c. 18, s. 33.

Accommodation.

Accommodation required.

19. Every tavern or inn authorized to be licensed under the provisions of this Act shall contain, and during the continuance of the license shall continue to contain, in addition to what may be needed for the use of the family of the tavern or inn-keeper, not less than four bed-rooms, together with, in every case, a suitable compliment of bedding and furniture, and (except in Cities and incorporated Towns) there shall also be attached to the said tavern or inn, proper stabling for at least six horses; (*d*) but the foregoing requirements shall not apply to such taverns as come within the third sub-section of section four of this act.

Not to communicate with grocery.

2. Such tavern or inn shall form no part of, and shall not communicate by any entrance with any shop or store wherein goods or merchandize known as groceries or provisions are kept for sale; (*e*) but this sub-section shall not apply to taverns in Townships, unless so provided by by-law of the Township Council. 37 V. c. 32, s. 12; 40 V. c. 18, s. 3.

Every tavern to be an eating house.

20. In addition to the accommodation required by the last preceding section, each tavern or house of entertainment shall

(*b*) See sec. 15.

(*c*) This is an extension of the principle already applied to the Town of Clifton. See note *p* to sec. 15.

(*d*) The existence of the required accommodation is a condition precedent to the granting of the license. Its continued existence is also apparently a condition precedent to the continuance of the license.

(*e*) It is objectionable for a tavern or inn to form part of, or to be in direct communication with any shop or store, where groceries or provisions are kept for sale. It is equally objectionable for a room in which billiard tables are licensed for use, to communicate with a tavern or inn, and Municipal Councils in passing By-laws for the licensing of billiard tables, may provide against any such communication. See *In the Neeley and Owen Sound*, 37 U. C. Q. B. 289; *In re Arkell and St. Thomas*, 38 U. C. Q. B. 594. See further, *Jones v. Whittaker*, L. R. 5 Q. B. 541.

be shown, to the satisfaction of the License Commissioners, to be a well-appointed and sufficient eating-house, with the appliances requisite for daily serving meals to travellers; (*f*) and the requirements of this section shall apply to all taverns or houses of entertainment, without any exception whatever and continuously, for the whole period of the license. (*g*) 39 V. c. 26, s. 5.

City or town council may prescribe further requirements as to tavern.

21. The Council of any City or Town may, by by-law to be passed before the first day of March in any year, prescribe for the then ensuing license year beginning on the first day of May, any requirements in addition to those in the last two preceding sections mentioned, as to accommodation to be possessed by taverns, or houses of entertainment, as the Council may see fit; (*h*) and the License Commissioners upon receiving a copy of such by-law shall be bound to observe the provisions thereof; and such by-law shall continue in full force for such year and any future year until repealed. (*i*) 39 V. c. 26, s. 6.

Security to be given.

Security to be given by tavern licensee.

22. Before any tavern license is granted, the person applying for the same shall enter into a bond to Her Majesty in the sum of two hundred dollars, with two good and sufficient sureties, (to be approved of by the Inspector) in the sum of one hundred dollars each, conditioned for the payment of all fines and penalties such person may be condemned to pay for any offience against any Act, by-law or provision in the nature of law, relative to taverns or houses of public entertainment then and thereafter to be in force, and to do, perform and

(*f*) A man who goes to an inn in the course of a journey whether of *business* or *pleasure*, is a traveller, and entitled to demand refreshment. *Atkinson* v. *Sellers*, 5 C. B. N. S. 442; *Taylor* v. *Humphreys*, 10 C. B. N. S. 429; *Fisher* v. *Howard*, 11 L. T. N. S. 373; *Taylor* v. *Humphreys*, 17 C. B. N. S. 539; *Peache* v. *Colman*, L. R. 1 C. P. 324; *Peplow* v. *Richardson*, L. R. 4 C. P. 168; *Davis* v. *Scrace*, *Ib.* 172; *Watt* v. *Glenister*, 32 L. T. N. S. 856; *Coulbert* v. *Troke*, 33 L. T. N. S. 340; *S. C.* L. R. 1 Q. B. Div. 1.

(*g*) See note *d* to sec. 19.

(*h*) The Legislature has in the two preceeding sections prescribed in general terms the accommodation necessary to be possessed by a person seeking a license for a tavern or house of entertainment. This section enables the Council of a City or Town to make additions to, but not to lessen the extent of the accommodation.

(*i*) See note *t* sec. 17.

observe all the requirements thereof, and to conform to all by-laws and regulations that may be established by competent authority in such behalf, and such bond shall be in the words or to the effect of Schedule A. to this Act; (*j*) and when executed, shall be filed in the office of the Inspector of Licenses, to be by him transmitted to the office of the Provincial Treasurer. (*k*) 39 V. c. 26, s. 7.

SHOP LICENSES.

Shop licenses, to whom given.

23. A shop license (*l*) shall not be granted to any person unless he has filed his application with the Inspector on or before the first day of April in that year, and unless the Inspector has reported to the License Commissioners that he is a person of good character, and that his shop and premises are suitable for carrying on a reputable business, and unless he executes with sureties the bond in the form expressed in Schedule B. to this Act. (*m*) 39 V. c. 26, s. 10.

Security.

Number of shop licenses limited, and licenses may be subjected to certain restrictions.

24. The Council of every City, Town, Village or Township may, by by-law to be passed before the first day of March, in any year, limit the number of shop licenses to be granted therein for the then ensuing license year, beginning on the first day of May, and in such by-law or by any other by-law passed before the first day of March, may require the shopkeeper to confine the business of his shop solely and exclusively to the keeping and selling of liquor, or may impose

(*j*) Long before the passing of this Act it was held that a Township Council had power before granting a license to require a certificate from the Township Treasurer of the deposit of a bond with the Treasurer conditional as in this section prescribed. *In re Greystock and Otanabee*, 12 U. C. Q. B. 458.

(*k*) The Inspector whose duty it is to receive the bond and transmit it to the office of the Provincial Treasurer would thereby have notice of it.

(*l*) See note *c* to sub. 2 of sec. 2 as to what is a Shop License.

(*m*) The prerequisites of a Shop License are as follows :

1. The filing of an application with the Inspector on or before 1st April in the year in and for which the license is asked ;
2. The report of the Inspector that the applicant is a person of good character, and that his shop and premises are suitable for carrying on a reputable business ;
3. The execution of a bond with sureties in the form expressed in Schedule B to the Act.

As to the duties of the Inspector see sec. 9 and notes thereto.

any restrictions upon the mode of carrying on such traffic as the Council may think fit. (*n*)

Certified copy to be sent to License Commissioners.

2. It shall be the duty of the Clerk, immediately after the passing of such by-law, to send a certified copy thereof to the License Commissioners within whose License District the Municipality is situate and such by-law shall be binding upon the License Commissioners, and any shop license to be issued shall conform to the provisions thereof; and such by-law shall remain in force for any future year until repealed, and any Clerk who neglects, omits or refuses to send such certified copy shall incur a penalty of not less than forty nor more than one hundred dollars. (*o*) 37 V. c. 32, s. 10; 39 V. c. 26, s. 12.

LICENSES BY WHOLESALE.

Issue of licenses by wholesale.

25. The Inspector of Licenses of the License District, in any Municipality in which the license applied for is to have effect, shall issue to any applicant, upon a requisition therefor signed by him, and after payment to the Inspector of the proper duty thereon, a license for selling fermented, spirituous or other liquors, by wholesale only, (*p*) in his warehouse, store, shop, or place to be defined in said license, (*q*) and situate within the said Municipality, and such license shall be deemed a license by wholesale within the meaning and subject to the provisions of the fourth sub-section of the second section of this Act. 37 V. c. 32, s. 15; 39 V. c. 26, s. 14.

(*n*) The Board of Commissioners have, under sec. 6, sub. 2, power to pass resolutions limiting the number of Tavern and Shop licenses. Sec. 17, enables the Council of a City, Town, Village or Township to limit the number of Tavern licenses. This section contains similar power as to Shop licenses. The Council in passing a By-law under this section may impose such restrictions as it sees fit. A By-law limiting the number of Shop licenses to be issued in a Town to one, and requiring the licensee to confine his business exclusively to the keeping and selling of liquors, is bad as being in effect a prohibitory by-law and creating a monopoly. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580.

(*o*) The simple neglect or omission of the Clerk to comply with the directions of this section subjects him to the penalty. Ignorance, therefore, would not be any excuse.

(*p*) See note *c* to sub. 2 of sec. 2, as to what is a wholesale license.

(*q*) See note *j* to sec. 14.

Regulations as to issue of wholesale licenses.

26. Wholesale licenses may be issued at any time during the year after the License Commissioners of the District in which such license is to have effect, have directed the same to be granted, and shall be strictly limited to persons who carry on the business of selling by wholesale or in unbroken packages, (*r*) and any wholesale license so issued shall be and become void in case the holder thereof, at any time during the currency of the said license, directly or indirectly, or by or with any partner, clerk, agent or other person, carries on, upon the premises to which such license applies, the business of a retail dealer in any other goods, wares or merchandize. (*s*) 40 V. c. 18, s. 29; 39 V. c. 26, s. 14.

Manufacturers of native wines.

27. Manufacturers of native wines from grapes grown and produced in Ontario, and who sell such wines in quantities of not less than one gallon, or two bottles of not less than three half-pints each at one time shall be exempt from any duty under this Act, and shall not be required to obtain any license for so selling wines so manufactured. (*t*) 39 V. c. 26, s. 15; 40 V. c. 18, s. 37.

TRANSFERS OF LICENSES.

Transfers of licenses.

28. In case any person having lawfully obtained a license under this Act before the expiration of his license dies, or sells, or by operation of law or otherwise assigns his said business, or removes from the house or place in respect of which the said license applies, his said license shall, *ipso facto*, become forfeited, and be absolutely null and void to all intents and purposes whatsoever,—unless such person his assigns or legal representatives, within one month after the death, assignment, or removal of the original holder of such license, or other period in the discretion of the License Commissioners of the District in which the said license has effect, obtains their written consent either for the continuance of the said

(*r*) See note c to sub. 2 of sec. 2 of this Act.

(*s*) This section provides for the forfeiture of the license. The forfeiture arises in the event of the licensee at any time during the currency of the license either directly or indirectly carrying on the business of a retail dealer. The carrying on of the retail business, either by a partner, clerk, agent or other person comes under the operation of this section.

(*t*) This is for the encouragment of the Home Industry. The protection is a limited one. If the sale be in quantities less than one gallon or two bottles of not less than three half-pints each at one time, it will be illegal in the absence of a license.

business or to transfer such license to any other person, and thereupon forthwith transfers the same to such other person, who, under such transfer, may exercise the rights granted by such license, subject to all the duties and obligations of the original holder thereof, until the expiration thereof, in the house or place for which such license was issued and to which it applies, but in no other house or place. (*u*) 40 V. c. 18, s. 6.

On transfer of tavern license new report necessary.

2. In every such case of transfer of a tavern license, the person in whose favour any such transfer is to be made shall first produce to the License Commissioners a report of the Inspector similar to that mentioned in the ninth section of this Act. (*v*) 40 V. c. 18, s. 7.

REMOVAL OF LICENSEE.

Inspector of Licenses may consent to removal of tavern-keeper to another house.

29. Any Inspector of Licenses may, after resolution allowing the same, of the License Commissioners, endorse on any tavern or shop license permission to the holder thereof, or his assigns or legal representatives, to remove from the house to which his said license applies to another house to be described in an endorsement to be made by the said Inspector on the said license, and situate within the same Municipality, and possessing all the accommodation required by law. (*a*)

Effect of such consent.

2. Such permission, when the approval of the said Inspector is endorsed on the said license, shall authorize the holder of the said license to sell the same liquors in the house mentioned in the endorsement during the unexpired portion

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(*u*) Upon the sale of a public house as a going concern, it is of the essence of the contract that the license of the house be transferred, *Day* v. *Luhke*, L. R. 5 Eq. 336; *Cowles* v. *Gale*, L. R. 7 Ch. Ap. 12. See further, *Claydon* v. *Green*, L. R. 3 C. P. 511. A. being the keeper of an hotel without a license, and B. being cognizant of that fact, upon the transfer of the premises to B. £150 were deposited in the hands of a stakeholder to be handed over to B. if A. failed to procure and transfer a license by the 31st October following. B. having failed to give the notice under the English Statute, and to attend the Magistrates on the licensing day, was held not entitled to recover the £150. *Bryant* v. *Beattie*, 4 Bing. N. C. 254.

(*v*) The transfer must of course be to a person of good character and repute, as to which, see notes to sec. 9

(*a*) The license is for the sale of liquor in a particular place described. The removal of the transferee to another place without notice does not entitle the licensee to sell on the place to which he has removed. Permission therefore must first be obtained from the

of the term for which the said license was granted, in the same manner, and upon the same terms and conditions; but no such permission shall be granted unless and until the person applying therefor has filed with the License Commissioners a report of the Inspector containing the information required by law in case of application for a license, (*b*) and any bond or security which such holder of a license may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorized, (*c*) but such permission shall not entitle him to sell at any other than this one place. (*d*) 37 V. c. 32, s. 18; 40 V. c. 18, s. 8.

Bond to apply.

WHERE LICENSE LAPSES.

30. In case for any cause the license becomes void, or in case the term or interest of the holder of a license in the premises licensed ceases before the expiry of the license, or if such licensee absconds or abandons the premises, or becomes insolvent, the License Commissioners may grant a new license for the same premises, subject to the provisions of this Act, upon such terms as to the payment or refund by the new licensee of the duty for the unexpired period to the person entitled thereto under the original license, as to the License Commissioners may seem just. (*e*) 40 V. c. 18, s. 9.

How licenses may be granted for premises where for any cause the license becomes void, &c.

DUTIES PAYABLE.

31. The following license duties shall hereafter be payable, and shall be in lieu of all others, (*f*) Provincial or Municipal—that is to say:

Duties.

License Commissioners to be signified by the endorsement by the Inspector on the License.

(*b*) See s. 9.

(*c*) See s. 22.

(*d*) See note *a* to this section.

(*e*) The power to grant a new license for the premises, arises,

1. Where the original license from any cause becomes void.

2. Where the term or interest of the holder of the original license ceases before the expiry of the license.

3. When the licensee absconds or abandons the premises or becomes insolvent.

(*f*) There was at one time an Imperial as well as a Provincial duty, but the former no longer exists. *Andrew* v. *White*, 18 U. C.

1. For each wholesale license, the sum of one hundred and fifty dollars :

2. For each tavern license in Cities, one hundred dollars ; in Towns, eighty dollars ; in other Municipalities, sixty dollars ;

3. For each shop license in Cities, one hundred dollars ; in Towns, eighty dollars ; in other Municipalities, sixty dollars ;

4. For each license for a vessel navigating the waters of this Province, one hundred dollars. (*g*) 39 V. c. 26, ss. 16 (1) & 26.

Council may impose a larger duty up to $200, but not more without consent of electors.

32. The Council of any Municipality may by by-law to be passed before the first day of March in any year, require a larger duty to be paid for tavern or shop licenses therein, but not in excess of two hundred dollars in the whole, (*h*) unless the by-law has been approved by the electors in the manner provided by "*The Municipal Act*," with respect to by-laws

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Q. B. 170 ; and now the duty, whether Provincial or Municipal, is in the first instance paid to the Provincial Government. See *The Queen* v. *The Board of Police of Niagara*, 4 U. C. Q. B. 141.

(*g*) The Municipal Council cannot make the sum payable for a license vary according to locality, as in certain Villages, $100, and elsewhere, $75. See *In re Donelly and Clarke*, 38 U. C. Q. B. 599.

(*h*) Before this Act there were questions as to the limit to the amount—whether the maximum intended only the amount payable to the Municipality, or the whole amount including as well the amount payable to the Government. See *In re Barclay and Darlington*, 12 U. C. Q. B. 86 ; *In re Harrison and Owen Sound*, 16 U. C. Q. B. 166 ; *In re Richardson and the Police Commissioners of Toronto*, 38 U. C. Q. B. 621 ; but now all doubt is removed by the use of the words, "in the whole." If the By-law of the Municipality require a larger duty than $200 in the whole, it must be submitted to the Municipal electors for their approval. See *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580. The Court after long delay refused to quash a By-law which ought to have been submitted to the electors, but had not been. *In re Sheley and Windsor*, 23 U. C. Q. B. 569. See also *In re Richardson and Toronto*, 35 U. C. Q. B. 630. The quashing of a By-law under which a certificate has been granted and license issued, does *not* nullify the license. *The Queen* v. *Stafford*, 22 U. C. C. P. 177. When the plaintiff leased a tavern to the defendant for three years at a rent of $400 a year, payable quarterly, "the said lessor to allow the said lessee the amount he has to pay his license fees out of the first quarter's rent in each year," and the license fee when the lease

which before their final passing require the assent of the electors of the Municipality. (*i*). Rev. Stat. c. 174.

2. Such by-law shall take effect from the passing thereof, and continue in force for any future year until repealed. (*j*)

3. Any by-law so approved shall not be varied or repealed unless the varying or repealing by-law has been in like manner submitted to and approved of by the electors of the Municipality. (*k*) 37 V. c. 32, s. 23; 39 V. c. 26, s. 16 (2); 40 V. c. 18, s. 27.

When duties now exceed the statutory figure they are not affected.

33. In any Municipality where, by virtue of any by-law in that behalf, passed under the provisions of any former Act, a larger sum or duty in the whole than that mentioned in section thirty-one was on the tenth day of February, one thousand eight hundred and seventy-six, payable for any shop or tavern license, such sum or duty shall be the lowest duty payable under this Act for any such license, until altered by by-law of the Municipality to be passed for the purpose, (*l*) but in no case shall the duty be under the amount in the said section specially prescribed. (*m*) 39 V. c. 26, s. 16 (3).

LICENSE FUND.

The duties, fines and penalties to form of License Fund.

34. All sums received from duties on tavern, shop and wholesale licenses, and received by the Inspector for fines and penalties, shall form the License Fund of the City, County,

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was issued, and for some years previously, was $85; but in the following year it was raised to $200, it was held that the lessee could claim no allowance beyond the first quarter's rent, the lessor being bound to allow the fee only, provided it did not exceed such rent. *Writt* v. *Sharman*, 41 U. C. Q. B. 249.

(*i*) See note to sec. 286 *et seq.* of The Municipal Act.

(*j*) It is not necessary that the the By-law should be an annual one. It continues in force from its passing till its repeal.

(*k*) It was held that a Municipal Council of a Village incorporated and separated from a Township in which, before and at the time of the incorporation, a By-law existed prohibiting the sale of intoxicating liquors in Shops and places other than houses of public entertainment within the Township, could not by a By-law not submitted to the electors of the Village for their approval, repeal the prohibitory By-law so far as it affected the Village. *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459.

(*l*) See note *h* to sec. 32.

(*m*) See sec. 31.

Union of Counties or Electoral District respectively for which the Board of License Commissioners has been appointed. 39 V. c. 26, s. 19.

Application of the Fund.

2. The License Fund shall be applied, under regulations of the Lieutenant-Governor in Council, for the payment of the salary and expenses of the Inspector, and for the expenses of the office of the Board and of officers, and otherwise in carrying the provisions of the law into effect, and the residue, on the thirtieth day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor in Council, shall be paid over,—one third to the Treasurer of the Province, to and for the use of the Province, and the other two-thirds to the Treasurer of the City, Town, Village, or Township Municipality in which the licensed premises are respectively situate; (*n*) but in cases where any Municipality by by-law requires a larger duty in the case of tavern or shop licenses to be paid than the specific sum mentioned in the thirty-first section for any license, the whole of such excess shall be paid over to the Treasurer of such Municipality. (*o*) 39 V. c. 26, s. 19.

Cheques upon the License Fund Account.

3. Cheques upon the License Fund Account shall be drawn by the Inspector, and countersigned by the Chairman, or any two of the License Commissioners, subject to the regulations of the Lieutenant-Governor in Council. 40 V. c. 18, s. 28.

Application of penalties where Inspector is prosecutor.

35. Any penalty in money recovered under this Act, in cases in which an Inspector is the prosecutor or complainant, (*p*) shall be paid by the convicting Justice, Justices or Police Magistrate to the Inspector, and paid in by him to the credit of the "License Fund Account;"

Where the whole penalty and

2. In case the whole amount of the penalty and costs is not recovered, the amount recovered shall be applied, first, to

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(*n*) There are some additional charges now imposed on the License Fund by 41 Vict. cap. 14, sec. 2. See further sec. 6, sub-s. 1, 2, 3 and 4 of that Act.

(*o*) See sec. 32 and notes thereto.

(*p*) The Act in several parts provides for penalties for its contravention. Others than the Inspector may be the prosecutor or complainant; this section provides only for the case of the Inspector being prosecutor or complainant. The License Fund is his indemnity. If he recover penalties, he is to pay them to the credit of the Fund. If he fail to obtain a conviction, he is to be indemnified

the payment of the costs, and the balance shall be appropriated as hereinafter mentioned. Costs are not recovered.

3. In any case where the Inspector has prosecuted and obtained a conviction, and has been unable to recover the amount of costs, the same shall be made good out of the said License Fund. Where costs are not recovered.

4. In any case where the Inspector has prosecuted and failed to obtain a conviction, he shall be indemnified against all costs out of the License Fund, should the Justice, Justices or Police Magistrate before whom the complaint is made certify that such officer had reasonable and probable cause for preferring such prosecution or complaint. 39 V. c. 26, s. 18. Indemnity of Inspector where he fails to obtain a conviction.

36. All moneys received for vessel licenses shall belong to Her Majesty, and be paid over to the Treasurer of the Province. (*q*) 39 V. c. 26, s. 26. Vessel licenses.

REGULATIONS AND PROHIBITIONS.

37. All licenses shall be constantly and conspicuously exposed in the warehouses, shops or in the bar-room of taverns, inns, alehouses, beerhouses or other places of public entertainment, and in the bar-saloon, or bar cabin of vessels, under a penalty of five dollars for every day's wilful or negligent omission so to do, to be recovered with costs from the merchant, shopkeeper or tavern, inn, alehouse or beerhouse-keeper or keeper of any other place of public entertainment, or master, captain or owner of the vessel so making default. (*r*) 37 V. c. 32, s. 8. Licenses to be kept exposed. Penalty on non-exposure.

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against costs out of the Fund. So also where he has been unable to recover costs.

(*q*) Where the license is in respect of some particular place in a Municipality, that Municipality is interested in the license and entitled to a portion of the duty; but where a vessel which goes from place to place usually in different Municipalities is licensed, the whole amount of duty belongs to the Province.

(*r*) The duty imposed is to have all licenses constantly and conspicuously exposed. The omission of that duty, whether the omission arise from wilfulness or negligence, subjects the party to a penalty of $5 for every day's omission. A conviction imposing a greater or other penalty would be bad. *The Queen* v. *Lennox*, 26 U. C. Q. B. 141. *In re Bright and Toronto*, 12 U. C. C. P. 433. See Sch. D, No. 1, form of conviction.

Tavern keepers to exhibit notice of being licensed.

38. Every person who keeps a tavern, or other place of public entertainment, in respect of which a tavern license has duly issued and is in force, shall exhibit over the door of such tavern, inn, alehouse, beerhouse, or other place of public entertainment, in large letters, the words "*Licensed to sell wine, beer, and other spirituous or fermented liquors*" (*s*) and in default thereof shall be liable to a penalty of five dollars, besides costs. (*t*) 37 V. c. 32, s. 19.

Penalty.

No person shall sell liquors without license.

39. No person shall sell by wholesale or retail any spirituous, fermented, or other manufactured liquors without having first obtained a license under this Act authorizing him so to do: (*a*) but this section shall not apply to sales under legal process, or for distress, or sales by assignees in Insolvency. 37 V. c. 32, s. 24.

2. No person unless duly licensed shall by any sign or notice hold himself out to the public that he is so licensed; and the use of any sign or notice for this purpose is hereby prohibited. (*b*) 40 V. c. 18, s 11.

Persons not to keep spirituous, etc., liquors for sale unless licensed.

40. No person shall keep or have in any house, building, shop, eating-house, saloon, or house of public entertainment, or in any room or place whatsoever, any spirituous, fermented or other manufactured liquors for the purpose of selling,

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(*s*) Proof that there is nothing exhibited over the door denoting that the house is licensed, has in England been held *prima facie* evidence in an action for penalties that the house is unlicensed. *Gregory* v. *Tuffs*, 6 C. & P. 271.

(*t*) See Sch. D, No. 2, for form of conviction.

(*a*) The sale of intoxicating drinks has, for many years, both in England and Canada, been placed, and wisely placed, under stringent and special legislation. *Per* Wilson, J., *In re Ross and York and Peel*, 14 U. C. C. P. 171, 174. This legislation either takes the form of Prohibition or regulation. See *Barclay and Darlington*, 11 U. C. Q. B. 470. The general belief is, that while Prohibition as affecting trade and commerce, appertains only to the Dominion Legislature, regulation clearly appertains to the Local Legislature. It is *ultra vires* for the Local Legislature to enact that the Provisions of the License Liquor Act of Ontario, shall have full force and effect where a Prohibitory By-law is in force. So as to make an offence against the latter an offence against the former. *Regina* v. *Prittie*, 42 U. C. Q. B. 612. See further, *Slavin and Orillia*, 36 U. C. Q. B. 159; *Regina* v. *Taylor* 36 U. C. Q. B. 183. See Sch. D, No. 3, for form of conviction.

(*b*) It has been held that a Municipal Council has the power to compel the removal of a notice such as is required by sec. 38 of this Act, from over the door of a house not for the time licensed. *In re Bright and Toronto*, 12 U. C. C. P. 433.

bartering or trading therein, unless duly licensed thereto under the provisions of this Act. (*c*) 37 V. c. 32, s. 25.

Last two preceding sections not to apply to brewers, etc.

41. Sections thirty-nine and forty shall not prevent any brewer, distiller, or other person duly licensed by the Government of Canada for the manufacture of fermented, spirituous, or other liquors, from keeping, having or selling any liquor manufactured by him in any building wherein such manufacture is carried on, provided such building forms no part of and does not communicate by any entrance with any shop or premises wherein any article authorized to be manufactured under such license is sold by retail, or wherein is kept any broken package of such articles.

2. Such brewer, distiller or other person is however further required to first obtain a license to sell by wholesale under this Act the liquor so manufactured by him, when sold for consumption within this Province, under which license the said liquor may be sold by sample, or in original packages, in any Municipality, as well as in that in which it is manufactured; but no such sale shall be in quantities less than those prescribed in sub-section four of section two of this Act. (*d*) 37 V. c. 32, s. 26.

Nor to chemists.

Rev. Stat. c. 145.

42. The said sections numbered thirty-nine and forty of this Act shall not prevent any chemist or druggist duly registered as such under and by virtue of "*The Pharmacy Act*," from keeping, having or selling liquors for strictly medicinal purposes, and then only in packages of not more than twelve ounces at any one time, except under certificate from a registered medical practicioner, (*e*) but it shall be the duty of such

(*c*) An agreement, the object of which is to enable an unlicensed person to sell spirituous, fermented, or manufactured liquors without a license, is illegal and cannot be enforced at law. See note *t* to sec. 91. As to the evidence sufficient to convict under this section, see notes to sec. 80. See also Sch. D, No. 4, for form of conviction.

(*d*) In *Regina* v. *Taylor*, 36 U. C. Q. B. 183, the Court of Queen's Bench held that to entitle a brewer or distiller to sell liquor manufactured by himself, it was unnecessary to obtain a license from the Provincial Government; that decision was reversed by the Court of Appeal, but afterwards restored by the Supreme Court in *Regina* v. *Severn*. The Legislature of Ontario have, in consequence made provision for the restoration of duty &c., to brewers and distillers. See 41 Vict. c. 14.

(*e*) The right conferred on a chemist or druggist to sell spirituous liquors without a license is subject to the following qualifications:

1. That the sale be for strictly medicinal purposes;

chemist or druggist to record in a book, to be open to the inspection of the License Commissioners or Inspector, every sale or other disposal by him of liquor, and such record shall show as to every such sale or disposal, the time when, the person to whom, the quantity sold, and the certificate, if any, of what medical practitioner, (*f*) and in default of such sale or disposal being so placed on record, every such sale or disposal, shall, *prima facie*, be held to be in contravention of the provisions contained in the said thirty-ninth and fortieth sections of this Act. (*ff*) 37 V. c. 32, s. 27; 40 V. c. 18, s. 12.

All places where intoxicating liquors sold to be closed

43. In all places where intoxicating liquors are, or may be, sold by wholesale or retail, no sale or other disposal (*g*) of the said liquors shall take place therein, or on the premises thereof, or out of or from the same, (*h*) to any person or per-

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2. That it be in a package of not more than twelve ounces at one time, except under a certificate from a registered medical practitioner.

The duties consequent upon the sale are the following:

1. To keep a record of the sale, subject to inspection;
2. The record to show the time when, the person to whom, the quantity sold, and the certificate, if any, of what medical practitioner.

(*f*) A conviction of the defendant, who was a registered druggist, for selling spirituous and intoxicating liquors by retail without having a license so to do, as required by law, the said spirituous and intoxicating liquor having been sold for other than strictly medicinal purposes only, was held to be valid. *Regina* v. *Denham*, 35 U. C. Q. B. 503.

(*ff*) See Schedule D, No. 11, for form of conviction.

(*g*) "Sale or other disposal" would include a gift. See *Overton* v. *Hunter*, 1 L. T. N. S. 366; *Petherick* v. *Sargent*, 6 L. T. N. S. 48. This, however, does not prevent the licensee giving to "some member of his family or to a lodger in his house."

(*h*) A person licensed to sell beer by retail "to be drunk or consumed on the premises," supplied a pint of beer to a traveller who sat upon a bench placed and *fastened* to the wall of the house, returning the mug in which he was served, was held to have been properly convicted of selling beer to be drunk *on the premises*. *Cross* v. *Watts*, 13 C. B. N. S. 239. A person licensed to sell beer *not* to be drunk on the premises whose servant handed beer in a mug through an open window to a person who, after paying for it drank it immediately, standing on the highway as close as possible to the window, was held to have been improperly convicted of selling beer on *the premises*. *Deal* v. *Schofield*, L. R. 3 Q. B. 8. The appellant being licensed to sell by retail intoxicating liquor to be consumed *off* the premises, was charged with keeping open his premises for the sale of such liquors during prohibited hours. He had two shops, a

sons whomsoever, from or after the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter, (*i*) and during any further time on the said days, and any hours or other days during which, by any statute in force in this Province, or by any by-law in force in the Municipality wherein such place or places may be situated, the same, or the bar-room or bar-rooms thereof, ought to be kept closed, (*j*) save and except in cases where

from seven o'clock on Saturday night till six o'clock on Monday morning.

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grocer's and a draper's shops, which formed part of his house, and both shops could be entered from the house at the back as well as by the customer's entrance. The grocery business was carried on in a shop which had an entrance for customers on one street, and the drapery business in a shop which had an entrance for customers on another street. During the day there were means of going, and customers occasionally passed from one shop to the other, but after ten o'clock shutters or partitions were put up and all means of communication, except through the house, prevented. It was held that the defendant could not be convicted of having the house open for the sale of liquor after ten o'clock at night. *Brigden* v. *Heighes*, L. R. 1 Q. B. Div. 330. See also, *Tassell* v. *Ovenden*, L. R. 2 Q. B. Div. 383. See sec. 82 as to evidence of guilt under this section.

(*i*) The old prohibition was during the hours of divine service. See *The Queen* v. *Knapp*, 2 E. & B. 447; *Regina* v. *Whiteley*, 3 H. & N. 143. An information for selling intoxicating liquors on Sunday is so far a charge of a criminal character that the defendant cannot be compelled to give evidence against himself. *The Queen* v. *Roddy*, 41 U. C. Q. B. 291. See Schedule D, Nos. 5 and 6, for form of conviction.

(*j*) "Or by any By-law in *force* in the Municipality, &c." The only body, with some few exceptions, now authorized to pass resolutions for regulating taverns and shops to be licensed, are the License Commissioners, and they act by resolution and not by By-law. See sec. 4, sub. 4. This power formerly was vested in Municipal Councils, see *In re Bright and the City of Toronto*, 12 U. C. C. P. 433, but was by sec. 1 of 39 Vict. cap. 26, Ont., transferred to the License Commissioners, except where express provision is otherwise made in the Act. See *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580; *In re Arkell and St. Thomas*, *Ib.* 594. This section does not in express language confer the power either on the License Commissioners or on Municipal Councils. Not having been in express language conferred on Municipal Councils the inference would be that it rests with the License Commissioners under one general power to regulate. But whether a resolution passed by the License Commissioners for the purposes of the section would be "a By-law in force in the Municipality," within the meaning of the section, is a question. It was, under the old law, held that Municipal Councils may pass By-laws against the sale of liquor to a person in a state of intoxication, *In re Greystock and Otanabee*, 12 U. C. Q. B. 458, or to idiots and insane persons. *In re Ross and York and Peel*, 14 U. C. C. P. 171, and it is now held that they may even since the appointment of

a requisition for medical purposes, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent; (*k*) nor shall any such liquor, whether sold or not, be permitted or allowed to be drunk in any such places during the time prohibited by this Act for the sale of the same, except by the occupant or some member of his family, or lodger in his house. (*l*) 37 V. c. 32, s. 28; 40 V. c. 18, s. 13.

Exception.

Sale of liquors from ships in port prohibited.

44. Where a license is issued, under this Act, to authorize the sale of liquors upon any vessel navigating any river, lake, or water in this Province, no sale or other disposal of liquor (*m*) shall take place thereon or therefrom, (*n*) to be consumed by any person other than a passenger on the said vessel, whilst such vessel is at any port, pier, wharf, dock, mooring, or station; nor shall any liquor, whether sold or not, be permitted or allowed to be consumed in or upon any vessel departing from and returning to the same port or wharf, dock, mooring, or station, within the time hereinafter in this section mentioned, by any person during the hours prohibited by the preceding section for sale of the same except for medical purposes, as provided in the preceding section. (*o*)

License Commissioners, prohibit the sale of intoxicating liquors to a child, servant or apprentice, without the consent of the parent, master or legal guardian. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580. A By-law providing that the bar-room shall be closed, and unoccupied except by members of the keeper's family or his employees, and shall have no light therein except the natural light of day, during the prohibited hours, is bad and in excess of the powers of the Police Commissioners. *Regina* v. *Belmont*, 35 U. C. Q. B. 298.

(*k*) Formerly there was an exception in favour of travellers on Sunday. See *Baker* v. *Paris*, 10 U. C. Q. B. 621; *In re Barclay and Darlington*, 12 U. C. Q. B. 86; *In re Ross and York and Peel*, 14 U. C. C. P. 171, but this no longer exists.

(*l*) It was at one time held that it was necessary for the conviction to negative the exceptions. See *Mills* v. *Brown*, 9 U. C. L. J. 246; *Regina* v. *White*, 21 U. C. C. P. 354; but see *Regina* v. *Breen*, 36 U. C. Q. B. 84.

(*m*) See note *g* to sec. 43.

(*n*) See note *h* to sec. 43.

(*o*) A passenger on a boat is looked upon in the same light as a lodger in a house, and so priviledged to consume spirituous or fermented liquors when other persons are prohibited. The only exception is when the vessel is departing from or returning to port within the hours mentioned in the preceding section.

2. In case any such sale or other disposal of liquor takes place, the said license shall *ipso facto* be and become forfeited and absolutely void, and the captain or master in charge of such vessel, and the owner or person navigating the same, as well as the person actually selling or disposing of liquor contrary to this section, shall be severally and respectively liable to pay to the Crown, for the public uses of this Province, the sum of one hundred dollars; and any person who sells or disposes of any liquor contrary to the provisions of this section, shall also be liable to the same penalty and punishment therefor as are hereinafter prescribed in the fifty-second section of this Act. (*p*) 37 V. c. 32, s. 29; 40 V. c. 18, s. 14. Penalty.

45. No person having a shop license to sell by retail, and no chemist or druggist, shall allow any liquors sold by him or in his possession, and for the sale of which a license is required, to be consumed within his shop, or within the building of which such shop forms part, or which communicates by any entrance with such shop, either by the purchaser thereof, or by any other person not usually resident within such building, (*q*) under the penalty, in money, imposed by the fifty-first section of this Act. (*qq*) 37 V. c. 32, s. 20; 40 V. c. 18, s. 10. Shop license not to authorize liquor sold to be consumed in the house. Penalty.

46. No person having a license to sell by wholesale, shall allow any liquors sold by him or in his possession for sale, and for the sale or disposal of which such license is required, to be consumed within his warehouse or shop, or within any building which forms part of or is appurtenant to, or which communicates by any entrance with any warehouse, shop or other premises wherein any article to be sold or disposed of under such license is sold by retail, or wherein there are kept any broken packages of such articles. (*r*) 37 V. c. 32, s. 21. Liquor not to be consumed on premises of persons having license by wholesale.

(*p*) The penalties are cumulative.

1. Forfeiture of license.

2. Penalty of $100 on the Captain or master in charge of the vessel and the owner or person navigating the same as well as the person actually selling or disposing of the liquor contrary to the section.

3. Penalties under sec. 52. See Sch. D, No. 12, for form of conviction.

(*q*) See note *h* to sec. 43.

(*qq*) See Sch. D, No. 9, as to form of conviction.

(*r*) See note *h* to sec. 43. See also Sch. D, No. 10, for form of conviction.

PENALTIES.

Not lawful to take money for certificate, &c.

47. It shall not be lawful for the License Commissioners of any License District, or any of them, nor for any Inspector, either directly or indirectly, to receive, take, or have any money whatsoever, for any certificate, license, report, matter or thing connected with or relating to any grant of any license, other than the sum to be paid therefor as the duty under the provisions of this Act, or to receive, take or have any note, security or promise for the payment of any such money or any part thereof, from any person or persons whatsoever; and any person or persons guilty of, or concerned in, or party to any act, matter or thing contrary to the provisions of this section, or of sections ten and eleven, shall forfeit and pay to and for the use of Her Majesty a penalty of not less than fifty dollars, nor more than one hundred dollars, besides costs, for every such offence. (*s*) 37 V. c. 32, s. 30.

Penalty.

Penalty for issuing any license contrary to this Act.

48. Any member of any Board of License Commissioners or any Inspector, officer or other person who, contrary to the provisions of this Act, knowing issues, or causes or procures to be issued, a tavern or shop license, or a certificate therefor, shall, upon conviction thereof, for each offence pay a fine of not less than forty dollars, nor more than one hundred dollars, and in default of payment of such fine, the offender or offenders may be imprisoned in the County Gaol of the County in which the conviction takes places for a period not exceeding three calendar months. (*t*) 37 V. c. 32, s. 31.

Forfeiture of office by municipal officer if convicted.

49. If any officer of any Municipal Corporation is convicted of any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and vacate his office, and shall be disqualified to hold any office in any Municipality in this Province for two years thereafter. (*u*) 37 V. c. 32, s. 32; 40 V. c. 18, s. 15.

(*s*) See note *a* to sec. 10.

(*t*) The offence under this section involves guilty knowledge. The words are, "Knowingly issues, &c." The issue through mistake or ignorance is not therefore an offence under the section. *Regina* v. *Paton*, 35 U. C. Q. B. 442.

(*u*) The penalties imposed by this section, are not in substitution for, but an addition to the ordinary penalties.

The additional penalties imposed are,

1. Forfeiture of office.

Forfeiture of office by member of council if convicted.

50. If any member of any Municipal Council is convicted of any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and vacate his seat, and shall be ineligible to be elected to or to sit or vote in any Municipal Council for two years thereafter; (*a*) and if any such person, after the forfeiture aforesaid, sits or votes in any Municipal Council, he shall incur a penalty of forty dollars for every day he so sits or votes. 37 V. c. 32, s. 33; 40 V. c. 18, s. 15.

Penalty.

Penalty for selling without license.

51. Any person (*b*) who sells or barters spirituous, fermented or manufactured liquors of any kind, or intoxicating liquors of any kind, without the license therefor by law required, (*c*) or who otherwise violates any other provision of this Act, in respect of which violation no other punishment is prescribed, shall for the first offence, on conviction thereof, forfeit and pay a penalty of not less than twenty dollars besides costs, and not more than fifty dollars besides costs; (*d*) and for the second offence, on conviction thereof, such person shall be imprisoned in the County Gaol of the

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2. Disqualification to hold office in any Municipality for two years.

The section is restricted in its operation to officers of a Municipal Corporation.

(*a*) The preceding section is restricted to Officers of a Municipal Corporation. This applies to any Member of a Municipal Council.

The additional penalties imposed by this section are,

1. Forfeiture of office.

2. Disqualification to be elected or to sit or vote in any Municipal Council for two years.

(*b*) Any person includes a married woman. *Regina* v. *Williams*, 42 U. C. Q. B. 462. A joint conviction of several persons for the same offence in a single penalty, is bad. *Regina* v. *Sutton et al.*, 42 U. C. Q. B. 220.

(*c*) A license irregularly issued when there is no fraud in the obtaining of it, is a protection against penal consequences. *Stevens* v. *Simson*, L. R. 1 Ex. Div. 100. The charge in the conviction should be certain and so stated as to be pleadable in the event of a second prosecution for the same offence. *Regina* v. *Haggard*, 30 U. C. Q. B. 152, but it is not necessary to mention the statute or the person to whom the liquor was sold. *Regina* v. *Faulkner*, 26 U. C. Q. B. 259; *Regina* v. *Strachan*, 20 U. C. C. P. 182; but see *Regina* v. *Cavanagh*, 27 U. C. C. P. 537.

(*d*) *For the first offence*, &c., this kind of legislation is by no means a novelty. The Legislature have, from a very early period of our history, endeavoured in certain offences to make the punishment of the hardened offender greater than the punishment of the offender for

County in which the offence was committed, to be kept at hard labour for a period not exceeding three calendar months. (*e*) 37 V. c. 32, s. 35; 39 V. c. 26, s. 20.

Penalty for contravention of sec. 43.

52. For punishment of offences against section forty-three of this Act, a penalty for the first offence (*ee*) against the provisions thereof, of not less than twenty dollars with costs or fifteen days' imprisonment with hard labour, (*f*) in case of conviction, shall be recoverable from, and leviable against, the goods and chattels of the person or persons who are the proprietors in occupancy, or the tenants or agents in occupancy of the said place or places, who are found by himself, herself, or themselves, or his, her, or their servants or agents, to have contravened the enactment in the said forty-third section, or any part thereof; for the second offence, a penalty against all such of not less than forty dollars with costs, or twenty days' imprisonment with hard labour; (*ff*) for a third offence, a penalty against all such of not less than one hundred dollars with costs, or fifty days' imprisonment with hard labour; and for a fourth or any after offence, a penalty against all such of not less than one nor more than three months' imprisonment with hard labour, in the Common Gaol of the County wherein such place or places are. (*gg*) 37 V. c. 32, s. 34.

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the first time, and attempted to lay down rules for the government of such cases. *Per* Harrison, C. J., in *Stoness* v. *Lake*, 40 U. C. Q. B. 320, 330. When the charge is for a second offence, it should, strictly speaking, be so stated in the information. *Regina* v. *French*, 34 U. C. Q. B. 403; *Regina* v. *The Justices of Queens*, 2 Pugs. N. B. 485; but defendant may, by his conduct, waive the necessity of such an allegation. *Stoness* v. *Lake*, 40 U. C. Q. B. 320.

(*e*) *Hard Labour, &c.* The Provincial Legislature have, under sub-sec. 15 of sec. 92 of the B. N. A. Act, the power of the imposition of punishment by fine, penalty, or *imprisonment*, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in that section. See *Regina* v. *McMillan et al.*, 2 Pugs. N. B. 110. Notwithstanding the decision of the *Queen* v. *Boardman*, 30 U. C. Q. B. 553, it is not clear that the Provincial Legislature has power to impose *hard* labour, which is one of the lots of crime. See *Regina* v. *Black*, 43 U. C. Q. B. 180.

(*ee*) A conviction for the second offence imposing upon the defendant a fine of $40, and in default of sufficient distress, imprisonment for ten days at hard labour, is bad. *Regina* v. *Black*, 43 U. C. Q. B. 180.

(*f*) *First offence.* See note *d* to sec. 51.

(*ff*) *Hard labour.* See note *ee* to sec. 51.

(*gg*) See Schedule D, Nos. 5 and 6, for form of conviction.

Keepers of disorderly inns subject to certain penalties.

53. The Mayor or Police Magistrate of a Town or City, or the Reeve of a Township or Village, with any one Justice of the Peace, or any two Justices of the Peace having jurisdiction in a Township or Village, upon information to them, or one of them respectively, that any keeper of any inn, tavern, ale-house, beer-house, or other house of public entertainment, situate within their jurisdiction, sanctions or allows gambling or riotous or disorderly conduct in his tavern or house, (*h*) may summon the keeper of such inn, tavern, ale or beer-house to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant or convict the keeper of having an improper or a riotous or disorderly house, as the case may be, (*i*) and annul his license, or suspend the same for not more than sixty days, with or without costs, as in his or their discretion may seem just; and in case the keeper of any such inn, tavern, ale-house, beer-house or place of public entertainment, is convicted under this section, and his license

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(*h*) In *Cattell* v. *Ireson*, E. B. & E. 91, it was held that an information for using an engine for the purpose of taking game against Eng. Stat 1 & 2 Will. IV. cap. 32, sec. 23, is a criminal proceeding, and consequently that the person charged is an incompetent witness. So when the information under the English Statute 9 Geo. IV. cap. 61, charged the innkeeper with having "unlawfully and knowingly permitted and suffered persons of notoriously bad character to assemble and meet together in his house and premises." *Parker* v. *Green*, 2 B. & S. 299. The game of dominos is not necessarily an unlawful game. *The Queen* v. *Ashton*, 1 E. & B. 286; nor billiards, *Ovenden* v. *Raymond*, 34 L. T. N. S. 698; but playing at cards for money, even with the innkeeper's private friends, in his own private room in the inn, or the playing of guests, with his knowledge, is unlawful. *Patten* v. *Rhymer*, 3 E. & E. 1. See further, *Bosley* v. *Davies*, 33 L. T. N. S. 528; *Hare* v. *Osborne*, 34 L. T. N. S. 294; *Cooper* v. *Osborne*, 35 L. T. N. S. 347. So playing at ten pins for a pint of beer on each game. *Danford* v. *Taylor*, 20 L. T. N. S. 483. Knowledge, or facts from which knowledge may be inferred, on the part of the innkeeper, is necessary. *Bosley* v. *Davies*, L. R. 1 Q. B. Div. 84: *Redgate* v. *Haynes*, *Ib.* 89. To permit prostitutes to assemble for the purpose of prostitution, would appear to be disorderly conduct on the part of the innkeeper. *Bennseo* v. *Hannant*, 3 B. & S. 13; *Wilson* v. *Stewart*, *Ib.* 913; see further, *Marshall* v. *Fox*, L. R. 6 Q. B. 370. As to thieves: a municipal Council has power to prevent gambling, profane swearing, blasphemous or grossly insulting language, or any indecency or disorderly conduct in a licensed inn. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580.

(*i*) The charge that the innkeeper allowed "drunkenness and other disorderly conduct," is not too vague. *Wray* v. *Toke*, 12 Q. B. 492.

annulled, he shall not be elegible to obtain a license for the period of two years thereafter and shall also be liable to the penalties by the fifty-first section prescribed. (*j*) 37 V. c. 32, s. 36; 40 V. c. 18, s. 17.

Provisions as to harbouring constables on duty.

54. Any person licensed to sell wine, beer or spirituous liquors, or any keeper of the house, shop, room, or other place for the sale of liquors, who knowing harbours or entertains any constable belonging to any police force, or suffers such person to abide or remain in his shop, room or other place during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance, or restoring order, or otherwise in the execution of his duty, (*k*) shall, for any of the offences aforesaid, be deprived of his license. (*l*) 37 V. c. 32, s. 58.

Penalty in case any person compromises, compounds, or settles a case.

55. Any person who, having violated any of the provisions of this Act, compromises, compounds or settles, or offers or attempts to compromise, compound, or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or if a complaint has been made with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, shall be guilty of an offence under this Act, (*m*) and on conviction thereof (*n*) shall be imprisonment

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(*j*) The penalties are cumulative—

1. The penalties in sec. 51.
2. The annulling or suspension of the license.
3. In case of annulling of license disqualification to obtain a license for two years.

If there be a conviction under this section on more than one occasion the license may be revoked by the County Judge, and the person licensed disqualified from obtaining a license for two years thereafter. See sec. 62.

See Schedule D, No. 13, for form of conviction.

(*k*) Guilty knowledge is of the essence of this offence. It is an offence *knowingly* to harbour or entertain any constable. See *Mullins* v. *Collins*, L. R. 9 Q. B. 292. See Schedule D, No. 14, for form of conviction.

(*l*) Loss of the license is the only punishment for the contravention of this section.

(*m*) A compromise contrary to the terms of this section is illegal, and therefore cannot form the subject of a reference to arbitration. *In re Fraser and Escott*, 1 U. C. J. N. S. 324.

(*n*) A conviction to the effect that defendant did unlawfully

at hard labour in the Common Gaol of the County in which the offence was committed for the period of three calendar months. (*o*) 37 V. c. 32, s. 39.

Penalty for being concerned in any such compromise, etc.

56. Every person who is concerned in, or is a party to, the compromise, composition or settlement mentioned in the next preceding section, shall be guilty of an offence under this Act, (*p*) and on conviction thereof shall be imprisoned in the Common Gaol of the County in which the offence was committed for the period of three calendar months. (*q*) 37 V. c. 32, s. 40.

Penalty for tampering with a witness.

57. Any person who, on any prosecution under this Act, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding under this Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself, or to swear falsely, (*r*) shall be liable to a penalty of fifty dollars for each offence. 37 V. c. 32, s. 42.

Penalties not to be Remitted.

Penalties or punishments not to be remitted.

58. No Police Magistrate or Justice or Justices of the Peace, License Commissioner or Inspector, or Municipal Council or Municipal officer, shall have any power or authority to remit, suspend or compromise any penalty or punishment inflicted under this Act. (*s*) 37 V. c. 32, s. 41; 40 V. c. 18, s. 19.

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attempt and offer to compound and settle with one R., a certain offence, with a view of stopping or having the said charge dismissed for want of prosecution, is bad. *Regina* v. *Mabey*, 37 U. C. Q. B. 248. See Schedule D, No. 15, for form of conviction.

(*o*) An act similar to this was held to be within the power of the Local Legislature. *Regina* v. *Boardman*, 30 U. C. Q. B. 553; but see note *e* to sec. 51.

(*p*) The preceding section applies to the party accused, this to all who are concerned or are parties to the compromise.

(*q*) See Sch. D, No. 16, for form of conviction.

(*r*) The offence mentioned here, is a criminal offence at Common Law. This section is therefore *ultra vires*, on the part of the Local Legislature. See *Regina* v. *Lawrence*, 43 U. C. Q. B. 164.

(*s*) In the past Municipal Councils and others have been too ready to remit penalties to electors or others who are likely to be useful at the annual election. This section is designed to prevent the continuance of such a flagrant abuse of the law.

Recovery of Penalties by Distress.

Penalties and costs, how recoverable.

59. For the recovery of the penalties in money under this Act, and legal costs, upon and after conviction in cases not appealable, and in cases appealable where an appeal has not been perfected according to law, is shall be lawful for any Justice, Justices or Police Magistrate to issue a warrant of distress to any constable or peace officer, against the goods and chattels of the person or persons convicted; and in case no sufficient distress is found to satisfy the said conviction, then in cases not otherwise provided for by this Act, it shall be lawful for the said Justice, Justices or Police Magistrate to order that the person or persons so convicted be imprisoned in any Common Gaol or Gaol or Lock-up House, within the County in which such conviction was made, for any period not exceeding thirty days, unless the penalty and all costs are sooner paid. (*t*) 37 V. c. 32, s. 43.

Application of Penalties.

(*See also Sec.* 34.)

Applications of penalties.

60. The penalties in money under this Act, or any portion of them which may be recovered, shall be paid to the convicting Justice, Justices, or Police Magistrate in the case, and shall by him, or them, in case the Inspector or any officer appointed by the Lieutenant-Governor or by the License Commissioners, is the prosecutor or complainant, be paid to the Inspector as provided in section thirty-five, and in case such Inspector or Officer is not the prosecutor or complainant, then the same shall be paid to the Treasurer of the Municipality wherein the offence was committed. (*u*) 37 V. c. 32, s. 43; 39 V. c. 26, s. 18.

(*t*) There is no power to imprison in the first instance for non-payment of a pecuniary penalty. The remedy in the first instance is a warrant of distress. In case no sufficient distress is found, imprisonment may follow for a period not exceeding thirty days, unless the penalty and all costs are sooner paid.

(*u*) Convicting Justices should forthwith pay over moneys levied by them *colore officii*. It is not lawful for such Justices to keep and use the moneys so levied, and pay them over only when they see fit to abandon the use of them. The payment must be made either to the Inspector of Licenses or to the Treasurer of the Municipality—the former where the Inspector is the prosecutor, the latter in all other cases.

61. The Council of every Municipality shall set apart not less than one-third part of such fines or penalties received by the said Municipality for a fund to secure the prosecutions for infractions of this Act, and of any by-laws passed in pursuance thereof. (*v*) 37 V. c. 32, s. 43.

Municipalities to set apart a third.

POWERS OF COUNTY JUDGE.

Revocation of Licenses improperly obtained.

62. The Judge of the County Court of the County in which any Municipality is situate in any part of which a license granted is intended to take effect, upon the complaint of any person that such license has been issued contrary to any of the provisions of this Act or of any by-law in force in the said Municipality, or that such license has been obtained by any fraud, or that the person licensed has been convicted on more than one occasion of any violation of the provisions of the fifty-third section of this Act, or has been convicted on three several occasions of any violation of any of the provisions of this Act, whether the offences in respect of which such convictions were made were the same or different in their character, so long as such convictions were for offences committed on different days, (*o*) shall summon the person to whom such license issued to appear, and shall proceed to hear and determine the matter of the said complaint in a summary manner, and may upon such hearing, or in default of appearance of the person summoned, determine and adjudge that such license upon any of the causes aforesaid, ought to be revoked, and thereupon shall order and adjudge that such license is and stands revoked and cancelled accordingly, and thereupon such license shall be and become inoperative and

Power of County Judge as to licenses improperly obtained or licensee convicted.

(*v*) The duty is imperative. Moneys paid to the Inspector are by him paid to the License Fund, which is used in aid of the carrying out of the Act. See sec. 34. A similar fund must be established by Municipal Councils out of moneys arising from liquor prosecutions.

(*o*) The jurisdiction here conferred is statutory and limited by the language of the statute to the particular cases for which provision is made.

The information must disclose one or other of the following cases :

1. That the license has been issued contrary to one or more of the provisions of this Act or of a By-law in force in the Municipality ;

2. That the license has been obtained by fraud ;

of none effect, (*p*) and the person to whom such license issued shall thereafter, during the full period of two years, be disqualified from obtaining any further or other license under this Act. (*q*) 37 V. c. 32, s. 37 ; 40 V. c. 18, s. 18.

Investigation of Negligence of Inspector.

Power of County Judge as to Inspectors neglecting their duties.

63. The Judge of the County Court of the County in respect of any part of which any Inspector or Inspectors of Licenses is or are appointed, upon a complaint made by any person that any such Inspector is guilty of wilfully neglecting to do or observe, or of wilfully doing any act, matter or thing contrary to his duty as such Inspector, (*r*) shall summon such Inspector to appear, and shall proceed to hear and determine the matter of the said complaint; (*s*) and upon such hearing, or in default of appearance of the said Inspector being duly summoned, may determine (*t*) that such Inspector

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3. That the person licensed was convicted on more than one occasion of a violation of the provisions of the 53rd section of the Act ;

4. That the person licensed has been convicted on three several occasions, of any violation of any of the provisions of this Act, provided committed on different days.

It would seem that the offences committed in different years, may be taken into consideration for the purposes of this section. See sec. 64 as to the procedure.

(*p*) The decision of the County Judge under this section is final. See sec. 64.

(*q*) The revocation of the license is not the only punishment. There is besides the disqualification from obtaining a license during the full period of two years.

(*r*) The Legislature has seen fit in this and the preceding section to lodge a superintending power in the County Judge for the purposes mentioned in each of the sections.

The Officer made subject to the exercise of the power by this section is the Inspector.

The complaint against him, in order to give jurisdiction, must shew:

1. That he is guilty of *wilfully* neglecting to do or observe his duty as an Inspector ;

2. That he is guilty of *wilfully* doing any act, matter, or thing contrary to his duty as an Inspector.

(*s*) Both this and the preceding section authorize the County Judge to proceed in default of an appearance.

(*t*) *Determine.* The decision of the County Judge is final. See sec. 64.

is guilty of the matter complained of, and ought to be removed from his said office of Inspector, and shall order the same accordingly, and thereupon such person shall no longer be Inspector, and shall thereafter, for the full period of two years, be disqualified from being or becoming an Inspector of Licenses. (*u*) 37 V. c. 32, s. 38.

Procedure in such cases.

Procedure under ss. 62, 63.

64. The complaint in the sixty-second and sixty-third sections mentioned, may be by a short petition to the Judge entitled "In the County Court of the County of————," (*v*) and "In the matter of the license granted to —— —— (*naming the defendant*)," (*or*, "In the matter of —— ——, Inspector of Licenses for the —— Riding of the County of ——,") praying for the revocation of the said license, (or the removal of the Inspector, as the case may be,) and upon hearing the evidence adduced, or upon default of appearance of the prosecutor or defendant, the Judge may dismiss the matter of the complaint, or make such order as he deems just, with or without costs to be paid by the prosecutor or defendant, and the order on adjudication of the said Judge shall be final and conclusive, and shall not be the subject of appeal or revision by any Court whatever. 37 V. c. 32, s. 38; 40 V. c. 18, s. 18 (2).

PROSECUTIONS.

Information. When to be laid.

Before whom.

65. All informations or complaints for the prosecution of any offence against any of the provisions of this Act, shall be laid or made in writing, (within thirty days after the Commission of the offence, or after the cause of action arose, and not afterwards,) (*a*) before any Justice of the Peace for the

(*u*) The Judge may either find the Inspector guilty or acquit him. If found guilty there is loss of office and personal incapacity to hold office for the full period of two years. If acquitted there is apparently no power to award costs in his favour. But it is presumed that the Inspector, in the event of the prosecution being malicious and without reasonable or probable cause, would have his remedy by action.

(*v*) The proceedings being entitled in the County Court it would seem that subpœnas and other process may issue from that Court to enforce, if necessary, the attendance of witnesses.

(*a*) Laying the information is the commencement of a prosecution before a Magistrate. The Magistrate, acting as a Judge, and on

County or District in which the offence is alleged to have been committed, or in Cities and Towns where there is a Police Magistrate before such Police Magistrate, but may be made without any oath or affirmation to the truth thereof, and the same may be according to the form of Schedule C to this Act or to the like effect. 40 V. c. 18, s. 21 (1).

Form.

Any person may be prosecutor, etc.

66. Any person may be prosecutor or complainant in prosecutions under this Act. (*b*) 37 V. c. 32, s. 47.

License Commissioners or Inspectors who are Justices of the Peace prohibited from trying certain complaints.

67. No License Commissioner or Inspector of Licenses who is a Justice of the Peace, shall try or adjudicate upon any complaint for an infraction of any of the provisions of this Act committed within the limits of the License District for which he is a Commissioner or Inspector; (*c*) but this section shall not be construed to apply to a Judge, or Junior Judge or Deputy Judge of a County. (*d*) 40 V. c. 18, s. 38.

Certain prosecutions to be before two or more Justices or Police Magistrate.

68. All prosecutions for the punishment of any offence against any of the provisions of sections thirty-nine, forty, forty-three, forty-four, forty-five, forty-seven, fifty-one and fifty-three of this Act, or any section for the contravention of which a penalty or punishment is prescribed by section fifty-one, whether the prosecution is for the recovery of a penalty or for punishment by imprisonment, may take place before any two or more of Her Majesty's Justices of the Peace having jurisdiction in the County or District in which the offence is committed, or in Cities and Towns where there is a Police Magistrate, before the Police Magistrate of the

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behalf of the public in issuing the summons on an information laid before him, ought not to delay proceedings to the prejudice of the defendant. *Regina* v. *Lennox*, 34 U. C. Q. B. 28. When the statute provided for the commencement of the prosecution within twenty days, an information sworn on 30th December, laying the offence on 16th December, was held to be sufficient. *Ib.* It is not necessary that the conviction should on the face of it, show that the prosecution was commenced within the time limited. *Regina* v. *Strachan*, 20 U. C. C. P. 182.

(*b*) Any person, &c. This is apparently broad enough to include a married woman. See *Regina* v. *Williams*, 42 U. C. Q. B. 462.

(*c*) It is necessary that the adjudications of Justices should not only be free from bias, but if possible from all suspicion of bias. It is a cardinal principle in the administration of justice, subject to a few exceptions, that no man shall adjudicate in a cause or matter wherein he is interested. See Paley on Convictions, 5 ed. p. 38, *et seq.*

(*d*) See secs 62 and 63.

City or Town, (*e*) who, shall have authority to hear and determine any case in which the offence is alleged to have been committed within the County (for judicial purposes) wherein such City or Town is situate, in a summary manner, according to the provisions and after the forms contained in and appended to the Act of Parliament of Canada, entitled "*An Act respecting the duties of Justices of the Peace out of Sessions, in relation to Summary Convictions and Orders*," which Act, and the Acts already passed, or which may be hereafter passed, amending the same, shall be held to apply to all prosecutions and proceedings under this Act, so far as consistent with this Act. 32-3 V. c. 31 (D).

2. The Justices or Police Magistrate shall in all cases reduce to writing the evidence of the witnesses examined before them, or him, and shall read the same over to such witnesses, who shall sign the same. (*f*) 40 V. c. 18, s. 20. Evidence to be taken in writing.

69. All prosecutions under this Act, other than those mentioned in section sixty-eight, whether for the recovery of a penalty or otherwise, may be brought and heard before any one or more of Her Majesty's Justices of the Peace in and for the County where the forfeiture took place, or the penalty was incurred, or the offence was committed or wrong done, and in Cities and Towns in which there is a Police Magistrate, before the Police Magistrate; (*g*) and the procedure shall be governed by *The Act respecting Summary Convictions before Justices of the Peace*. 37 V. c. 32, s. 45; 40 V. c. 18, s. 21 (1). All other prosecutions may be before one or more Justices or a Police Magistrate. Mode of procedure. Rev. Stat. c. 74.

70. In all cases where the Board of License Commissioners in Cities passes a resolution in pursuance of the powers conferred upon them by the fourth and fifth sections of this Act, (*h*) and in and by any such resolution, penalties are imposed for the infraction thereof, such penalties may be recovered and enforced by summary proceedings before the Prosecutions under resolutions of License Commissioners, imposing penalties.

(*e*) It would seem that the Crown is not obliged to prosecute under this section like a private individual before two magistrates, but may proceed by information in one or other of the Superior Courts of Common Law at Toronto. See *Regina* v. *Taylor*, 36 U. C. Q. B. 183.

(*f*) It would be well for magistrates, when reducing the evidence of witnesses to writing, to use as nearly as possible the very language of the witnesses.

(*g*) See note *e* to sec. 68.

(*h*) See note *j* to sec. 43.

Police Magistrate (if any), or before any Justice of the Peace having jurisdiction, in the manner and to the extent that by-laws of Municipal Councils may be enforced under the authority of "*The Municipal Act*:" (*i*) and the convictions in such proceedings may be in the form set forth in section four hundred and seven of the said last mentioned Act. 37 V. c. 32, s. 48.

Rev. Stat. c. 174, s. 407.

APPEALS.

In Cases under Section 51.

Right of appeal in cases under s. 51.

71. In all cases of prosecution for any offence against any of the provisions of this Act, for which any penalty or punishment is prescribed by the fifty-first section of this Act, the conviction or order of the said Justices or Police Magistrate, as the case may be, shall, except as hereinafter mentioned, be final and conclusive, and, except as hereinafter mentioned, against such conviction or order there shall be no appeal to the Court of General Sessions of the Peace, or to any other Court. (*k*) 40 V. c. 18, s. 21 (3).

Procedure on such appeals.

2. An appeal shall lie from a conviction for any offence for which a penalty or punishment is prescribed by the fifty-first section of this Act to the Judge of the County Court of the County in which the conviction is made, sitting in Chambers, without a jury, (*l*) provided a notice in writing of such appeal is given to the prosecutor or complainant within five days after the date of the said conviction, (*m*) subject to the following provisions. 40 V. c. 18, s. 21 (4).

Appellant to enter into a recognizance,

3. The person convicted, in case he is in custody, shall either remain in custody until the hearing of such appeal before the said Judge, or (where the penalty of imprisonment with or without hard labour is adjudged) shall enter into a

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(*i*) See note *e* to sec. 68.

(*k*) This applies to convictions for selling spirituous or fermented liquors without a license. See *Regina* v. *Firmin*, 33 U. C. Q. B. 523.

(*l*) Where there is jurisdiction to entertain the appeal, mere irregularity in the mode of procedure, is not a ground for prohibition, for example, the calling of a jury where the appeal should be heard without a jury. See *In re Brown and Wallace*, 6 U. C. P. R. 1.

(*m*) The giving of this notice as directed, is a condition precedent to the hearing of the appeal. See *The Queen* v. *Justices of Cheshire*, 11 A. & E. 139.

recognizance with two sufficient sureties, in the sum of two hundred dollars each, before the convicting Justices or Police Magistrate, conditioned personally to appear before the said Judge, and to try such appeal and abide his judgment thereupon, and to pay such costs as he may order, and in case the appeal is against a conviction whereby only a penalty or sum of money is adjudged to be paid, the appellant may, (although the order directs imprisonment in default of payment) instead of remaining in custody as aforesaid, give such recognizance as aforesaid, or may deposit, with the said Justices or Police Magistrate convicting, the amount of the penalty and costs, and a further sum of twenty-five dollars to answer the respondent's costs of appeal. (*n*) 40 V. c. 18, s. 21 (5).

or deposit amount of penalty and costs.

4. Upon such recognizance being given or deposit made, the said Justices or Police Magistrate shall liberate such person if in custody, and shall forthwith deliver or transmit by registered letter post-paid, the depositions and papers in the case, with the recognizance or deposit as the case may be, to the Clerk of the County Court of the County wherein such conviction was had. (*o*) 40 V. c. 18, s. 21 (6).

Justices to transmit depositions to Clerk of County Court.

5. The practice and procedure upon such appeal, and all the proceedings thereon, shall thenceforth be governed by *The Act respecting the Procedure on Appeals to the Judge of a County Court from Summary Convictions*, so far as the same is not inconsistent with this Act. (*p*) 40 V. c. 18, s. 21 (7).

Rev. Stat. c. 75, to apply.

In cases other than those under Section 51.

72. In all cases of prosecutions for any offence against any of the provisions of this Act, other than those for which any

Appeal from convictions other than

(*n*) It is now enacted that when costs are directed to be paid on an appeal under this Act by either party to the other, no greater costs shall be taxable by or against either party as between party and party, than the sum of $10, and the actual and necessary disbursements in procuring the attendance of witnesses and the fees to which the Clerk of the Peace shall be lawfully entitled. See sec. 8 of 41 Vic. cap. 14, O.

(*o*) It is presumed that performance of the duties imposed by this part of the section, could, if necessary, after proper demand and refusal, be enforced by writ of mandamus.

(*p*) Where the appellant relies upon an objection on the evidence not raised before the convicting Justice or Justices, effect will not be given to it. See *Purkis* v. *Huxtable*, 1 E. & E. 780.

for those under s. 51.

penalty or punishment is prescribed by the said fifty-first section, an appeal shall lie from any order or conviction, in the same manner and to the same extent as is provided in and by *The Act respecting Summary Convictions before Justices of the Peace.* (*q*) 37 V. c. 32, s. 46; 40 V. c. 18, s. 24.

Rev. Stat. c 74.

PROCEDURE IN CASES WHERE PREVIOUS CONVICTION CHARGED.

Proceedings in cases where a previous conviction charged.

73. The proceedings upon any information for committing an offence against any of the provisions of this Act, in case of a previous conviction or convictions being charged, (*r*) shall be as follows:

1. The Justices or Police Magistrate shall in the first instance inquire concerning such subsequent offence only, and if the accused be found guilty thereof, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and if he answers that he was so previously convicted, he may be sentenced accordingly; (*s*) but if he denies that he was so previously convicted, or stands mute of malice, or does not answer directly to such question the Justices or Police Magistrate shall then inquire concerning such previous conviction or convictions.

Number of previous convictions, how proved.

2. The number of such previous convictions shall be provable by the production of a certificate under the hand of the convicting Justices or Police Magistrate, or of the Clerk of the Peace, without proof of his signature or official character, or by other satisfactory evidence. (*t*)

Previous convictions need not be charged.

3. A conviction may in any case be had as for a first offence notwithstanding that there may have been a prior

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(*q*) This section extends to all convictions under the Act, except for selling spirituous or fermented liquors without a license. See note *k* to sec. 71. The advantage of appeals under this section is, that a jury may be had for the trial of the appeals. See note *l* to sec. 71.

(*r*) "Being charged," &c. See nete *d* to sec. 51.

(*s*) This is analogous to the procedure made necessary in the case of crime, under sec. 26 of the Criminal Procedure Act of 1869.

(*t*) There must be legal proof of the former conviction or convictions. *Cross* v. *Watts*, 13 C. B. N. S. 239; and it would seem that in addition there must be proof of the identity of the person convicted, with the person previously convicted. See *Regina* v. *Crofts*, 9 C. & P. 219.

conviction or convictions for the same (*u*) or any other offence. (*v*)

Offences on same day.

4. Convictions for several offences may be made under this Act, although such offences may have been committed on the same day: but the increased penalty or punishment hereinbefore imposed shall only be recoverable in the case of offences committed on different days; and after information laid for a first offence. (*w*)

In case of a second or subsequent conviction becoming irregular by quashing of a first or previous conviction,

Justices or Police Magistrate may amend;

And amended conviction valid.

5. In the event of any conviction for any second or subsequent offence becoming void or defective, after the making thereof, by reason of any previous conviction being set aside, quashed, or otherwise rendered void, the Justices or Police Magistrate by whom such second or subsequent conviction was made, may by warrant under his or their hand summon the person convicted to appear at a time and place to be named in such warrant, and may thereupon, upon proof of the due service of such warrant, if such person fails to appear, or on his appearance, amend such second or subsequent conviction, and adjudged such penalty or punishment as might have been adjudge had such previous conviction never existed, and such amended conviction shall thereupon be held valid to all intents and purposes, as if it had been made in the first instance. (*x*)

(*u*) The conviction may, *in any case*, be, in the discretion of the Justice or Justices, for a first offence, notwithstanding that there may have been a prior conviction or convictions for the same or any other offence. This would appear to be so, although prior convictions may be alleged and proved. Unless the prior conviction or convictions be both alleged and proved, the Court is not bound in any case to take notice of them. See *Regina* v. *Summers*, 11 Cox C. C. 248; *Regina* v. *Willis*, 12 Cox C. C. 192.

(*v*) *Or any other offence.* The general rule when increased punishment is allowed for a subsequent offence is, that it and the former one shall be of the same character. See *Regina* v. *Garland*, 11 Cox C. C. 224. But see note *d* to sec. 51.

(*w*) Although there may be several convictions for several offences committed on one and the same day, these are not to be used for the purpose of the increased penalty or punishment under the Act, although the offences have been committed in different years, it would seem that they may be used for such a purpose. See note *o* to sec. 62.

(*x*) This provision is become necessary in consequence of prior convictions having been quashed or otherwise rendered void. The only prior convictions which are allowed to be taken into consideration for the purpose of the section, are those which, at the time of the

Second offence; meaning of.

6. In case any person who has been convicted of a contravention of any provision of any of the sections of this Act, numbered thirty-nine, forty, forty-one, forty-two or forty-four, or any section for the contravention of which a penalty or punishment is prescribed by section fifty-one, is afterwards convicted of an offence against any provision of any of the said sections, such conviction shall be deemed a conviction for a second offence, within the meaning of section fifty-one, and may be dealt with and punished accordingly, although the two convictions may have been under different sections; and in case any such person is afterwards again convicted of a contravention of any provision of any of the said sections, whether similar or not to the previous offences, such conviction shall in like manner be deemed a conviction for a third offence, within the meaning of section fifty-one, and may be dealt with and punished accordingly. (*y*) 40 V. c. 18 s. 16.

Third offence.

FORM OF INFORMATIONS AND OTHER PROCEEDING—AMENDMENTS.

Description in informations.

74. In describing offences respecting the sale or other disposal of liquor, or the keeping, or the consumption of liquor in any information, summons, conviction, warrant, or proceeding under this Act, it shall be sufficient to state the sale, disposal, keeping, or consumption of liquor simply, without stating the name or kind of such liquor, or the price thereof, or any person to whom it was sold or disposed of, or by whom it was consumed; and it shall not be necessary to state the quantity of liquor so sold, disposed of, kept, or consumed, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. (*a*) 40 V. c. 18, s. 22.

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subsequent conviction, are existing convictions. See *Regina* v. *Ackroyd* 1 C. & K. 158: *Regina* v. *Stonnell*, 1 Cox C. C. 142.

(*y*) See note *r* to sub-s. 3 of this section.

(*a*) A conviction, stating that "the defendant was in the habit of selling spirituous liquors without license," without charging any specific offence and not shewing time nor place, is bad. *The King* v. *Ferguson*, 2 U. C. Q. B. O. S. 220. It is sufficient to state the offence as selling "a certain spirituous liquor called whisky." *Reid* v. *McWhinnie*, 27 U. C. Q. B. 289. It is not sufficient to state that the person convicted "did keep his bar room open and allow parties to frequent and remain in the same contrary to law." *Regina* v. *Hoggard*, 30 U. C. Q. B. 152. It is not sufficient to state that "he did sell wine,

75. The forms given in the Schedules to this Act, or any forms to the like effect, (*b*) shall be sufficient in the cases thereby respectively provided for, and where no forms are prescribed by the Schedules new ones may be framed according to those appended to The Act of Canada entitled "*An Act respecting the duties of Justices of the Peace out of Sessions in relation to Summary Convictions and Orders*," or *The Revised Statute respecting the Procedure on Appeals to the Judge of the County Court from Summary Convictions*, or any Acts amending the same respectively—such forms being made short and concise in the mode indicated in the Schedules to this Act which shall serve as guides so far as the particular case will allow. 40 V. c. 18, s. 36. Forms. 32-3 V. c. 31 (D). Rev. Stat. c. 75.

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beer, and other spirituous or fermented liquors, to wit, one glass of whiskey, contrary to law," for such a conviction does not shew whether the offence was for selling without a license or during prohibited hours. *Ib.* It is not necessary in a conviction for selling liquor without license to mention any statute under which the conviction took place. *Regina* v. *Strachan*, 20 U. C. C. P. 182. A conviction that one G. P. of, &c., innkeeper, after the hour of seven in the evening, &c., in and at his tavern, &c., being a place where intoxicating liquors are allowed to be sold by retail, did unlawfully sell, &c., one glass of beer, &c., was held bad, as the use of the word innkeeper was not enough to shew the defendant the occupier, &c. *Regina* v. *Pralee*, 23 U. C. C. P. 359. An information stated the defendant, "a licensed hotel keeper in the Town of Peterborough, did, on Sunday, 2nd July, 1876, at the hotel occupied by him in the said Town, dispose of intoxicating liquor to a certain person who had not a certificate therefor," &c., and the conviction thereunder stated that the defendant was convicted "upon the information and complaint of J. R., the above named complainant, and another, before the undersigned," &c., "for that the defendant," &c. (using the words in the information): Held, that it sufficiently appeared that the hotel was a licensed hotel, at which liquor was allowed to be sold; that a sale "at" the hotel was equivalent to a sale "therein or on the premises thereof;" and that it sufficiently appeared the defendant was the proprietor in occupancy, or tenant or agent in occupancy. *Regina* v. *Cavanagh*, 27 U. C. C. P. 537. After a first conviction has been returned to the Clerk of the Peace and filed, the Justices, if they think it defective, may make out and file a more formal conviction. *Wilson* v. *Gaybiel et al.*, 5 U. C. Q. B. 227. The Court refused to grant a mandamus to compel two Justices of the Peace to issue execution upon a conviction for selling spirituous liquors without a license, there being some doubt as to the sufficiency or legality of the conviction. *The Queen* v. *McConnell*, 6 U. C. Q. B. O. S. 629.

(*b*) It is in general safer to follow the statutory form where applicable than to attempt to improve upon it by substituting a different one. In some cases, however, it is necessary to alter the form to bring the description of the offence within the language of the statute on which it is grounded, for it is a rule that where a statute

Information may be amend'

76. At any time before judgment, the Justice, Justices, or Police Magistrate may amend or alter any information, and may substitute for the offence charged therein, any other offence against the provisions of this Act; (*c*) but if it appears that the defendant has been prejudiced by such amendment, (*d*) the said Justice, Justices, or Police Magistrate shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment. (*e*) 40 V. c. 18, s. 21 (2).

Conviction not void for certain defects;

77. (*f*) No conviction or warrant enforcing the same or other process or proceeding under this Act shall be held insufficient or invalid by reason of any variance between the information or conviction, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding that the same was made for an offence against some provision of this Act, within the jurisdiction of the Justice, Justices, or Police Magistrate who made or signed the same, and provided there is evidence

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gives a form of conviction not fully describing the offence, the conviction nevertheless must fully describe it. See *Nixon* v. *Nanney*, 1 Q. B. 747; see further, *Regina* v. *Jones*, 12 A. & E. 684; *Regina* v. *Recorder of King's Lynn*, 3 D. & L. 725.

(*c*) The section as above is by 41 Vict. cap. 14, sec. 9, substituted for sec. 76 of the original Act.

(*d*) It is the duty of a person summoned before Justices, if he have any objection to the form of the information, at once to state it, with a view, if necessary, to an amendment. See *Crawford* v. *Beattie*, 39 U. C. Q. B. 13, 29. Where a defendant appears and cross-examines witnesses on a charge over which the Justice has jurisdiction, whether there be an information or not for the charge, and whether required to be in writing or not, he thereby waives the information. *Stoness* v. *Lake*, 40 U. C. Q. B. 320, 327. Where, instead of doing so, he insists upon the want of an information or defective information, and does nothing to waive it, he is, subject to the power of amendment, entitled to the benefit of the objection. *Ib.* There can be no reason why the information, like an indictment, may not at any time before judgment be amended, and the section here annotated in express language gives the power. See *Regina* v. *Cavanagh*, 27 U. C. C. P. 537, 540.

(*e*) The only answer which can be made to a proposed amendment is the prejudice to the defendant, but this is at most a mere claim to the indulgence of the Court in the granting of an adjournment where the Justice is satisfied that the request is a reasonable one under the circumstances.

(*f*) This section is printed as amended by 41 Vic. cap. 14 sec. 10, Ont.

to prove such offence, (*g*) and it can be understood from such conviction, warrant, or process, or is otherwise made to appear that the appropriate penalty or punishment for such offence was intended to be adjudged. (*h*) 40 V. c. 18, s. 23 (1).

May be amended.

2. Upon any application to quash such conviction, or warrant enforcing the same, or other process or proceeding whether in appeal or upon *habeas corpus*, or by way of *certiorari* or otherwise, the Court or Judge to which such appeal is made or to which such application has been made upon *habeas corpus* or by way of *certiorari*, or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid, and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process, or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process, or proceeding shall be affirmed, or shall not be quashed (as the case may be), and such Court or Judge may, in any case, amend the same if necessary, (*i*) and any conviction, warrant, process or proceeding so affirmed or affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. 40 V. c. 18, s. 23 (2).

(*g*) The old rule was to the effect that evidence would not be allowed to supply omissions in the statement of the charge, "for the office of evidence is to *prove* not to *supply* a legal charge." See *Rex* v. *Wheatman*, Doug. 345; *Wiles* v. *Cooper*, 3 A. & E. 524; *Carpenter* v. *Mason*, 12 A. & E. 629. This rule is reversed in the section here annotated.

(*h*) Where the Justice has a discretionary power either to fine or imprison, it will be difficult to hold that the one form of punishment rather than one other is "*the* appropriate penalty or punishment," within the meaning of this section. *Regina* v. *Black*, 45 U. C. Q. B. 180. The amendment by striking out the words "hereby," and substituting the words, "or is otherwise made to appear," is apparently designed, if possible, to overcome some of the difficulties pointed out in *Regina* v. *Black*.

(*i*) The powers of amendment are wide and ought, if possible, to be exercised, *Regina* v. *Lake*, 7 U. C. P. R. 215, but there are cases in which the exercise of them is impossible. Thus, where there was a single joint conviction of two persons of having in their house of public entertainment unlawfully kept liquor for the purpose of sale, barter, and traffic therein without the license required, and adjudged for their offence to pay a fine of $40 and costs, an amendment was refused. *Regina* v. *Sutton et al.*, 42 U. C. Q. B. 220. Armour, J., in delivering the judgment of the Court, at p. 227, said: "I think the Police Magistrate, in making the conviction now before us, did

EVIDENCE, &c.

License, how proved.

78. In any prosecution or proceeding under this Act, in which proof is required respecting any license, a certificate under the hand of the License Inspector of the District shall be *prima facie* proof of the existence of a license, and of the person to whom the same was granted or transferred; (*k*) and the production of such certificate shall be sufficient *prima facie* evidence of the facts therein stated and of the authority of the License Inspector, without any proof of his appointment or signature. (*l*) 40 V. c. 18, s. 31.

How each regulation authenticated, etc.

79. Any resolution of the Board of License Commissioners passed under the fourth and fifth sections of this Act, shall be sufficiently authenticated by being signed by the Chairman of the Board which passed the same; and a copy of any such resolution written or printed, and certified to be a true copy by any member of such Board, shall be deemed authentic, and be received in evidence in any Court of Justice without

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precisely what he intended to do—convicted the defendants jointly and imposed the penalty upon them jointly, and I think that he was clearly wrong in doing either. Can we now amend by drawing up separate informations, if that is, as I think it was, necessary? Can we amend by drawing up two separate convictions, which I think clearly necessary? Can we divide the penalty and impose half upon each defendant, or can we impose the whole penalty upon each? Can we divide the costs and impose half on each, or can we impose the whole costs on each? if the latter, we would impose more costs than have been incurred; if the former, we would impose less than could have been incurred by separate convictions. Our powers of amendment are extremely wide, as pointed out in *Regina* v. *Lake*, 7 U. C. P. R. 215 and we ought to amend if it is possible to do so, but I do not think that they are wide enough to enable us to amend this conviction." Although a conviction was amended by Mr. Justice Wilson by striking out the words "hard labour," a similar amendment was refused in *Regina* v. *Lawrence*, 43 U. C. Q. B. 164, and *Regina* v. *Black*, *Ib.* 180.

(*k*) Where one is proceeded against for doing an act which he is not permitted to do unless he has some special license in his favour, it it for him to prove the license. *In re Barrett*, 28 U. C. Q. B. 559.

(*l*) The mode of proof authorized by this section is a certificate under the hand of the License Inspector of the district. It is not only *primâ facie* proof of the license but of the person to whom the same was granted, and of the facts therein stated, and of the authority of the License Inspector, and all this without any proof of his appointment or signature. A certificate not complying with the Statute, is the same as no certificate, and in such a case there must be proof of a license.

proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original regulation has been forged. (*m*) 37 V. c. 32, s. 49.

Places in which the sale of liquors is presumed.

80. Any house, shop, room, or other place in which are proved to exist a bar, counter, beer pumps, kegs, jars, decanters, tumblers, glasses, or any other appliances or preparations similar to those usually found in taverns and shops where spirituous or fermented liquors are accustomed to be sold or trafficked in, shall be deemed to be a place in which spirituous, fermented or other manufactured liquors are kept or had for the purpose of being sold, bartered or traded in, under the fortieth section of this Act, unless the contrary is proved by the defendant in any prosecution ; (*n*) and the occupant of such house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter or traffic therein. (*o*) 37 V. c. 32, s. 50 ; 39 V. c. 26, s. 22.

Presumption as to occupant.

(*m*) The section deals with two things, an original resolution and a copy. The former is sufficiently authenticated by being signed by the Chairman of the Board *which passed the same*—not the Chairman of the Board *for the time being*. The latter when certified to be a true copy by any member of such Board, is to be deemed authentic and received in evidence without proof of the signature. There is no declaration to the effect that a certified copy shall be received in evidence in the place of the original, although this was probably intended.

(*n*) Where crime is charged the well known rule is, that the accused is presumed to be innocent till proved guilty : and that where guilt is sought to be inferred from circumstances, the circumstances must not only be consistent with guilt but inconsistent with innocence ; and this has in England been applied to charges against persons for having violated some of the provisions of the Liquor License Acts. Thus where the evidence in support of an information against a beerhouse keeper for opening his shop on Sunday for the sale of beer was, that a little after midnight on Saturday the door of the house was closed and all appeared quiet ; that a little after two on the Sunday morning, persons looking through the window saw a man drinking with the publican in the house, and that afterwards he let the man out. The defendant was held entitled to an acquittal, inasmuch as it did not appear but that the man had been let into the house on the Saturday. *Tennant* v. *Cumberland*, 1 E. & E. 401. But under this section the existence in a house of the usual appliances of a bar-room, is to be deemed evidence that spiritous, fermented, or other manufactured liquors are kept or had for the purpose of sale so as to throw upon the accused the obligation of proving the contrary.

(*o*) The presumption mentioned in the preceeding part of the section is a rebuttable one. The charge is to be inferred "unless the

Evidence as to sale, etc., of liquor.

81. In proving the sale or disposal, gratuitous or otherwise, or consumption of liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or any liquor was actually consumed, if the Justices, Police Magistrate, or Court hearing the case is or are satisfied that a transaction in the nature of a sale or other disposal actually took place, or that any consumption of liquor was about to take place; (*p*) and proof of consumption or intended consumption of liquor on premises under license or in respect to which a license is required under this Act, by some person other than the occupier of said premises, shall be evidence that such liquor was sold to the person consuming or being about to consume or carrying away the same, as against the holder of the license or the occupant of the said premises. (*q*) 39 V. c. 26, s. 21.

Persons or lights in bar-rooms at prohibited times, when so proved, to be *prima facie* evidence of illegal sale of liquor.

82. In Cities, Towns and in incorporated Villages, in all cases where any person or persons other than members of the family or household of the keeper of a licensed tavern or saloon, is or are found frequenting or present, or gas or other light is seen burning in the bar-room of such tavern or saloon, where liquor is trafficked in, at any time during which the sale or other disposal of liquors is prohibited by any provision of this Act, (*r*) any such fact, when proved, shall be deemed and taken as *prima facie* evidence that a sale or other disposal of liquors by the keeper of such tavern or other place

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contrary is proved by the defendant." But the presumption in this part of the section, is made conclusive. The occupant is to be taken *conclusively* to be the person who has or keeps therein such liquors for sale, &c.

(*p*) There may be a sale although no money passed from the buyer to the purchaser, although in the case of the sale of spirituous or fermented liquors in small quantities, this is usually the case. If the Justice is satisfied upon the evidence that a transaction in the nature of a sale actually took place, he may convict. So if satisfied that there was any disposal or that the consumption of liquor was about to take place.

(*q*) Proof of the consumption or intended consumption of liquor is made evidence, but not conclusive evidence that that the liquor was sold to the person consuming or being about to consume it.

(*r*) A By-law providing that a bar-room should be closed and unoccupied except by members of the keeper's family or his employees, and should have no light therein except the natural light of day, during the time prohibited by the By-law for the sale of liquor, was held to be illegal. *Regina* v. *Belmont*, 35 U. C. Q. B. 298.

has taken place contrary to the provisions of the forty-third section of this Act; (*s*) and such keeper may thereupon be convicted of an offence against said section, and shall, upon conviction, be subject to the punishment prescribed in and by the fifty-second section of this Act. (*t*) 37 V. c. 32, s. 51.

Liability of occupants.

83. The occupant (*a*) of any house, shop, room or other place in which any sale, barter or traffic of spirituous, fermented or manufactured liquors, or any matter, act or thing in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishments prescribed in the fifty-first and fifty-second sections of this Act, as the case may be, notwithstanding such sale, barter or traffic be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant, (*b*) and proof of the fact of such sale, barter or traffic, or other act, matter or thing, by any person in the employ of such occupant, or who is suffered to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be conclusive evidence that such sale, barter or traffic, or other act, matter or thing, took place with the authority and by the direction of such occupant. (*c*) 37 V. c. 32, s. 52; 40 V. c. 18, s. 25.

In prosecutions for sale without license certain presumptions

84. In any prosecution under this Act for the sale or other disposal of liquor without the license required by law, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bar-

(*s*) See notes *n* and *o* to sec. 80 of this Act.

(*t*) See sec. 43 and notes thereto.

(*a*) When the husband, the occupant of the house in which the sale took place, was in gaol, it was held that his wife might be convicted of selling liquor without a license. *Regina* v. *Williams*, 42 U. C. Q. B. 462.

(*b*) The occupant of a shop is criminally liable for any unlawful act done therein in his absence, by clerk or assistant, as for example, the sale of liquor without a license by a female attendant. *Regina* v. *King*, 20 U. C. C. P. 246; see further, *Hugill* v. *Merrifield*, 12 U. C. C. P. 269.

(*c*) It may be that the sale &c., took place in spite of and contrary to the occupants command, and yet proof of the fact of the sale by any person in his employ or acting for him is, under this section, made *conclusive* evidence that the sale was by his authority. See *State* v. *Wentworth*, 65 Maine 234; *Brantigam* v. *White*, 73 Ill. 561; *Keedy* v. *Howe*, 72 Ill. 133; *Feantz* v. *Meadows*, *Ib.* 540; see further, note *n* to sec. 80 of this Act.

sufficient to put defendant on his defence, and convict him in default of rebuttal.

tered or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal and certain knowledge, but the Justices or Police Magistrate trying the case, so soon as it appear to them or him that the circumstances in evidence sufficiently establish the infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly. (*d*) 27-8 V. c. 18, s. 39 (1).

Proof of being licensed to rest on the defendant.

85. In any prosecution under this Act, whenever it appears that the defendant has done any act or been guilty of any omission in respect of which, were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed, and that he did the said act lawfully. (*e*)

Evidence of license.

2. The production of a license which on its face purports to be duly issued, and which, were it duly issued, would be a lawful authority to the defendant for such act or omission, shall be *prima facie* evidence that the defendant is so entitled, and in all cases the signature to and upon any instrument purporting to be a valid license shall *prima facie* be taken to be genuine. (*f*) 37 V. c. 32, s. 53.

Witnesses.

Witnesses summoned and not appearing, may be brought up by warrant.

86. In any prosecution under this Act the Justice, Justices, or Police Magistrate trying the case may summon any person represented to him or them as a material witness in relation thereto; (*g*) and if such person refuses or neglects to attend pursuant to such summons, the Justice, Justices, or Police Magistrate may issue his or their warrant for the arrest of such person; (*h*) and he shall thereupon be brought

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(*d*) See note *n* to sec. 80.

(*e*) See note *k* to sec. 78.

(*f*) A certificate under the hand and seal of the License Inspector of the District is, under sec. 78, made sufficient *prima facie* proof of the existence of a license in any prosecution or proceeding.

(*g*) The informer is a competent witness, *Regina* v. *Strachan*, 20 U. C. C. P. 182, but not the defendant, where the charge is preferred under sec. 43 of this Act. *Regina* v *Roddy*, 41 U. C. Q. B. 291.

(*h*) There is no power to issue the warrant in the first instance. The proposed witness must first be summoned. If, having been

before the Justice, Justices, or Police Magistrate, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the Common Gaol of the County, there to remain until he consents to be sworn or to affirm, and to answer. (*i*) 27-8 V. c. 18, s. 39 (2).

Production of books, etc., may be ordered.

87. Any person summoned as a party to, or as a witness in any proceeding under this Act, may, by the summons, be required to produce, at the time and place appointed for his attendance, all books and papers, accounts, deeds and other documents in his possession, custody or control, relating to any matter connected with the said proceeding, saving all just exceptions to such production : (*j*) and shall be liable to the same penalties for non-production of such books, papers or documents, as he would incur by refusal or neglect to attend, pursuant to such summons, or to be sworn or to answer any question touching the case. (*k*) 40 V. c. 18, s. 32.

CIVIL REMEDIES AGAINST TAVERN KEEPERS, ETC.

Liability of inkeepers or persons in their employ, etc., who give liquor to persons who become intoxicated and commit suicide or perish from cold, etc.

88. Wherever in any inn, tavern, or other house or place of public entertainment, or wherein refreshments are sold, or in any place wherein intoxicating liquor of any kind is sold, whether legally or illegally, any person has drunk to excess of intoxicating liquor of any kind, therein furnished to him, and while in a state of intoxication from such drinking has come to his death by suicide, or drowning, or perishing from cold, or other accident caused by such intoxication, (*l*) the

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summoned, he refuses or neglects to attend pursuant to the summons, the Justice, &c., may issue his warrant, &c.

(*i*) The committal should be "until he consents to be sworn or to affirm or answer," and not in the ordinary form, "until discharged by the course of law." See *In re John Anderson*, 11 U. C. C. P. 1.

(*j*) The summons, in order to be effective, must of course on the face of it require the production of books, papers, accounts, deeds, and other documents in the possession, custody, or control of the witness.

(*k*) See sec. 86 and notes.

(*l*) Where deceased, being intoxicated, fell off a bench in the bar-room and was placed upon the floor in a small room adjoining, with nothing under his head, and while there died from apoplexy or congestion of the brain, brought on, as the plaintiff alleged, by placing

keeper of such inn, tavern, or other house or place of public entertainment, or wherein refreshments are sold, or of such place wherein intoxicating liquor is sold, and also any other person or persons who for him or in his employ delivered to such person the liquor whereby such intoxication was caused, shall be jointly and severally liable to an action as for personal wrong, (if brought within three months thereafter, but not otherwise,) (*m*) by the legal representatives of the deceased person; and such legal representatives may bring either a joint and several action against them or a separate action against either or any of them, and by such action or actions may recover such sum not less than one hundred nor more than one thousand dollars, in the aggregate of any such actions, as may therein be assessed by the Court or jury as damages. (*n*) 27-8 V. c. 18, s. 40.

Form of action against them.

Persons who furnish the liquor liable

89. If a person in a state of intoxication assaults any person, or injures any property, the person who furnished him with

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him in an improper position when intoxicated, it was held that the death did not arise from "accident caused by the intoxication," within the meaning of sec. 40 of 27 & 28 Vict. cap. 18, from whence this section is taken. *Bobier* v. *Clay*, 27 U. C. Q. B. 438. Hagarty, J., in delivering judgment, said, at p. 443: "If the deceased, having previously been drinking to excess, took in this tavern a tumbler of brandy and drank it off at a draught, and thereby produced an immediate apoplectic seizure or asphyxia and fell back insensible, and died at once or in a few hours, could we hold that to be death from accident caused by intoxication? We think not." The learned Judge, in another part of the same judgment, at p. 442, said: "Had our statute declared that if any person shall die from excessive drinking, the person furnishing the liquor so drank shall be responsible in this action, the case would be wholly different. See further *Krach* v. *Heilman*, 53 Ind. 517; *Collier* v. *Early*, 54 Ind. 559.

(*m*) No additional time is apparently given to a legal representative to bring the action, owing to the death of the intestate, more than three months after the happening of the accident. See *Turner* v. *Brantford*, 13 U. C. C. P. 109. The statute begins to run from the occurrence of the accident, not from the death. *Miller* v. *North Fredericksburgh*, 25 U. C. Q. B. 31.

(*n*) Proof of pecuniary damage does not appear to be necessary for the maintenance of the action. It appears to be in the discretion of the Court or Jury to assess the damages as they see fit, looking to all the circumstances of the case, provided the amount assessed be not less than $100 or more than $1,000. This question, as appears from the head note, was raised but not decided in *Bobier* v. *Clay*, 27 U. C. Q. B. 438. It was afterwards decided as above laid down in *Henderson* v. *Campbell*, an unreported case in the Court of Queen's Bench, and in *Gleason* v. *Williams*, 27 U. C. C. P. 93, by the Court of Common Pleas, under a different but similar section of the Act.

the liquor which occasioned his intoxication,—if such furnishing was in violation of this Act, or otherwise in violation of law,—shall be jointly and severally liabile to the same action by the party injured as the person intoxicated may be liable to; (*o*) and such party injured, or his legal representatives, may bring either a joint and several action against the person intoxicated and the person or persons who furnished such liquor, or a separate action against either or any of them. (*p*) 27-8 V. c. 18, s. 41.

for assault committed by a person thereby intoxicated.

90. The husband, wife, parent, brother, sister, guardian or employer of any person who has the habit of drinking intoxicating liquor to excess—or the parent, brother or sister, of the husband or wife of such person—or the guardian of any child or children of such person—may give notice in writing, signed by him or her, (*o*) to any person licensed to sell, or who sells or is reputed to sell, intoxicating liquor of any kind, not to deliver intoxicating liquor to the person having such habit; (*p*) and if the person so notified, at any time within twelve months after such notice, either himself, or by his clerk, servant or agent, otherwise than in terms of a special requisition for medicinal purposes, signed by a licensed medical practitioner, delivers, or in or from any building,

Husband, wife, &c. may notify sellers of liquor not to furnish it to any person addicted to drinking.

Liability of persons so notified.

(*o*) In *McCurdy* v. *Swift*, 17 U. C. C. P. 126, decided under sec. 41 of 27 & 28 Vic. cap. 18, from which this section is taken—Wilson, J., at p. 138, said: "The Legislature must have considered, as many persons do, that the person who intoxicates, or suffers or encourages another to become intoxicated when it is the interest of such a person to make as large a sale of liquor as the other will or can be made to buy, is far more to blame than the unfortunate inebriate, and should therefore be answerable for the acts and conduct of the person who has been deprived of his senses and rendered a really dangerous being." In that case it was held, that the act may be construed as giving the civil remedy, at any rate, against the innkeeper, notwithstanding a felony may have been committed, which has not been prosecuted for although it does not, like an Imperial Act to which reference was made, contain any express provision to that effect. *Ib.*

(*p*) There is no reduction as to the amount of damages, such as contained in the previous section, See note *n* to that section.

(*o*) When there was no evidence to shew that the wife had in fact signed the notice served, but merely that she signed a notice, a copy of which was served, it was held under sec. 42 of 27 & 28 Vict. cap. 18, from which this section is taken, that there could be no recovery. *Gleason* v. *Williams*, 27 U. C. C. P. 93.

(*p*) There must not only be proof of the notice, but proof of the fact that the deceased, before and at the time of the giving of the

booth or place occupied by him, and wherein or wherefrom any such liquor is sold, suffers to be delivered, any such liquor to the person having such habit, the person giving the notice may, in an action as for personal wrong (if brought within six months thereafter, but not otherwise) (*q*) recover from the person notified such sum, not less than twenty nor more than five hundred dollars, as may be assessed by the Court or jury as damages; (*r*) and any married woman may bring such action in her own name, without authorization by her husband; and all damages recovered by her shall in that case go to her separate use; and in case of the death of either party, the action and right of action given by this section shall survive to or against his legal representatives. (*s*) 27-8 V. c. 18, s. 42.

Married woman may bring action for damages.

Money paid for liquor sold contrary to this Act may not be recovered.

91. Any payment or compensation for liquor furnished in contravention of this Act, or otherwise in violation of law, whether made in money or securities for money, or in labour or property of any kind, shall be held to have been received without any consideration, and against law, equity, and good conscience—and the amount of value thereof may be recovered from the receiver by the party who made the same; (*t*) and all sales, transfers, conveyances, liens and

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notice, was a person "who was in the habit of drinking intoxicating liquor to excess." This is the foundation of the case.

(*q*) See note *m* to sec. 88.

(*r*) No proof of pecuniary damage is necessary to the maintenance of the action. See note *n* to sec. 88.

(*s*) The action is not only for the benefit of the married woman, but of a parent, brother, sister, guardian, or employer.

(*t*) The ordinary rule is, that where a contract which a party seeks to enforce is forbidden, either by the statute or common law, no Court will lend its assistance to give effect to it, but this section goes further and entitles the person who paid for liquor sold contrary to law, notwithstanding payment, to recover from the receiver the amount paid, as having been received "without any consideration and against law, equity, and good conscience." It has been held that an agreement entered into for the purpose of enabling a person to sell beer and spirits without a license cannot be enforced. *Ritchie* v. *Smith*, 6 C. B. 462. When the vendor of spirituous liquors who sells them knowing that they are to be sold in violation of law, and who at the same time enters into an arrangement for aiding the purchaser so to sell them, cannot recover the price of the liquors from the purchaser. *Foster* v. *Thurston*, 11 Cush. (Mass.) 322; see also *White* v. *Buss*, 3 Cush. (Mass.) 448; *Spalding* v. *Preston*, 21 Vt. 9. But it would appear to be no defence that the vendor knew the goods were

securities of every kind, in whole or part, made, granted or given, for or on account of liquor so furnished in contravention of this Act, or otherwise in violation of law, shall be wholly null and void, save only as regards subsequent purchasers or assignees for value, without notice; and no action of any kind shall be maintained, either in whole or in part, for or on account of any liquor so furnished in contravention of this Act, or otherwise in violation of law. (*u*) 27-8 V. c. 18, s. 43.

Securities, &c., for payment to be void.

OFFICERS TO ENFORCE THE LAW, THEIR DUTIES AND POWERS.

92. The Lieutenant-Governor may appoint one or more Provincial officers whose duty it shall be to enforce the provisions of this Act, and especially for the prevention of traffic in liquor by unlicensed houses. (*a*) 37 V. c. 32, s. 54.

Lieutenant-Governor may appoint officers to enforce this Act.

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bought for an illegal purpose, provided it was not made a part of the contract that they were to be used for that purpose, and provided the vendor has done nothing to aid the unlawful design beyond the sale. *Tracy* v *Talmage*, 4 Kern. (N.Y.) 162; see further, *Kress* v. *Sligman*, 8 Barb. (N.Y.) 439; *Smith* v. *Godfrey*, 28 Post. (N.H.) 379. It has been held that a brewer who supplies beer to a public house on the credit of a person not licensed, can recover from such person the price of the beer. *Brooker* v. *Wood*, 5 B & Al. 1052, overruling *Meux* v. *Humphries*, 1 M. & M. 132; *S. C.* 3 C. & P. 79; see however *Langton*, v. *Hughes*, 1 M. & S. 593.

(*u*) It is by sec. 53, sub. 2 of Revised Statutes, Ont., cap. 47, declared that the Division Courts of the Province shall not have jurisdiction in any actions for spirituous or malt liquors drunk in a tavern or ale-house.

(*a*) It is a conspiracy for two or more persons, whether Government officers or detectives, to act in concert in unlawful measures to enforce a Liquor License Act, for example, by artifice inducing a man to sell liquor contrary to law. *Commonwealth ex rel. Shea et al.* v. *Leeds*, 8 U. C. C. L. J. N. S. 216. Paxson, J., of Philadelphia, in delivering judgment, said: "For the relators it was urged they were engaged in a lawful object, to wit, the enforcement of the Sunday Liquor Law. If this was in truth their object, it was certainly a lawful one and worthy of all commendation. Assuming such to have been their purpose, did they resort to any unlawful means to accomplish it? If they did, and if they acted in concert in the pursuance of a common design, there was a conspiracy. *It was never intended that a man should violate the law in order to vindicate the law.* I am of opinion that these relators, in their anxiety to procure evidence against Mr. Barthoulott, went a step too far. He was not engaged in any violation of law when they entered his place. They urged and persuaded him to furnish the beer. In fact they resorted to artifice and deception for that purpose. If any crime was committed, they were present

Appointment of officers by License Commissioners.

93. The License Commissioners, with the sanction of the Lieutenant-Governor in Council, may appoint one or more officers to enforce the provisions of this Act, and especially for the prevention of traffic in liquor by unlicensed houses, and shall fix the security to be given by such officers for the efficient discharge of the duties of their office, (*b*) and every such officer or officers shall, within the License District for which he is appointed, possess and discharge all the powers and duties of Provincial officers appointed under the next preceding section. (*c*) 39 V. c. 26, s. 23.

Officers within this Act.

94. Every officer so appointed under this Act, (*d*) every policeman, or constable, or Inspector of Licenses, shall be deemed to be within the provisions of this Act; and when any information is given to any such officer, policeman, constable or Inspector that there is cause to suspect that some person is violating any of the provisions of this Act, it shall be his duty to make diligent enquiry into the truth of such information, and enter complaint of such violation before the proper Court, without communicating the name of the person giving such information; (*e*) and it shall be the duty of the Crown Attorney, within the County in which the offence

Duties of officers and County Attorneys on receiving information of intringement of this Act.

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aiding and abetting. It was urged in extenuation of the conduct of the relators that their action was entirely in accordance with the practice of the detective service, not only of the police, but in other departments of the Government. This is not my understanding of the detective service. I have never known an instance of detectives deliberately procuring a man to commit a crime in order to lodge information against him. Such informers have been infamous from the time of Titus Oates."

(*b*) A Municipal By-law, passed on 21st July, 1874, appointed an officer under 36 Vict. cap. 34, sec. 8, Ont., to enforce the provisions of the said Act and the Acts therein recited, and the by-laws of the Corporation respecting shop and tavern licenses. This By-law was passed to fill a vacancy in the office caused by the resignation of the person appointed under a By-law passed in February previous. The 36 Vict. cap. 34, had been repealed, when the By-law was passed, by 37 Vict. cap. 32, which gave power to fill a vacancy in such office. Held, that the By-law was not invalid. *In re Slavin and Orillia*, 36 U. C. Q. B. 159.

(*c*) See note *a* so sec. 92.

(*d*) Whether by the Government, under sec. 92, or the License Commissioners under sec. 93.

(*e*) It is not the duty of the officer to enter complaint simply upon information that there is cause to suspect some person of violating the provisions of the Act. Such information may be given in spite and be without actual foundation of any kind. Before making the

is committed, to attend to the prosecution of all cases committed to him by an Inspector or officer appointed under this Act by the Lieutenant-Governor. (*f*) 37 V. c. 32, s. 55.

Right of search granted.

95. Any officer, policeman or constable, or Inspector of Licenses may, for the purpose of preventing or detecting the violation of any of the provisions of this Act which it is his duty to enforce, (*g*) at any time enter into any and every part of any inn, tavern, or other house or place of public entertainment, shop, warehouse or other place wherein refreshments or liquors are sold, or reputed to be sold, whether under license or not, and may make searches in every part thereof, and of the premises connected therewith, as he may think necessary for the purpose aforesaid. (*h*) 40 V. c. 78, s. 26.

Penalty for refusing to admit officer.

2. Every person being therein, or having charge thereof, who refuses or fails to admit such officer, policeman, or constable, or Inspector demanding to enter in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such officer, policeman, constable, or Inspector, or any such searches as aforesaid,

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charge it is the duty of the officer "to make diligent enquiry into truth of such information." See Sch. D, No. 19, for form of conviction.

(*f*) The duty of the Crown Attorney to act is only in cases committed to him "by an Inspector or officer appointed under this Act by the Lieutenant-Governor." It is not his duty to act when the officer who commits the case to him is only an officer appointed by the License Commissioners, nor where the person committing the case to him is simply a Policeman, Constable or Amateur Detective.

(*g*) The right of search is granted not only to Policeman, Constables and Inspectors of Licenses, but "to any officer" which would apparently include as well officers appointed by the License Commissioners under sec. 93, as officers appointed by the Lieutenant-Governor under sec. 92.

(*h*) The time to enter is "at any time," whether on Sunday or any other day, and at any hour of any night or any day. The place upon which the entry may be made is, "into any and every part of any inn or tavern or *other* house or place of public entertainment, shop, warehouse, or *other* place wherein refreshments or liquors are sold or *reputed* to be sold, whether under license or not." The right is, "to make searches in every part thereof, and of the premises connected therewith, as *he* may think necessary for the purpose aforesaid." All this may be done without any warrant or other authority than the holding of the office indicated, but there is no power to enter by force. See notes *j* and *k* to sec. 96. *Regina* v. *Tott*, 4 L. T. N. S. 306.

shall be liable to the penalties and punishments prescribed by section fifty-one of this Act. (*i*) 40 V. c. 18, s. 26.

Search warrant may be granted.

96. Any Justice of the Peace or Police Magistrate, if satisfied by information on the oath of any such officer, policeman, constable or Inspector, that there is reasonable ground for belief that any spirituous or fermented liquor is being kept for sale or disposal contrary to the provisions of this Act in any unlicensed house or place within the jurisdiction of the Justice or Magistrate, may, in his discretion, grant a warrant under his hand, by virtue whereof it shall be lawful for the person named in such warrant at any time or times within ten days from the date thereof to enter, and, if need be, by force, the place named in the warrant, and every part thereof, or of the premises connected therewith, and examine the same and search for liquor therein ; (*j*) and for this purpose may, with such assistance as he deems expedient, break open any door, lock, or fastening of such premises, or any part thereof, or of any closet, cupboard, box or other article likely to contain any such liquor ; (*k*) and in the event of any liquor being so found unlawfully kept on the said premises, the occupant thereof shall, until the contrary is proved, be deemed to have kept such liquor for the purpose of sale contrary to the provisions of the fortieth section of this Act. (*l*) 40 V. c. 18, s. 26.

Unlawful keeping of liquor to be evidence of illegal dealings therein.

Duty of constables and others to prosecute offenders.

97. It shall be the duty of every officer, policeman, constable, or Inspector of Licenses in each Municipality, to see that the several provisions of this Act are duly observed, and to proceed by information and otherwise prosecute for the punishment of any offence against the provisions of this Act; and in case of wilful neglect or default in so doing in any case, such officer, policeman, constable or Inspector shall

Penalty for neglect.

(*i*) See sec. 51 and notes thereto. See sch. D. No. 18, for form of conviction.

(*j*) The special warrant here authorized is for entry, "at any time or times within ten days from the date thereof." This would exclude the day of the date. A person having this special entry may, if needed, enter by force. This is a power not conferred under the preceding section.

(*k*) The nature of the force authorized is here indicated, as the breaking open any door, lock, or fastening, or any closet, cupboard, box or other article likely to contain liquor.

(*l*) See note *n* to sec. 80.

incur a penalty of ten dollars for each and every such neglect and default. (*m*) 37 V. c. 32, s. 57.

UNORGANIZED DISTRICTS.

This Act to apply to the territorial and unorganized districts.

98. Subject to the provisions as hereinafter contained, (*n*) the preceding provisions of this Act shall apply to all portions of Judicial, Territorial and other unorganized Districts of this Province; and in any prosecution or proceeding thereunder the Stipendiary Magistrate in any such District shall possess and exercise all the powers and jurisdictions of the Police Magistrate, or other convicting Justice or Justices of the Peace, under this Act; and the Lock-up of such District shall be deemed to be a Gaol for the purpose of imprisonment under this Act; (*o*) and any money penalty imposed and recovered shall, where the Inspector is not the prosecutor, or the offence was not committed within any Municipality, be paid to the Treasurer of Ontario; and the provisions of this Act, applicable to Township Municipalities, shall apply to all Municipalities organized under *The Act respecting the establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing and Thunder Bay.* 37 V. c. 32, s. 59; 39 V. c. 26, s. 25 *last clause.*

Rev. Stat. c. 175.

License districts in Judicial or Territorial Districts.

99. The Lieutenant-Governor in Council may declare any portion of a Judicial or Territorial District which is not within the jurisdiction of a municipal County, a License District, for the purposes of this Act, and the Lieutenant-Governor may appoint therefor a Board of License Commissioners and one or more Inspectors. (*p*) 40 V. c. 18, ss. 1 & 34 (1).

Appeal from Stipendiary Magistrates.

100. In any License District so formed an appeal shall lie from any decision of the Stipendiary Magistrate in any prosecution or proceeding under this Act, to the Judge of such

(*m*) The penalty only arises in case of "*wilful* neglect or default." The penalty is $10 "for each and every *such* neglect." See Sch. D. No. 19, for form of conviction.

(*n*) See secs. 99, to 104.

(*o*) Committing Magistrates have nothing whatever to do with the condition of lock ups. * * * The laws of health, humanity and decency alike demand that such buildings as those mentioned should be fit for the purpose for which they are designed. See *per* Harrison, C. J., in *Crawford* v. *Beattie*, 39 U. C. Q. B. 13, 31.

(*p*) See secs. 3, 4, 5 and 6 of this Act.

District, or to any County Judge to whom an appeal lies in other matters in such District. (*q*) 40 V. c. 18, s. 34 (2).

Appointment of Commissioners, &c., in Districts not within the jurisdiction of municipal councils or a license district.

101. In such portions of Judicial or Territorial Districts as are not within the jurisdiction of any municipal County, and have not been included in any License District, under the provisions of section ninety-nine, the Lieutenant-Governor may appoint one or more persons as Commissioners and Inspectors respectively for the granting of such number of tavern and shop licenses to such persons, for such places and periods, and upon such conditions as may be prescribed by Order in Council, such licenses to take effect from the first day of June in each year. (*r*)

Duties payable.

2. For any such tavern or shop license, the duty payable shall be the sum of sixty dollars. (*s*) 39 V. c. 26, s. 25.

Issue of licenses for places not within license district.

102. The licenses to be issued for the sale of spirituous, fermanted or other manufactured liquors, in any place not within a License District, may be issued on such conditions and under such regulations as the Lieutenant-Governor in Council from time to time directs, subject to the provisions of this Act; and any bond which the Lieutenant-Governor in Council may direct to be taken from any person obtaining a license under this Act for any such place, conditioned for the observance of the law and of all regulations to be made under this section, shall be valid, and may be enforced according to its tenor. (*t*) 37 V. c. 32, s. 60.

Powers of municipal corporations.

103. Any Municipal Corporation within any Judicial or Territorial District shall have the like authority in respect of taverns and shops therein, and the licenses therefor, as the like Corporations in municipal Counties possess under the provisions of this Act. (*u*) 39 V. c. 26, s. 25.

MUNICIPALITIES UNDER THE TEMPERANCE ACTS.

27-8 V. c. 78, and Rev. Stat. c. 182, not affected by this Act.

104. Nothing in the foregoing provisions of this Act shall be construed to affect or impair any of the provisions of "*The Temperance Act of* 1864" of the late Province of

(*q*) See secs. 71, 72 and 73 of this Act.

(*r*) See sec. 7 *et seq.* of this Act.

(*s*) See sec. 31 and notes thereto.

(*t*) See sec. 22.

(*u*) See note *j* to sec. 43.

Canada, or "*The Temperance Act of Ontario*;" and no tavern or shop license shall be issued or take effect within any County, City, Town, incorporated Village, or Township in Ontario within which any by-law for prohibiting the sale of liquor under the said Acts is in force. (*a*) 39 V. c. 26, s. 27 (1).

Commissioners and Inspectors may be appointed where said Acts in force.

105. The Lieutenant-Governor in Council may, notwithstanding that any such by-law effects the whole of any County nominate a Board of Commissioners of the number, and for the period mentioned in the third section of this Act, and also an Inspector; and the said Board and Inspector shall have, discharge and exercise all such powers and duties respectively for preventing the sale, traffic or disposal of liquor contrary to the said Acts or this Act as they respectively have or should perform under this Act. (*b*) 39 V. c. 26, s. 27 (2).

Duties of in such case.

27-8 V. c. 18; Rev. Stat. c. 182.

106. The Board of Commissioners and the Inspector so appointed under this Act shall exercise and discharge all their respective powers and duties for the enforcement of the provisions of "*The Temperance Act of* 1864" and "*The Temperance Act of Ontario*," as well as of this Act, so far as the same apply, within the limits of any County, City, incor-

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(*a*) Richards, C. J., in delivering judgment in *Re Mottashed and Prince Edward*, 30 U. C. Q. B. 74, 80, intimated, although not necessary for the decision of the case, that most of the provisions of the Temperance Act of 1864, referring to the granting of licenses and punishing parties for violating the laws made on those subjects, were superseded, if not repealed, by the provisions of the Statute of Ontario, 32 Vict. cap. 32; but this was not the opinion at the time generally entertained upon the point, and is not the opinion of the Legislature as indicated in this section. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of The Temperance Act of 1864 were on the 10th of May last repealed by the Dominion Legislature, 41 Vict. cap. 16, "as to every Municipality within the limits of the late Province of Canada in which no By-law was passed and approved or adopted, and passed under the authority and for the enforcement of the said Act." The better opinion appears to be that laws as to prohibition appertain to the Dominion Legislature, and laws regulating the sale appertain to the Local Legislature. See *Regina* v. *Justices of Kings*, 2 Pugs. N. B. 535, and *per* Strong, J., in *Regina* v. *Taylor*, 36 U. C. Q. B. 183, 224.

(*b*) It is to be presumed that each of the Dominion and Local Legislatures has power to devize the machinery necessary for the enforcement of an Act which it has the power to pass, and if this be so, it would be well that no legislative body should concern itself about measures which exclusively belong to another legislative body. See *The Queen* v. *Prittie*, 42 U. C. Q. B. 612.

porated Village or Township in which any By-law under the said Acts is in force. (c) 39 V. c. 26, s. 27 (3).

Wholesale licenses.

107. A wholesale license to be obtained under and subject to the provisions of this Act, shall be necessary, in order to authorize or make lawful any sale of liquor in the quantities allowed under the provisions of "*The Temperance Act of* 1864" and "*The Temperance Act of Ontario.*" (*d*) 40 V. c. 18, s. 30 (2). *See also Rev. Stat.* c. 182, s. 13 (4).

27-8 V. c. 18; Rev. Stat. 182.

Prosecutions where Temperance Acts in force.

108. The sale of liquor without license in any Municipality where "*The Temperance Act of* 1864" and "*The Temperance Act of Ontario*" are in force shall nevertheless be a contravention of sections thirty-nine and forty of this Act, and the several provisions of this Act shall have full force and effect in every such Municipality except in so far as such provisions relate to granting licenses for the sale of liquor by retail. (*e*) 40 V. c. 18, s. 30 (1).

Expenses in such case.

109. (*f*) *All expenses incurred in carrying the provisions of the last five preceding sections into effect shall be borne and paid in the proportion of one-third by the Province out of the Consolidated Revenue Fund, and two-thirds by the Municipality within which any such by-law is in force, in cases where there is no License Fund under this Act; and the proportion of such expenses payable by the Municipality shall become due and payable in one month after the same has been audited by the Provincial Treasurer, and after the Board of License Commissioners has requested payment of the same by notice in writing to the Clerk of the Municipality.* 39 V. c. 26, s. 27 (4); 40 V. c. 18, s. 35.

(*c*) See note *b* to sec. 105.

(*d*) This would appear to be free from objection. The Legislature of Ontario has power to regulate the sale of spirituous and fermented liquors. See note *a* to sec. 104. The Temperance Act of 1864 allowed sales under certain circumstances in certain quantities specified. The Local Legislature may well step in and say we shall not permit any such sales in this Province, unless the person selling is licensed so to do. The quantities allowed to be sold by the Temperance Act of 1864 are such as to make necessary the obtaining of a wholesale license. See sec. 2, sub. 4, of this Act.

(*e*) This is objecionable. The Local Legislature has no power to make the sale of liquor contrary to the Temperance Act of 1864, an offence against sec. 39 and 40 of this Act, so as to subject the persons selling to the penalties of the Ontario Act, in lieu of the penalties imposed by the Temperance Act of 1864. *Regina* v. *Prattie*, 42 U. C. Q. B. 612, 623, 624.

(*f*) Repealed by sec. 5 of 41 Vic. c. 14, O.

SCHEDULE "A."

(*Section* 22.)

FORM OF BOND BY APPLICANT FOR A TAVERN LICENSE.

Know all men by these presents, that we, T. U., of , V. W., of and X. Y., of , are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and Successors, in the penal sum of four hundred dollars of good and lawful money of Canada—that is to say, the said T. U., in the sum of two hundred dollars, the said V. W., in the sum of one hundred dollars, and the said X. Y., in the sum of one hundred dollars of like good and lawful money, for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, firmly by these presents.

Whereas the above bounden T. U. is about to obtain a license to keep a tavern or house of entertainment in the of ; the condition of this obligation is such, that if the said T. U. pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereafter to be in force, relative to any tavern or house of public entertainment, and does, performs and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness thereof, we have signed these presents with our hands, and sealed them with our seals, this day of , A. D. one thousand eight hundred and

T. U. [L. S.]
V. W. [L. S.]
X. Y. [L. S.]

Signed, sealed and delivered in the presence of us.

39 V. c. 26, Schedule A.

SCHEDULE "B."

(*Section* 23.)

FORM OF BOND BY APPLICANT FOR A SHOP LICENSE.

Know all men by these presents, that we, T. U., of V. W. of , and X. Y., of , are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and Successors, in the penal sum of four hundred dollars of good and lawful money of Canada—that is to say, the said T. U. in the sum of two hundred dollars, the said V. W., in the sum of one hundred dollars, and the said X. Y. in the sum of one hundred dollars of like good and lawful money,

for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors and admistrators, firmly by these presents.

Whereas the above bounden T. U. is about to obtain a license to keep a shop wherein liquor may be sold by retail in the of ; the condition of this obligation is such, that if the said T. U. pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereafter to be in force, relative to any shop wherein liquor may be sold by retail, and does, performs and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness whereof, we have signed these presents with our hands, and sealed them with our seals, this day of , A. D. one thousand eight hundred and

T. U. [L.S.]
V.W. [L.S.]
X. Y. [L.S.]

Signed, sealed and delivered in the presence of us

39 V. c. 26, Sched. B.

SCHEDULE "C."

(*Section* 65 *and* 75.)

GENERAL FORM OF INFORMATION.

ONTARIO, County of York, To Wit: } THE INFORMATION of A. B. of the Township of York, in the County of York, License Inspector, laid before me C. D., Police Magistrate, in and for the City of Toronto, [*or* one of Her Majesty's Justices of the Peace, in and for the County of York], the day of in the year of our Lord, one thousand eight hundred and

The said informant says, he is informed and believes that X. Y. on the day of in the year of our Lord, one thousand eight hundred and , at the Township of York, in the County of York, unlawfully did sell liquor without the license therefor by law required [*or as the case may be.—See Forms in Schedule D.*]

A. B.

Laid and signed before me the day and year, and at the place first above mentioned.

C. D.
P. M. or J.P.

SCHEDULE "D."

(*Section* 75.)

FORMS FOR DESCRIBING OFFENCES.

1. *Neglecting to keep license exposed.* (Section 37.)

"That X. Y. having a license by wholesale [*or* a shop, *or* a tavern, *or* a vessel license] on at unlawfully and wilfully (*or* negligently) omitted to expose the said license in his warehouse [*or* shop, *or* in the bar-room of his tavern, *or* in the bar-saloon, *or* bar-cabin of his vessel," *as the case may be.*]

2. *Neglecting to exhibit notice of license.* (Section 38.)

"That X. Y. being the keeper of a tavern [*or* inn *or* house *or* place of public entertainment] in respect of which a tavern license has duly issued and is in force on at unlawfully did not exhibit over the door of such tavern [*or* inn, &c.,] in large letters the words, 'Licensed to sell wine, beer, and other spirituous or fermented liquors,' as required by '*The liquor License Act.*'"

3. *Sale without license.* (Section 39.)

"That X. Y., on the day of in the year of our Lord one thousand eight hundred and at in the County of unlawfully did sell liquor without the license therefor by law required."

4. *Keeping liquor without license.* (Section 40.)

"That X. Y. on at unlawfully did keep liquor for the purpose of sale, barter and traffic therein, without the license therefor by law required."

5. *Sale of liquor on licensed premises during prohibited hours.* (Sections 43 and 52.)

"That X. Y. on at in his premises [*or* on, *or* out of, *or* from, his premises] being a place where liquor may be sold, unlawfully did sell [*or* dispose of] liquor during the time prohibited by "*The Liquor License Act*" (*or* by by-law of the Municipal Council of *or* of the Licensed Commissioners for the District of *or as the case may be,*) for the sale of the same, without any requisition for medical purposes as required by said Act being produced by the vendee or his agent."

6. *Allowing liquor to be drunk on licensed premises during prohibited hours.* (Sections 43 and 52.)

"That X. Y. on at in his premises, being a place where liquor may be [*or* is] sold, by retail [*or* wholesale] unlawfully did allow [*or* permit] liquor to be drunk in such place during the time prohibited by "*The Liquor License Act*" for the sale

of the same by a person other than the occupant, or some member of his family, or a lodger in his house."

7. *Sale of less than three half-pints under shop license.* (Section 2 (3).)

"That X. Y. having a shop license on at unlawfully did sell liquor in less quantity than three half-pints."

8. *Sale under wholesale license in less than wholesale quantities.* (Sections 2 (4), and 41.)

"That X. Y. having a license to sell by wholesale on at unlawfully did sell liquor in less quantity than five gallons [*or*, than one dozen bottles of three half-pints each, *or* than two dozen bottles of three-fourths of a pint each]."

9. *Allowing liquor to be consumed in shop.* (Section 45.)

"That X. Y. having a shop license on at unlawfully did allow liquor sold by him (*or* in his possession), and for the sale of which a license is required, to be consumed within his shop [*or* within the building of which his shop forms part, *or* within a building which communicates by an entrance with his shop], by a purchaser of such liquor [*or*, by a person not usually resident within the building of which such shop forms a part.]."

10. *Allowing liquor to be consumed on premises under wholesale license.* (Section 46.)

"That X. Y. having a license by wholesale, on at unlawfully did allow liquor sold by him [*or* in his possession for sale], and for the sale of which such license is required, to be consumed within his warehouse [*or* shop, *or* within a building which forms part of (*or* is appurtenant to *or* which communicates by an entrance with a warehouse *or* shop, *or* premises) wherein an article to be sold (*or* disposed of) under such license, is sold by retail (*or* wherein there is kept a broken package of an article for sale under such license)]."

11. *Illegal sale by druggists.* (Section 42.)

"That X. Y. being a chemist [*or* druggist] on at did unlawfully sell liquor for other than strictly medicinal purposes [*or* sell liquor in packages of more than twelve ounces at one time without a certificate from any registered medical practitioner, *or* sell liquor without recording the same], as required by "*The Liquor License Act.*"

12. *Illegal sale under vessel license.* (Section 44.)

"That X. Y. being authorized to sell liquor on a vessel called the '*Spartan*,' on at unlawfully did sell [*or* dispose of] liquor to be consumed by a person other than a passenger on such vessel while in port [*or* unlawfully did allow liquor to be consumed

on such vessel during the time prohibited by "*The Liquor License Act*" for the sale of the same without any requisition for medical purposes, as required by said]."

13. *Keeping a disorderly house.* (Section 53.)

"That X. Y. being the keeper of a tavern [*or* ale-house, *or* beer-house, *or* house of public entertainment], situate in the City [*or* Town, *or* Village, *or* Township], of in the County of on in his said tavern [*or* house] unlawfully did sanction [*or* allow] gambling, [*or* riotous, *or* disorderly conduct] in his said tavern [*or* house]."

14. *Harbouring constables on duty.* (Section 54.)

"That X. Y. being licensed to sell liquor at on unlawfully and knowingly did harbour [*or* entertain *or* suffer to abide and remain on his premises] O. P., a constable belonging to a police force, during a part of the time appointed for his being on duty, and not for the purpose of quelling a disturbance or restoring order, or executing his duty."

15. *Compromising or compounding a prosecution.* (Section 55.)

That X. Y. having violated a provision of "*The Liquor License Act*," on at unlawfully did compromise [*or* compound, *or* settle, *or* offer, *or* attempt to compromise, compound *or* settle], the offence with A. B., with the view of preventing any complaint being made in respect thereof [*or* with the view of getting rid of *or* of stopping, *or* of having the complaint made in respect thereof dismissed, *as the case may be*.]"

16. *Being concerned in compromising a prosecution.* (Section 56.)

"That X. Y. on at unlawfully was concerned in [*or* a party to] a compromise [*or* a composition, *or* a settlement] of an offence committed by O. P., against a provision of "*The Liquor License Act.*"

17. *Tampering with a witness.* (Section 57.)

That X. Y. on a certain prosecution under "*The Liquor License Act*," on at unlawfully did tamper with O. P., a witness in such prosecution before [*or* after] he was summoned [*or* appeared] as such witness on a trial [*or* proceeding] under the said Act, [*or* unlawfully did induce, *or* attempt to induce O. P., a witness in such prosecution, to absent himself, *or* to swear falsely].

18. *Refusing to admit policeman.* (Section 95.)

"That X. Y. on the at being in (*or* having charge of) the premises of O. P., being a place where liquor is sold [*or* reputed to be sold], unlawfully did refuse [*or* fail] to admit [*or* did obstruct *or* attempt to obstruct] E. F., an officer demanding to enter in the execution of his duty [*or* did obstruct *or* attempt to

obstruct E. F., an officer making searches in said premises, and in the premises connected with such place]."

19. *Officer refusing to prosecute.* (Sections 94 and 97.)

"That X. Y. being a police officer [*or* constable, *or* Inspector of Licenses] in and for the Township of York, in the County of York, knowing that O. P. had on at committed an offence against a provision of '*The Liquor License Act*,' unlawfully and wilfully did and still does neglect to prosecute the said O. P., for his said offence."

SCHEDULE "E."

(*Section* 75.)

FORM OF INFORMATION FOR SECOND, THIRD, OR FOURTH OFFENCE.

ONTARIO, County of York, To Wit: } THE INFORMATION of A. B., of &c., License Inspector, laid before me C. D., Police Magistrate in and for the City of Toronto [*or* one of Her Majesty's Justices of the Peace in and for the County of York], the day of in the year of our Lord one thousand eight hundred and .

The said informant says he is informed and believes that X. Y. on at [*describe last offence*].

And further that the said X. Y. was previously, to wit: on the 15th day of December, A.D. 1876, at the City of Toronto, before C. D., Police Magistrate in and for the City of Toronto [*or* at the Township of York, in the County of York, before E. F. and G. H., two of Her Majesty's Justices of the Peace for the County of York], duly convicted of having on the 30th day of November, 1876, at the Village of Yorkville, in the County of York, unlawfully sold liquor without the license therefor required by law [*or as the case may be*].

And further, that the said X. Y. was previously, to wit: on the 28th day of November, A.D. 1876, at the Township of Vaughan, in the County of York, before, &c., (*as in preceding paragraph,*) again duly convicted of having, on the 10th day of November, A. D. 1876, at the Township of Etobicoke, in the County of York, having a shop license, unlawfully allowed liquor to be consumed within a building which communicates by an entrance with his shop, by a person not usually resident within the building of which such shop forms a part [*or as the case may be.*]

And further, that the said X. Y. was previously, to wit: on the 30th day of October, A.D. 1876, at the Village of Newmarket, in the County of York, before, &c., (*see above*) again duly convicted of having, on the 25th day of September, A.D. 1876, at the Village of Yorkville, in the County of York (being in charge of the premises of O. P., a place where liquor was reputed to be sold), unlawfully failed to admit E. F., an officer demanding to enter in the execution of his duty.

And the informant says the offence hereinbefore firstly charged against the said X. Y., is his fourth offence against "*The Liquor License Act.*" A. B.

Laid and Signed before me the day and year, and at the place first above mentioned.
C. D.,
J. P.

SCHEDULE "F."

SUMMONS TO WITNESS.

ONTARIO, County of York, To Wit: } To J. K., of the City of Toronto, in the County of York,

Whereas, information has been laid before me, C. D., one of Her Majesty's Justices of the Peace in and for the County of York, (*or* Police Magistrate for the City of Toronto,) that X. Y., being a druggist, on the 10th day of January, A. D. 187 , at the Township of Vaughan, in the County of York, unlawfully did sell liquor for other than strictly medicinal purposes, and it has been made to appear to me that you are likely to give material evidence on behalf of the prosecutor in this behalf.

These are to require you, under pain of imprisonment in the Common Gaol, personally to be and appear on Tuesday, the 16th day of January, A. D. 187 , at ten o'clock in the forenoon, at the Town Hall, in the Village of Richmond Hill, before me or such Justice or Justices of the Peace as may then be there, to testify what you shall know in the premises [and also to bring with you and there and then to produce all and every invoices, day books, cash books, or ledgers and receipts, promissory notes, or other security relating to the purchase or sale of liquor by the said X. Y., and all other books and papers, accounts, deeds, and other documents in your possession, custody or control, relating to any matter connected with the said prosecution.]

Given under my hand and seal this 12th day of January, A. D. 187 , at the Village of Richmond Hill, in the County of York.

C. D.,
J. P. [L.S.]

SCHEDULE "G."

(*Section 75.*)

FORM OF CONVICTION FOR FIRST OFFENCE.

ONTARIO, County of York, To Wit: } BE IT REMEMBERED that on the sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at the City of Toronto, in the said County of York, X. Y. is convicted before me,

C. D., Police Magistrate in and for the City of Toronto (*or* before us, E. F. and G. H., two of Her Majesty's Justices of the Peace, in and for the said County), for that he the said X. Y., on the second day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at the Township of York, in the said County, in his premises, being a place where liquor may be sold, unlawfully did sell liquor during the time prohibited by "*The Liquor License Act*" for the sale of the same, without any requisition for medicinal purposes as required by said Act, being produced by the vendee or his agent, (*or as the case may be*) A. B. being the informant, and I (*or we*) adjudge the said X. Y., for his said offence to forfeit and pay the sum of twenty dollars, to be paid and applied according to law, and also to pay to the said A. B. the sum of six dollars for his costs in this behalf, and if the said several sums be not paid forthwith, then* I (*or* we) order the said sums to be levied by distress and sale of the goods and chattels of the said X. Y., and in default of sufficient distress in that behalf* [*or where the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks*** *say* "inasmuch as it has now been made to appear to me (*or* us) that the issuing of a warrant of distress in this behalf would be ruinous to the said X. Y. and his family," *or* "that the said X. Y. has no goods or chattels whereon to levy the said several sums by distress,"] I (*or* we) adjudge the said X. Y. to be imprisoned in the Common Gaol for the County of York, at Toronto, in the said County, and there to be kept for the space of *fifteen days*, unless the said sums and the costs and charges of conveying the said X. Y. to the said Common Gaol, shall be sooner paid.

Given under my hand and seal (*or* our hands and seals) the day and year first above mentioned, at the City of Toronto, in the County aforesaid.

C. D. (LS.)
Police Magistrate,
or E.F.
J. P. (L.S.)
G. H.,
J. P. (L.S.)

SCHEDULE "H."

(*Section* 75.)

FORM OF CONVICTION FOR A THIRD OFFENCE.

ONTARIO, County of York, To wit: } BE IT REMEMBERED that on the twenty-second day of January, in the year of our Lord one thousand eight hundred and seventy-seven, in the City of Toronto, in the said County, X. Y. is convicted before the undersigned C. D., Police Magistrate in and for the City of Toronto, in the said County, [*or* C. D. and E. F., two of Her Majesty's Justices of the Peace in and for the said County], for that he, the said X. Y., on the thirtieth day of December, in the year of our Lord one thousand eight hundred and seventy-six, at the City of Toronto, [*or*

Township of Scarboro], in said County (*as the case may be*), having violated a provision of "*The Liquor License Act*," unlawfully did attempt to settle the offence with A. B., with the view of having the complaint made in respect thereof dismissed. And it appearing to me [*or* us] that the said X. Y. was previously, to wit: on the 15th day of December, A.D. 1876, at the City of Toronto, before, &c., duly convicted of having, on the 30th day of November, A. D. 1876, at the Village of Yorkville, unlawfully sold liquor without the license therefor by law required. And it also appearing to me [*or* us] that the said X. Y. was previously, to wit, on the 28th day of November, A.D., 1876, at the Township of Vaughan, before &c., (*see above*) again duly convicted of having, on the 2nd day of November, A.D. 1876, at the Village of Markham (being the keeper of a tavern, situate in the said Village of Markham), unlawfully allowed gambling in his said tavern (*or as the case may be*).

I [*or* we], adjudged the offence of said X. Y. hereinbefore firstly mentioned, to be his third offence against "*The Liquor License Act*," (A. B. being the informant) and I [*or* we], adjudged the said X. Y. for his said third offence to be imprisoned in the Common Gaol of the said County of York, at Toronto, in the said County of York, there to be kept at hard labour for the space of three calendar months (*or as the case may be*).

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at Toronto, in the County of York.

C. D. (L. S.)
or C. D. (L. S.)
E. L. (L. S.)

SCHEDULE "I."

(*Section* 75.)

WARRANT OF COMMITMENT FOR FIRST OFFENCE WHERE A PENALTY IS IMPOSED.

ONTARIO, County of York, To Wit: } To ALL or any of the Constables and other Peace Officers in the said County of York, and to the Keeper of the Common Gaol of the said County at Toronto, in the County of York.

Whereas, X. Y., late of the City of Toronto, in the said County, was on this day convicted before the undersigned, C. D., Police Magistrate in and for the City of Toronto [*or* C. D. and E. F., two of Her Majesty's Justices of the Peace in and for the City of Toronto *or* County of York, *as the case may be*], for that he, the said X. Y., on at unlawfully did sell liquor without the license therefor by law required (*state offence as in the conviction*), (A. B. being the informant), and it was thereby adjudged that the said X. Y., for his said offence, should forfeit and pay the sum of (*as in conviction*), and should pay to the said A. B. the sum of for his costs in that behalf.

And it was thereby further adjudged that if the said several sums should not be paid forthwith, the said X. Y. should be imprisoned in the Common Gaol of the said County at Toronto, in the said County of York, there to be kept at hard labour for the space of , unless the said several sums and the costs and charges of conveying the said X. Y. to to the said Common Gaol should be sooner paid.

And whereas the said X. Y. has not paid the said several sums, or any part thereof, although the time for payment thereof has elapsed.

[*If a distress warrant issued and was returned no goods, or not sufficient goods, say,* "And whereas, afterwards on the 15th day of January, A.D. 1877, I, the said Police Magistrate (*or* we, the said Justices), issued a warrant to the said Constables or Peace Officers, or any of them, to levy the said several sums of and by distress and sale of the goods and chattels of the said X. Y.;

"And whereas it appears to me (*or* us) as well, by the return of the said warrant of distress by the constable who had the execution of the same as otherwise, that the said constable has made diligent search for the goods and chattels of the said X. Y., but that no sufficient distress whereon to levy the said sums could be found."]

[*Or where the issuing of a distress warrant would be ruinous to the defendant and his family, or if it appears that he has no goods whereon to levy a distress, then, instead of the foregoing recitals of the issue and return of the distress warrant, &c., say:*

"And whereas it has been made to appear to me (*or* us), that the issuing of a warrant by distress in this behalf would be ruinous to the said X. Y. and his family," *or* "that the said X. Y. has no goods or chattels whereon to levy the said sums by distress" *as the case may be*].

These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said X. Y., and him safely convey to the Common Gaol aforesaid, at Toronto, in the County of York, and there deliver him to the said Keeper thereof, together with this precept.

And I (*or* we) do hereby command you the said Keeper of the said Common Gaol to receive the said X. Y. into your custody in the said Common Gaol, there to imprison him and keep him for the space of , unless the said several sums and all the costs and charges of the said distress, amounting to the sum of , and of the commitment and conveying of the said X. Y. to the said Common Gaol, amounting to the further sum of shall be sooner paid unto you the said Keeper, and for so doing this shall be your sufficient warrant.

Given under my hand and seal (*or* our hands and seals), this day of A.D. 187 , at Toronto, in the said County of York.

C. D. (L. S.)
or C. D. (L. S.)
E. F. (L. S.)

SCHEDULE "J."

(S. . 5.)

WARRANT OF COMMITMENT FOR SECOND (*or* THIRD) OFFENCE, WHERE PUNISHMENT IS BY IMPRISONMENT ONLY.

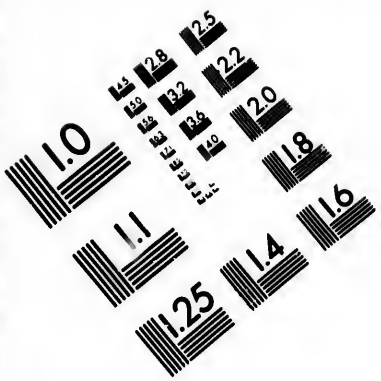
ONTARIO, County of York, To Wit: } To ALL or any of the Constables and other Peace Officers in the said County of York, and to the Keeper of the Common Gaol of the said County, at Toronto, in the County of York.

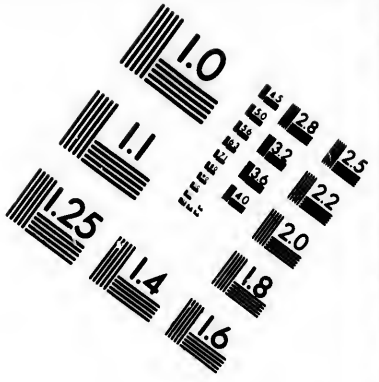
Whereas X. Y., late of the of in the said County, was on this day convicted before the undersigned C. D., &c., (*or* C. D. and E. F., &c., *as in preceding form*), for that he, the said X. Y. on at (*state offence with previous convictions as set forth in the conviction for the second or third offence, or as the case may be, and then proceed thus*): "And it was thereby adjudged that the offence of the said X. Y., hereinbefore firstly mentioned, was his second (*or* third) offence against "*The Liquor License Act*," (A. B. being the informant.) And it was thereby further adjudged that the said X. Y., for his said second (*or* third) offence, should be imprisoned in the Common Gaol of the said County of York, at Toronto, in the said County of York, and there to be kept at hard labour for the space of three calendar months.

These are therefore to command you the said Constables, or any one of you, to take the said X. Y., and him safely convey to the said Common Gaol at Toronto aforesaid, and there deliver him to the Keeper thereof, with this precept. And I (*or* we) do hereby command you, the said Keeper of the said Common Gaol, to receive the said X. Y. into your custody in the said Common Gaol, there to imprison him and to keep him at hard labour for the space of three calendar months.

Given under my hand and seal (*or* our hands and seals), this day of A.D. 1877, at Toronto, in the said County of York.

C. D. (L. S.)
or C. D. (L. S.)
E. F. (L. S.)





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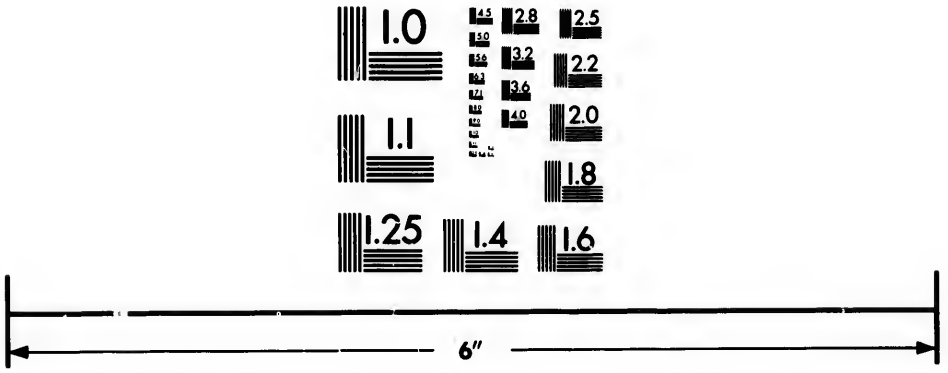

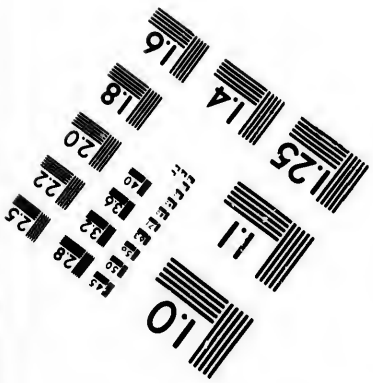

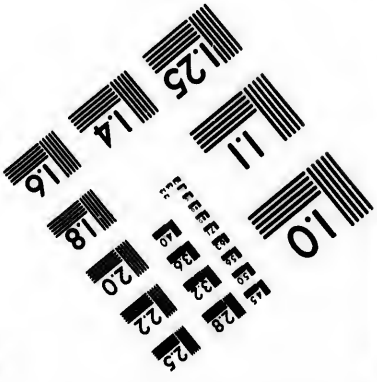

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(716) 872-4503

An Act to amend the License Act, and for other purposes.

[*Assented to 7th March*, 1878.]

41 VICT. CAP. 14.

HER MAJESTY, by and with the advice and consent of of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Repayment to brewers, &c., of duties, penalties, &c.

1. A sum not exceeding seven thousand dollars may be set apart out of the Consolidated Revenue of the Province for the re-payment to any brewer or distiller who has paid the duty on a wholesale license or licenses, the amount of such duty and the amount to which any Municipality was entitled upon the issue of such license or licenses, under and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, chaptered thirty-two and interest thereon, and the amount of any fine or fines or penalties imposed and paid, by reason of the neglect of any brewer or distiller to obtain the wholesale license required by section twenty-six of said Act and interest thereon, and on the several sums to be repaid under section three of this Act; and the Treasurer of the Province may, upon such payment by any brewer or distiller being made to appear to his satisfaction, repay the sum or sums so paid as aforesaid to the person or persons who paid the same, or to his or their executors, administrators or assigns. (*a*)

Province to be repaid what has been paid to municipalities.

2. Upon the distribution of the license fund thereafter, there shall be paid to the Province, out of the proportion of such license fund payable to any municipality, the amount which such municipality has been paid by any brewer or distiller upon the issue of a wholesale license under said Act, and the amount of any fine or fines received by any municipality and the interest, which may be repaid to such brewers or distillers. (*b*)

(*a*) See note *f* to sub. 4 of sec. 2 of "The Liquor License Act."

(*b*) See note *f* to sub. 4 of sec. 2 of "The Liquor License Act."

License boards may repay brewers, &c., in certain cases.

3. Where any brewer or distiller, under and by virtue of the Act passed in the thirty-ninth year of Her Majesty's reign, chaptered twenty-six, has paid into the license fund of any license district, or to the License Inspector the duty on any wholesale license or licenses, or has paid any fine or fines by reason of the neglect of such brewer or distiller to obtain such wholesale license, and such duty and fines shall not have been paid into the Consolidated Fund, such license Board may repay the same to the person or persons who paid the same, or to his or their executors, administrators or assigns, such payment being first approved by the Treasurer of the Province. (*c*)

This Act not to be acquiescence in Queen *versus* Severn.

4. Nothing herein contained shall be construed as an acquiescence by the Legislature, in the judgment heretofore given by the Supreme Court against the authority of this Legislature, to require brewers and distillers to take out a wholesale license in the terms and for the purposes mentioned in the said Act passed in the thirty-seventh year of Her Majesty's reign, chaptered thirty-two, and to pay the duty there... (*d*)

R. S. c. 181, s. 109, repealed.

5. Section one hundred and nine of chapter one hundred and eighty-one of the Revised Statutes of Ontario is hereby repealed. (*e*)

Expenses of provisions of R. S., caps. 181, 182, and of this Act, how to be borne.

6. All expenses of carrying such of the provisions of chapters one hundred and eighty-one and one hundred and eighty two of the Revised Statutes of Ontario as may be in force in municipalities where a by-law prohibiting the sale of intoxicating liquors under "Temperance Act of 1864," or the "Temperance Act of Ontario" is in force, and this Act into effect, shall, when the license fund is insufficient for that purpose, be borne and paid in the proportion of one-third by the Province out of the Consolidated Revenue Fund, and two-thirds by the county within which any by-law for prohibiting the sale of liquor under the Temperance Act of 1864, or under chapter one hundred and eighty two of the Revised Statutes of Ontario is in force; and where the by-law is that of a minor municipality, such minor municipality's share of

(*c*) See note *f* to sub. 4 of sec. 2 of "The Liquor License Act."

(*d*) See note *f* to sub. 4 of sec. 2 of "The Liquor License Act."

(*e*) The Act repealed made provision for carrying into effect the provisions of secs. 104, 105, 106, 107 and 108, some of which were clearly unconstitutional, and others of doubtful validity.

the entire expenses shall be paid in the same proportion by the Province and the minor municipality respectively, as when the by-law is that of a county. (*f*)

Proportion payable by the Province or Municipality, how and when to be paid.

(2) The proportion of such expenses payable under this section by a county, or by a minor municipality, or by the Province, shall be by them paid into the bank in which the license fund is kept to the credit of the license fund for the city or county or electoral district, as the case may be, and shall become due and payable within one month after an estimate of the amount of the expenses for the current license year shall be made by the Board of License Commissioners for the city, county, or electoral district, as the case may be, and shall be approved by the Provincial Treasurer, which approval shall be final and conclusive; and after a copy or duplicate of such estimate and approval together with a notice in writing by the Board of License Commissioners, requesting payment of the proportion payable by the municipality shall be served upon the clerk of the county, or minor municipality; and should any estimate prove insufficient for the payment of the expenses of the license year any deficiency may be provided for in the estimate for the succeeding year; and should any sums remain unexpended in any year, the same may be applied on account of the expenses of the succeeding year.

Payment of proportion, how enforced.

(3) Payment may be enforced against any county, or minor municipality by the Board of License Commissioners in any Court of law or equity of competent jurisdiction in the name and by the title of "The Board of License Commissioners for the city, county, or electoral district of ," (as the case may be); and it shall not be necessary to mention or include the names of the commissioners in the proceedings; and the said action or proceedings may be carried on in the name of such license board as fully and effectually as though such license board were incorporated under the aforesaid name or title. In the event of the death or resignation of any of the commissioners, or of the expiry of their commission and of the re-appointment of the same, or of the appointment of other commissioners, the proceedings, action, or suit at law or in equity, shall not cease, abate or determine, but shall proceed as though no change had been made in the commission or commissioners, and in the

(*f*) See note *b* to sec. 105 of "The Liquor License Act."

event of said license board being condemned in costs, the same may be payable out of the License Fund.

This section to apply to all expenses under 39 Vict. c. 26, and 40 Vict. c. 18, and R. S. c. 181.

(4) This section shall apply to all expenses heretofore incurred under the Acts passed in the thirty-ninth year of the reign of Her Majesty, chapter twenty-six and in the fortieth year of the reign of Her Majesty, chapter eighteen, or under the said Revised Statute, chapter one hundred and eighty-one, and the same may be recovered by the license board hereunder from the municipality liable by virtue of this Act to pay the same; and any notice requesting payment of its proportion heretofore given to any Municipality by any Board of License Commissioners, or by the members thereof shall be as effective as though given under this Act.

The case of a county by-law and the license district embracing a city or town separate where by-law not in force.

7. When the by-law is a county by-law, and the license district in addition to other portions of the county, embraces a city or town withdrawn from the county for municipal purposes wherein the by-law is not in force, the license fund of such city or town withdrawn from the county for municipal purposes shall be kept as a separate license fund for such city or town; and such city or town shall pay a just share of the expenses of such license district; and the same shall be determined by the Board of License Commissioners; and shall after approval by the Treasurer of the Province be paid out of the license fund for such city or town; and in determining such share of expenses the commissioners shall take into account with other circumstances, as far as may be, the proportion of the expenses incurred in said city or town. (*g*)

Costs on appeal from conviction under R. S. c. 181, or R. S. c. 182.

8. On an appeal to the County Judge or General Sessions from a conviction or order under the "Liquor License Act," or under chapter one hundred and eighty-two of the Revised Statutes of Ontario, when costs are directed to be paid by either party, no greater costs shall be taxable by or against either party, as between party and party than the sum of ten dollars, and the actual and necessary disbursements in procuring the attendance of witnesses and the fees to which the Clerk of the Peace shall be lawfully entitled. (*h*)

(*g*) See secs. 34, 35 and 36 of "The Liquor License Act," as to the License Fund.

(*h*) See secs. 71, 72 and 73 of "The Liquor License Act."

R. S. c. 181, s. 76, amended as to power of justice to amend informations.

9. The seventy-sixth section of the said "Liquor License Act" is hereby repealed and the following section substituted therefor: (*i*)

76. At any time before judgment, the justice, justices, or police magistrate may amend or alter any information, and may substitute for the offence charged therein, any other offence against the provisions of this Act; but if it appears that the defendant has been prejudiced by such amendment, the said justice, justices or police magistrate shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment.

R. S. c. 180, s. 77 amended.

10. The seventy-seventh section of said Act is hereby amended by inserting the words "or is otherwise made to appear" after the word "process," in the eleventh line of said section and by striking out the word "thereby" in the twelfth line of said sub-section. (*j*)

"Minor municipality," interpretation of.

11. The word "minor municipality," when mentioned herein shall be held to mean any municipality, other than that of a county or union of counties.

(*i*) Sec. 76 of "The Liquor License Act" is in this work at p. 834, printed as here amended and so annotated.

(*j*) Sec. 77 of "The Liquor License Act" is in this work at p. 834, 835, printed as here amended and so annotated.

An Act respecting the establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing and Thunder Bay.

R. S. O. Cap. 175.

Organization of Townships :
- Area and Population required, s. 1.
- Preliminary Meeting, ss. 2-5.
- Election of first Council, ss. 6-16.
- Appointment of Clerk, &c., s. 17.

Powers of Council :
- General powers, s. 18.
- As to assessment, ss. 19, 20.
  - Appeals therefrom, ss. 21-26.
  - Assessments after the first, s. 27.
  - Collection of taxes, ss. 28, 29.
  - Arrears of taxes, s. 30.
  - Sale of lands, s. 31.
- As to liquor licenses, s. 32.
- As to licensing of auctioneers, &c., s. 33.
- As to constables, s. 34.
- As to lock-up houses, s. 35.
- Other powers, s. 36.

Elections and Councils after the first :
- Voters' qualification, s. 37.
- Councillors' qualification, s. 38.
- Election how conducted, s. 39.
- Nomination meeting, ss. 40-42.
- Polling, s. 43.
- Tenure of office, s. 44.
- Controverted elections, s. 45.
- Vacancies in Council, s. 46.
- Conduct of business, s. 47.
- Reeve to be Justice of the Peace, s. 48.

Police villages :
- Formation of, ss 49, 50.
- Electors, s. 51.
- Trustees, s. 52.

Powers of Lieutenant-Governor as to annexation or union, s. 53.

Special provisions as to Algoma, ss. 54, 55.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Municipalities may be organized.

1. It shall be lawful for the inhabitants of any locality in the Districts of Muskoka, Parry Sound, Nipissing and Thunder Bay, having a population of not less than one hundred persons within any Township, or within an area of not more than ten thousand acres, to organize themselves into a

Township Municipality in respect of such Township or area. 36 V. c. 50, s. 31. *As to Algoma, see section* 54.

Stipendiary Magistrate, upon petition, to call a public meeting to form Municipality.

2. In order to constitute and establish a Municipality as above provided, it shall be lawful for the Stipendiary Magistrate of the District in which such locality is situate, upon the receipt of a petition in which the limits of the said proposed Municipality are defined, and signed by not less than thirty inhabitants of such locality, to call a meeting by public notice of said inhabitants, to consider the expediency of erecting a Municipality. 35 V. c. 37, s. 2.

Petitioners to make a deposit to meet expenses of the meeting and election.

3. Before the said Stipendiary Magistrate calls said meeting, it shall be the duty of those petitioning for said Municipality to deposit with him a sum sufficient to meet the expense of said meeting, as also of the election to be held, as hereinafter provided. 35 V. c. 37, s. 3.

Magistrate to appoint chairman.

4. The said Stipendiary Magistrate shall name some fit and competent person to preside at said meeting, who shall forthwith report the result of the same, with the votes given thereat, to said Stipendiary Magistrate, under oath, which may be administered by any Justice of the Peace. 35 V. c. 37, s. 4.

Magistrate to provide for first election.

5. Upon receiving the report of said meeting for the establishment of a Municipality, the Stipendiary Magistrate shall fix a time and place for holding the first election in said proposed Municipality, and shall, in the notice providing for said election, name the Returning Officer who shall preside at said election; but no such Municipality shall be established unless at such meeting at least thirty freeholders or householders have voted in favour thereof. 35 V. c. 37, s. 5.

Council, of what officers composed.

6. The officers to be elected at the said election shall be one Reeve and four Councillors, who shall have the same qualification as voters, and shall constitute the Council of the Township, the Reeve being the head thereof. 40 V. c. 8, s. 53 (1).

Qualification of voters.

7. The persons qualified to vote at said election shall be male British subjects of the full age of twenty-one years, being householders resident in the locality proposed to be organized into a Municipality. 40 V. c. 8, s. 53 (2).

Nomination.

8. At the time and place appointed by the Stipendiary Magistrate under the fifth section of this Act, the nomina-

tion of candidates shall be made in the same manner as is provided in respect to the nomination of candidates at municipal elections. 40 V. c. 8, s. 53 (3).

Election by acclamation.

9. In case no more persons are nominated than are required to be elected, the Returning Officer shall declare such persons to be elected. 40 V. c. 8, s. 53 (4).

Notice of time and place of holding poll.

10. In case a poll is required the Returning Officer shall adjourn the proceedings until the same day of the following week, and shall declare the place at which a poll will be opened in the locality, and shall forthwith post up in at least six of the most public and conspicuous places in the locality, a notice declaring that a poll will be held at such time and place. 40 V. c. 8, s. 53 (5).

Poll book and how filled up.

11. The Returning Officer shall, previous to the opening of the poll, procure a poll book, and he shall enter in such book, in separate columns, the names of the candidates proposed and seconded at the nomination, and shall, opposite to such columns write the names of the electors offering to vote at the election and shall, in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name. 40 V. c. 8, s. 53 (6).

Casting vote.

12. In case a casting vote is required to determine an election, the Returning Officer, whether otherwise qualified or not, shall give a casting vote for one or more of such candidates, so as to decide the election, and except in such case, the Returning Officer shall not vote at any such election. 40 V. c. 8, s. 53 (7).

Term of office of first member of Council.

13. The persons elected shall hold office until their successors are elected or appointed and sworn into office and hold their first meeting. 40 V. c. 8, s. 53 (8).

Oath of voters.

14. The following shall be the oath to be administered to voters at such election:

You swear (*or* solemnly affirm) that you are A. B.;

That you are a subject of Her Majesty by birth (*or* naturalization);

That you are of the full age of twenty-one years;

That you are a householder in the locality now proposed to be organized into a Municipality;

That you have not received anything nor has anything been promised you directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

That you have not directly or indirectly paid or promised anything to any person either to induce him to vote or refrain from voting at this election ;

So help you God.

40 V. c. 8, ss. 50 & 53 (9).

Declaration of election.

15. After the said election, the said Returning Officer shall return to the said Stipendiary Magistrate the result of the same, and the said Stipendiary Magistrate shall, as soon as may be convenient thereafter, by public notice, declare the names of the persons so elected, who shall forthwith enter upon the duties of their office; and the said Municipality shall from thenceforth be known as "The Corporation of the Municipality of , in the District of ;" and the said Reeve and Councillors shall hold and continue in office until their successors are elected, as hereinafter provided. 35 V. c. 37, s. 8.

Name of Municipality.

Tenure of office of Councillors.

First meeting of Council.

16. The first meeting of the Council shall be held at a time and place to be fixed by the Stipendiary Magistrate. 35 V. c. 37, s. 9.

Appointment and remuneration of Clerk, Treasurer and Collector.

17. The said Council shall at their first meeting, or as early as possible thereafter, appoint a Clerk, Treasurer and Collector, who shall hold office until removed or dismissed by said Council ; and the said Council shall also fix the remuneration to be paid said officers, by by-law to be passed for that purpose. 35 V. c. 37, s. 10.

POWERS OF COUNCILS.

Council to pass certain by-laws.

Rev. Stat. c. 174.

18. The said Council shall have power to pass by-laws for such purposes as are provided for regarding Townships under "*The Municipal Act*;" and the provisions of the said Act relating to Township Municipalities and their officers shall apply to the Municipalities erected under this Act, except where inconsistent with this Act. 35 V. c. 37, s. 18.

Assessors to be appointed to enter in assessment rolls,

Freeholders and householders.

19. The said Council shall, as early as convenient after their first meeting, appoint one or more Assessors, who shall enter upon a roll to be provided for that purpose :

(*a.*) The names of all the freeholders and householders in said Municipality, stating at the same time on the roll the amount of all the real and personal property owned by such persons respectively, and the actual value thereof, and whether the owners are resident or not :

(*b.*) The names of all persons liable to taxation for income, or who, though exempt from taxation, have required their names to be entered on the said roll in respect of such income, stating at the same time the amount of such income. Persons taxable for income.

(*c.*) The names of all farmers' sons entitled to be assessed under the provisions of "*The Assessment Act.*" Farmers' sons, Rev. Stat. c. 180, s. 20.

and the said Assessor or Assessors shall duly notify the person or persons so assessed by leaving a notice at his or her place of abode, or if a non-resident, by leaving the same at the nearest post-office, stating in such notice the particulars of said assessment. 35 V. c. 37, s. 11; 37 V. c. 3, s. 1; 40 V. c. 9. Notice of assessment.

20. The said roll shall be returned to the Clerk of the Municipality within such time as may be provided for by any by-law passed by said Council. 35 V. c. 37, s. 12. Rolls to be returned to Clerk.

21. The person or persons so assessed, if he complains of his assessment, shall, within one month after the time fixed for returning said roll, notify in writing the Clerk of his grounds of complaint. 35 V. c. 37, s. 13. Appeal against assessment.

22. The said Council shall, within two months after the time fixed for returning the roll, appoint a time and place for hearing said complaints, and shall, after hearing the parties complaining, as well as the Assessor or Assessors, and such evidence as may be adduced, alter or amend the roll accordingly. 35 V. c. 37, s. 14. Council to hear and determine appeals.

23. An appeal may be had from the decision of the said Council in that behalf to the Stipendiary Magistrate in the same manner as to the County Judge in other Municipalities, and the decision of the Stipendiary Magistrate shall be final. 37 V. c. 17, s. 1. Appeal from the Council to Stipendiary Magistrate.

24. Notice of appeal shall in all cases of appeal to the Stipendiary Magistrate be left with the Clerk of the Division Court of the Division in which such Municipality is situated, and copies thereof shall also be left with the Clerk of the Municipality; and such notice shall be so given and left within the time, and the said Clerks respectively shall, with regard to such appeal, perform all the duties and matters in the manner in that behalf required by law in the case of a like appeal to the County Judge as aforesaid. 37 V. c. 17, s. 2. Notice of appeal.

Powers of Stipendiary Magistrate.

25. The Stipendiary Magistrate shall have the like powers and shall perform the like duties in respect of such appeals as are performed by the County Judge in like case in other Municipalities. 37 V. c. 17, s. 3.

Revised roll to be the roll of the municipality.

26. The said roll when finally revised by the Council, or by the Stipendiary Magistrate in case of appeal, shall be taken and held as the roll of the Municipality, for all purposes, until a new roll has been made as hereinafter provided 35 V. c. 37, s. 15.

Council to fix time for making assessment.

27. The said Council shall by by-law fix the time for making the subsequent assessments in the municipality at periods of not less than one nor more than three years: and the year for the purposes of this Act shall be considered as commencing on the first day of January thereof. 35 V. c. 37, s. 16; 37 V. c. 17, s. 5.

Council to levy rates.

28. The Council may, in each year after the final revision of the roll, pass a by-law for levying a rate on all the real and personal property on said roll, of not more than two cents on the dollar, to provide for all the necessary expenses of said Municipality, and also such sum or sums as may be found expedient for the purposes mentioned in the eighteenth section of this Act. 35 V. c. 37, s. 17.

The Collector, his returns and powers. Rev. Stat. c. 180.

29. The said Council shall, by by-law, fix the time for the Collector making his return, and the said Collector shall have the same powers as are conferred on Collectors by "*The Assessment Act.*" 35 V. c. 37, s. 19.

Collection of taxes and sales for taxes.

30. Arrears of taxes due to any Municipality formed under this Act shall be collected and managed in the same way as like arrears due to Municipalities in Counties; and the Treasurer and Reeve of such Municipality shall perform the like duties in the collection and management of arrears of taxes, as in Counties are performed by the Treasurers and Wardens thereof; and the various provisions of law relating to sales of land for arrears of taxes, or to deeds given therefor, shall, unless otherwise provided by this Act, apply to the said Municipalities and to sales of land therein for arrears of taxes due thereon, and to deeds given therefor. 38 V. c. 13, s. 9.

Mode of sale for arrears of taxes.

31. No sale of any lands for taxes shall take place in any such Municipality formed as aforesaid, except during the months of July, August, September or October; and the

advertisement of the proposed sale, which under the one hundred and thirty-first and one hundred and thirty-second sections of "*The Assessment Act*" is required to be published in *The Ontario Gazette* and in a local newspaper, shall, when lands are to be sold in any such Municipality for arrears of taxes, be published also once a week, for at least four weeks, in such newspaper published in the City of Toronto as the Lieutenant-Governor in Council may designate. 38 V. c. 13, s 10.

Notices, time for.

Rev. Stat c. 18.O., ss. 131, 132.

32. The Council of any Municipality formed under this Act shall have the like authority in respect to taverns and shops within the Municipality and the licenses therefor as the Councils of Townships possess under "*The Liquor License Act.*" 35 V. c. 37, s. 26; 39 V. c. 26 ss. 1 & 25.

Council to regulate tavern licenses.

Rev. Stat. c. 181.

33. Except in the cases of Townships and Villages attached or belonging to a County for municipal purposes, the Councils of Townships and incorporated Villages in Provisional Judicial, Temporary Judicial, and Territorial Districts shall have power to pass by-laws for the purposes mentioned in sub-sections two and three of the four hundred and sixty-fifth section of "*The Municipal Act.*" 40 V. c. 8, s. 54.

Townships and Villages in Districts to have power to license auctioneers, etc.

Rev. Stat. c. 174. s. 465 (2) & (3).

34. The Council shall have the power to appoint one or more constables within the Municipality, whose duty it shall be to enforce and maintain law and order, and who shall perform all duties appertaining to constables; and the said Council shall have power, from time to time, to remove the same, for any misconduct in their office, and shall also regulate the fees to be paid said constables; but such appointment and tariff of fees shall be subject to the approval and ratification of the Stipendiary Magistrate of the said District. 35 V. c. 37, s. 28.

Appointment and removal of constables.

Fees to constables.

35. The said Council may establish and maintain a Lock-up House within the Municipality, and may establish and provide for the salary or fees to be paid the constable to be placed in charge of such Lock-up House: but the appointment of said constable shall be ratified by the Stipendiary Magistrate of the District; and the said Council shall have power to remove or suspend such constable for neglect of duty or other misconduct. 35 V. c. 37, s. 27.

Council may establish a lock-up house.

Appointment of a constable thereto.

36. In addition to the powers conferred upon said Township or Village Municipalities by this Act, the following sec-

Certain sections of Rev.

Stat. c. 174, to apply.

Secs. 237, 239, 240, 244, 246, 247, 254, 255, 256, 257, 258, 265, 266, 267, 268, 269, 270, 272, 282, 284, 319, 320, 321, 322, 323, 324, 328, 329, 337, 394, 399, 401, 402, 403, 454, 489, 491.

tions, with their sub-sections of "*The Municipal Act*," shall be applicable to the said Municipalities, so far as they can be adapted to the same, viz.: sections two hundred and thirty-seven, two hundred and thirty-nine, two hundred and forty, two hundred and forty-four, two hundred and forty-six, two hundred and forty-seven, two hundred and fifty-four, two hundred and fifty-five, two hundred and fifty-six, two hundred and fifty-seven, two hundred and fifty-eight, two hundred and sixty-five, two hundred and sixty-six, two hundred and sixty-seven, two hundred and sixty-eight, two hundred and sixty-nine, two hundred and seventy, two hundred and seventy-two, two hundred and eighty-two, two hundred and eighty-four, three hundred and nineteen, three hundred and twenty, three hundred and twenty-one, three hundred and twenty-two, three hundred and twenty-three, three hundred and twenty-four, three hundred and twenty-eight, three hundred and twenty-nine, three hundred and thirty-seven, three hundred and ninety-four, three hundred and ninety-nine, four hundred and one, four hundred and two, four hundred and three, four hundred and fifty-four, four hundred and eighty-nine, and four hundred and ninety-one. 35 V. c. 37, s. 33; 40 V. c. 8, s. 54.

ELECTIONS AFTER THE FIRST.

Who qualified to vote.

37. The persons qualified to vote at every election after the first shall be:

Real property.

1. Every male freeholder and resident householder whose name appears in the revised assessment roll upon which the voters list used at the election is based, for said Municipality, and who is of the full age of twenty-one years, and a naturalized or natural-born subject of Her Majesty;

Income.

2. Every male person who resides at the time of the election in the Municipality in which he tenders his vote, and has resided therein continuously since the completion of the last revised assessment roll of the Municipality, and derives an income from some trade, calling, office or profession of not less than four hundred dollars annually, and is assessed for such income in and by the revised assessment roll upon which the voters' list used at the election is based, of the Municipality, and possesses the qualifications required by law other than in respect of property. 35 V. c. 37, s. 21; 36 V. c. 48, s. 77; 37 V. c. 3, s. 1; 37 V. c. 17, s. 9.

3. Every person who is a farmer's son within the meaning of "*The Municipal Act*," and entitled as such to vote at municipal elections, under the provisions of said Act. *See* 40 V. c. 9. Farmers' sons. Rev. Stat. c. 174, s. 76.

38. The persons qualified to be elected as members of the Council in any Municipality after said first election, shall, in addition to the qualification required for voters, be assessed in the said assessment roll for at least two hundred dollars freehold or four hundred dollars leasehold. 35 V. c. 37, s. 22. Qualifications of Councillor.

39. All elections after the first shall be conducted in the same manner as is provided for municipal elections in Townships in Ontario, except so far only as is otherwise enacted by this Act. 37 V. c. 17, s. 7, *part*. Place and conduct of election.

40. A meeting of the electors shall take place for the nomination of candidates for the offices of Reeve and Councillors of the Municipalities formed in accordance with the provisions of this Act, on the last Monday in December, annually, at such place therein as may from time to time be fixed by by-law of the Council. 37 V. c. 17, s. 7, *part*. Nomination of Reeve and Councillors.

41. When the last Monday in December happens to be Christmas Day, the nomination of candidates for the office of Reeve and Councillors in each of the said Municipalities, shall take place on the preceding Friday, at the times and places, and in the manner prescribed by law. 39 V. c. 7, s. 20. Nomination day falling on Christmas Day.

42. The Clerk of the Municipality shall preside at the meeting for the nomination of candidates for the offices of Reeve and Councillors for such Municipality, and shall be the Returning Officer at all elections after the first election. 37 V. c. 17, s. 8. Clerk to preside at nomination. Returning officer.

43. The electors of every such Municipality shall elect annually, on the first Monday in January, the members of the Council of the Municipality, except such members as may have been elected by acclamation on the nomination day. 37 V. c. 17, s. 7, *part*. Polling day.

44. The persons so elected shall hold office until their successors are elected and sworn into office. 37 V. c. 17, s. 7, *part*.

45. The provisions of law for the trial of controverted elections, applicable to Councillors of Townships in Counties, Trial of controverted elections.

shall apply to the members of the Council of any Municipality formed under this Act. 38 V. c. 13, s. 12.

Vacancy in Council, how filled.

46. In case the seat of any member of the Council becomes vacant by death, resignation or a continued absence from meetings of the Council for a period of six months, it shall be the duty of the Council to direct a new election to be held for the purpose of supplying such vacancy. 35 V. c. 37, s. 23.

Who to preside at meetings of the Council.

47. The Reeve of the said Council shall preside at all meetings thereof, and, in the event of his absence, the Council shall choose from among their number, a person to preside, and, in such case, the said person so presiding shall have all the powers and exercise all the functions appertaining to the Reeve. 35 V. c. 37, s. 24.

Reeves to be Justices of the Peace.

48. The Reeves of the various Municipalities shall be *ex officio* Justices of the Peace, and shall have the like powers as are exercised by other Justices of the Peace in this Province. 35 V. c. 37, s. 25.

POLICE VILLAGES.

Erection of police villages.

49. On the petition of thirty of the inhabitants of a Village in any of the said Territorial Districts containing one hundred inhabitants at least, the Lieutenant-Governor in Council may, by proclamation, erect the same into a Police Village, and assign thereto such limits as seem expedient. 35 V. c. 37, s. 29.

Rev. Stat. c. 174, ss. 562-595, to apply to police villages.

50. The provisions of "*The Municipal Act*" relating to Police Villages or their officers, shall apply to the Police Villages erected under the preceding section, except where inconsistent with this Act. 35 V. c. 37, s. 30.

Qualification of electors, and elections in police villages.

51. The electors of any such Police Village shall be required to have the same qualification in respect to such Village as the electors of the said Township Municipalities; and the elections for Police Trustees shall be held on the same days and in the same manner as elections for Councillors. 35 V. c. 37, s. 31.

Qualification of police trustees.

52. Any elector of such Police Village resident therein may be elected as a Police Trustee, unless disqualified on account of holding an office inconsistent with the position of Police Trustee. 35 V. c. 37, s. 32.

Lieutenant-Governor in Council may annex to certain municipalities territory adjacent thereto, and form two into one.

53. The Lieutenant-Governor in Council may, by proclamation, annex to any Municipality formed as aforesaid, any territory lying adjacent thereto, and may, upon the application of two or more adjacent Municipalities, form the same either with or without additional area, into one Municipality.

2. In any such case the Lieutenant-Governor may fix the time at which the annexation or union shall take effect, and also the time when the first election shall take place, and the name by which the Municipality shall be called. 38 V. c. 13, s. 11.

ALGOMA.

Act to apply to Algoma.

54. Except so far as regards any territory comprised in the Municipality of Shuniah, this Act shall apply to the District of Algoma, except that the duties which by the preceding sections of this Act are required to be performed by the Stipendiary Magistrate shall, in that portion of Algoma which is not included within the District of Thunder Bay, be performed by the Judge of the District Court of Algoma. 38 V. c. 13, s. 13; 36 V. c. 50, s. 28.

Judge to decide disputes as to validity of by-laws, etc.

55. If any dispute at any time arises as to the validity of any by-law, or resolution, or order of any Municipality in the District of Algoma, the same shall be referred to the Judge of the District of Algoma, whose decision thereon shall be final, and the said Judge shall have the power of enforcing his decision, if necessary, by a writ or writs under his hand and seal, to be directed to the Sheriff of the said District, adapted to the purposes intended. 33 V. c. 25, s. 25.

An Act respecting the Registration of Municipal and certain other Debentures.

R. S. O. Cap. 176.

Short title, s. 1.
Returns to
Registrar, s. 2.
Provincial Secretary, s. 3.
Duties of
Provincial Secretary, s. 4.
Registrar, ss. 5, 6.
By-laws, how to be verified, s. 7.
Books to be open to inspection, s. 8.
Registrar's fees, s. 9.
Penalties, s. 12.
Sanction of Lieutenant-Governor to by-laws, s. 10.
Railway, etc., debentures not within the Act, s. 11.
Debenture not impeachable against *bona fide* holder for value without notice, s. 13.
Debentures good for face value, C. S. C. c. 84, s. 16.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Debentures Registration Act.*"

Certified copies of all by-laws under which debentures are intended to be issued, to be transmitted to the proper Registrar, etc.

2. It shall be the duty of the Clerk or person acting as such, of every Municipal or Provisional Municipal Corporation, and of the Clerk or Secretary, or person acting as such, of any other corporate body, within two weeks after the final passing of any by-law made and passed by such Corporation for the purpose of raising money by the issue of debentures, and before the sale or contract for sale of any such debentures issued or intended to be issued thereunder, to transmit to the Registrar of the County or other Registration Division in which such Municipal Corporation or other corporate body, or its principal office, is situated, a copy duly certified, as hereinafter provided, of each and every by-law made and passed as aforesaid by such Municipal or Provisional Municipal Corporation, or other corporate body, together with a return in the form specified in the Schedule A, hereunto annexed, showing the title or objects of each

such by-law, the amounts to be raised thereunder, the number of debentures to be issued thereunder, the amounts thereof respectively, the dates at which the same respectively fall due, the assessed value of the real and personal estate belonging to such Corporation or Company, the assessed value of the real and personal estate of the Municipality, and the amount of the yearly rate in the dollar to liquidate the same. C. S. C. c. 84, s. 2.

Return to be made to Provincial Secretary.

3. The Clerk, or person acting as such, of every Municipal or Provisional Municipal Corporation, and the Clerk or Secretary, or person acting as such, of any other corporate body (excepting such as are in and by this Act excepted), shall, on or before the tenth day of January in each year, transmit to the Provincial Secretary a return made up to the thirty-first day of December then last past, in the form specified in the Schedule B hereunto annexed, showing the name of the Municipal or Provisional Municipal Corporation, or other corporate body,—the amount of its debt, if any, distinguishing the amount of debt incurred under the Municipal Loan Fund Acts, if any, from the remainder of its debt—the assessed value of the real and personal estate belonging to such Corporation or Company, or the assessed value of the real and personal estate of the Municipality, or both, as the case may be—the total rates, if any, per dollar, assessed on such last mentioned property for all purposes, and the amount of interest due by the Corporation or Company, or by the Municipality. C. S. C. c. 84, s. 3.

Provincial Secretary to compile tables from such returns and lay them before the Legislative Assembly.

4. The Provincial Secretary shall annually compile, from the returns so transmitted, a statement in tabular form, showing the names of the several Corporations in one column, and the contents of their respective returns against their respective names in other columns, corresponding to those in the said Schedule B; and he shall cause copies thereof to be laid before the Legislative Assembly within the first fifteen days of the Session next after the completion of the same, or if the Legislative Assembly is sitting when the same is completed, as soon as may be after such completion. C. S. C. c. 84, s. 4.

Registrar to file such by-laws, and to keep books with

5. The Registrar of the County or other Registration Division in which such Municipal Corporation or other corporate body or its principal office is situated, shall receive and file in his office the several by-laws required to be transmitted to him as hereinbefore provided, and shall cause to

copies of the returns required by section 2.

be entered in a book provided for that purpose, true and correct copies of the returns hereinbefore required by the second section of this Act. C. S. C. c. 84, s. 5.

If requested, the registrar may register the name of such holder of any debenture, and registration to be *prima facie* evidence.

6. The Registrar of each County or other Registration Division, as aforesaid, shall provide a book of registration, wherein he shall, at the request of the original holder or holders, or any subsequent transferee or transferees thereof respectively, from time to time, cause to be entered and registered the name of such original holder or holders, or of such subsequent transferee or transferees, and such holder or last registered transferee in such book of registration shall be deemed *prima facie* the legal owner and possessor thereof. C. S. C. c. 84, s. 6.

Mode in which by-laws shall be certified.

7. All by-laws mentioned in the second section of this Act shall be certified and authenticated by the seal of the Municipal Corporation, and by the signature of the head thereof, or of the person presiding at the meeting at which the original by-law has been made and passed, and also by that of the Clerk of such Corporation; and all by-laws of other corporate bodies shall be attested and authenticated by the seal of such corporate body and by the signature of the head thereof. C. S. C. c. 84, s. 7.

By-laws, returns and books of entry in Registry Office, to be open to inspection.

8. The certified copies of all by-laws hereinbefore referred to and transmitted as aforesaid, and also the returns in the second section of this Act mentioned, and the book or books of entry of such returns and of registration, shall be open to public inspection and examination, and access had thereto at all seasonable times and hours upon payment of certain fees as hereinafter provided. C. S. C. c. 84, s. 8.

Fees to be payable under this Act.

9. The following fees shall be paid to Registrars under this Act:

	$ cts.
For registration of each certified copy of By-laws, the sum of	2 00
For registration of any Returns as prescribed in Schedule A, for each such Return, the sum of	1 00
For registration of the name of holder or transferee of any number of debentures not exceeding five, the sum of	0 25
Over five and not exceeding fifteen, the sum of	0 50
Over fifteen and not exceeding thirty, the sum of	0 75
Upwards of thirty, the sum of	1 00
For making search, inspecting each copy of By-law, and examining entries connected therewith	1 00

C. S. C. c. 84, s. 9.

10. In all such cases as require the submission of any by-law or by-laws to the Lieutenant-Governor of this Province for his sanction, such sanction must first be obtained to bring the same within the meaning of the words "final passing thereof" in the second section of this Act. C. S. C. c. 84, s. 10.

Meaning of term "final passing," as to by-laws to be submitted to the Lieutenant-Governor.

11. The foregoing sections of this Act shall not extend to the by-laws, or debentures thereunder, of any Railway Company or any Ecclesiastical Corporation heretofore incorporated or hereafter to be incorporated, or the debentures issued by any religious denomination in its corporate capacity. C. S. C. c. 84, s. 11.

Act not to extend to railway companies or ecclesiastical corporations, &c.

12. Any Clerk or Secretary as aforesaid, of any Municipality or corporate body as aforesaid, who neglects to perform, within the proper period, any duty devolving upon him in virtue of this Act, shall be subject to a fine of two hundred dollars, or, in default of payment thereof, to imprisonment until such fine is paid, but for a period not exceeding twelve months, to be prosecuted for in the name of the Attorney-General of Ontario, in any Court of competent jurisdiction. C. S. C. c. 84, s. 12.

Penalty on officers of corporations neglecting their duties under this Act.

13. Any such debenture issued as aforesaid shall not be impeachable in the hands of a *bona fide* holder for value, without notice. C. S. C. c. 84, s. 16.

When not impeachable.

[*Section* 16 *of* C. S. C. c. 84, *is as follows*:—

16. Any such debenture issued as aforesaid shall be valid and recoverable to the full amount thereof, notwithstanding its negotiation by such Corporation at a rate less than par or at a rate of interest greater than six per centum per annum, and shall not be impeachable in the hands of a *bona fide* holder for value without notice. 18 V. c. 80, s. 4.]

Good for full amount though discounted at a less sum.

SCHEDULE "A."

(*Section* 2.)

RETURN as required by Chapter 176 of the Revised Statutes of Ontario, entitled, "*An Act respecting the Registration of Municipal and certain other Debentures*," of Debentures issued by (*here insert title of Corporation*).

1	2	3		4	5		6		7
Title or Objects of the By-Law.	Amount to be raised.	Number of Debentures and Am'ts.		Dates when payable.	Assessed value of Real and Personal Estate belonging to such Corporation (*or* Company).		Assessed value of the Real and Personal Estate of the Municipality of (Town, Township, County, City *or* Village, *as the case may be*).		Amount of yearly rate in the $ to liquidate same.
		Number.	Amo'nts.		Real.	Personal.	Real.	Personal.	

Dated at this day of A. D. 18

Dated at this day of A. D. 18

SCHEDULE "B."

(*Sections* 3 *and* 4).

RETURN as required by Chapter 176 of The Revised Statutes of Ontario, entitled "*An Act respecting the Registration of Municipal and certain other Debentures*," of Debentures issued by (*here insert title of Corporation*).

LIABILITIES.			Assessed value of Real and Personal Estate belonging to the Body Corpopate.		Assessed value of the Real and Personal Estate of the Municipality.		Total Rates Assessed for all purposes.	Interest due by the Corporation (*or* Company, *or* Municipality).
Under Municipal Loan Fund Acts.	All other Liabilities.	Total Liabilities.	Real.	Personal.	Real.	Personal.		

An Act respecting Public Meetings.

R. S. O. Cap. 177.

Public Meetings defined, ss. 1-3.
What notices required to constitute, ss. 4-8.
Sheriff, Mayor, or Magistrates to attend meeting, s. 9.
Order of proceedings at, s. 10.
Powers of Chairman, ss. 11, 12.
Special constables, s. 13, & C. S. C. c. 82, s. 14.
Limitation of actions for things done under this Act, s. 14.
Provisions of C. S. C. c. 82. *See* pp. 890-892.
Magistrates may disarm persons, s. 15.
Weapons to be returned, ss. 16, 17.
Battery, how punishable, s. 18.
No arms to be carried, s. 19.
Lying in wait, do. s. 20.

Preamble.

IT being the undoubted right of Her Majesty's subjects to meet together in a peaceable and orderly manner, not only when required to do so in compliance with the express direction of law, but at such other times as they may deem it expedient so to meet for the consideration and discussion of matters of public interest, or for making known to their Gracious Sovereign or Her Representative in this Province, or to both or either Houses of the Imperial or Dominion Parliaments, or the Provincial Legislature, their views respecting the same, whether such be in approbation or condemnation of the conduct of public affairs;

And it being expedient to make legislative provision for the calling and orderly holding thereof, and the better preservation of the public peace at the same;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

"Public Meetings" within the protection of this Act.

1. All public meetings of the inhabitants or of any particular class of the inhabitants of any District, County, Riding, City, Town, Township or Ward in this Province,

which are required by law, and summoned or called in the manner hereinafter by the fourth section of this Act prescribed, shall be and be deemed to be public meetings within the meaning of this Act. C. S. C. c. 82, s. 1.

"Public Meetings" called by Sheriff or two magistrates to be within protection of this Act

2. All public meetings of the inhabitants or of any particular class of inhabitants of any District, County, Riding, City, Town, Township or Ward in this Province, called by the Sheriff of any such District or County, or by the Mayor or other chief municipal officer of any such City or Town respectively, in the manner hereinafter by the fifth section of this Act prescribed, upon the requisition of any twelve or more of the freeholders, citizens or burgesses of such District, County, Riding, City, Town, Township or Ward, having a right to vote for members to serve in Legislative Assembly in respect of the property held by them within such District, County, Riding, City, Town, Township or Ward respectively, and all such meetings called by any two or more Justices of the Peace resident in any such District, County, Riding, City, Town, Township, or Ward respectively, upon a like requisition from twelve or more of such freeholders, citizens or burgesses, shall be and be deemed to be public meetings within the meaning of this Act. C. S. C. c. 82, s. 2.

"Public Meetings" declared by two magistrates to be within the protection of this Act to be so.

3. All public meetings of the inhabitants or of any particular class of the inhabitants of any District, County, Riding, City, Town, Township or Ward in this Province, declared to be public meetings within the meaning of this Act by any two Justices of the Peace resident in such District, County, Riding, City, Town, Township or Ward, in the manner hereinafter by the sixth section of this Act prescribed, shall be and be deemed to be public meetings within the meaning of this Act. C. S. C. c. 82, s. 3.

Manner of bringing meetings required by law within protection of this Act.

4. In every notice or summons for calling together any such public meeting as in the first section of this Act is mentioned, there shall be contained a notice that such meeting, and all persons attending the same, will be within the protection of this Act, and requiring all persons to take notice thereof and govern themselves accordingly.

Notice.

2. Such part of the notice or summons may be in the form or to the effect following:

And be it known, that the meeting to be held in pursuance hereof is called in conformity with the provisions of Chapter 177 of "*The Revised Statutes of Ontario*," entitled "*An Act respecting Public Meetings*;" and that the said Meeting and all persons attending the

same will therefore be within the protection of the said Act, of all which premises, all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

C. S. C. c. 82, s. 4.

Manner of bringing meetings called by Sheriffs, &c., within the protection of this Act.

5. The notice to be issued by the Sheriff of any County, or by the Mayor or other chief municipal officer of any City or Town, or by two or more Justices of the Peace, for calling any such public meeting as in the second section of this Act is mentioned:

1. Shall be issued at least three days before the day upon which such meeting is appointed to be held; and shall set forth

(*a*) The names of the requisitionists, or of a competent number of them;

(*b*) That such meeting is called in conformity with the provisions of this Act; and

(*c*) That such meeting, and all persons attending the same, will be within the protection of this Act, and that all persons are required to take notice thereof and govern themselves accordingly.

2. Such notice may be in the form or to the effect of Schedule A to this Act. C. S. C. c. 82, s. 5.

By private persons within the protection of this Act.

6. Upon information on oath, before any Justice of the Peace, that any public meeting of the inhabitants, or of any particular class of the inhabitants of any District, County, Riding, City, Town, Township or Ward, not being a public meeting of the description mentioned in the first section of this Act, or a public meeting called in the manner referred to in the second section of this Act, is appointed to be held at any place within the jurisdiction of such Justice, and that there is reason to believe that great numbers of persons will be present at such meeting: any two Justices of the Peace having jurisdiction within the District, County, City or Town within which such Meeting is appointed to be held, may give notice of such Meeting, and may declare the same, and declare all persons attending the same, within the protection of this Act, and require all persons to take notice thereof and govern themselves accordingly, and such notice or declaration may be in the form of Schedule B to this Act. C. S. C. c. 82, s. 6.

Sheriff or Justices, &c., calling meetings on requisition to give certain notices.

7. Every Sheriff, Mayor, Justice of the Peace, or other person who calls any such public meeting as is mentioned in the second section of this Act, shall give public notice thereof, as extensively as he reasonably can, by causing to be posted and distributed throughout the District, County, Riding, City, Town, Township or Ward for which the same is called, a sufficient number of printed or written copies of the notice calling the same. C. S. C. c. 82, s. 7.

Justices declaring meetings to be within protection of Act to give certain notices.

8. The Justices of the Peace who declare any public meeting about to be held to be a public meeting within the protection of this Act, as in the third section of this Act mentioned, shall give public notice of its having been so declared, by causing to be posted and distributed throughout the District, County, Riding, City, Town, Township, or Ward for which the same is so called, as many printed or written copies of the notice or declaration issued by them in that behalf as may be reasonably necessary for that purpose, and as the time appointed for the holding such meeting reasonably admits. C. S. C. c. 82, s. 8.

Sheriffs and Justices calling and declaring meeting under this Act to attend the same.

9. Every Sheriff, Mayor, Justice of the Peace, or other person who either calls any public meeting under the provisions of the second section of this Act, or declares any meeting called by others to be a public meeting within the protection of this Act, under the provisions of the third section hereof, shall attend such meeting, and whether such Sheriff, Mayor, Justice of the Peace, or other person is appointed by such public meeting to take the chair and preside over the same, or not, every such Sheriff, Mayor, Justice of the Peace, and other person shall continue at or near the place appointed for holding such public meeting, until the same has dispersed, and shall afford all such assistance as is in his power in preserving the public peace thereat. C. S. C. c. 82, s. 9.

Chairman to read requisition and make proclamation for the preservation of order.

10. Every person required by law, or who has, in the usual way, been appointed at such public meeting to preside over the same, shall commence the proceedings of the meeting by causing the summons or notice calling the meeting, or the declaration whereby the same is declared to be a public meeting, under the protection of this Act, to be publicly read. C. S. C. c. 82, s 10.

Chairman to remove disorderly per-

11. Any person required by law, or who has been appointed at such meeting in the usual way to preside over the same, shall cause order to be kept at such meetings, and for that

sons, and convict on view of disturbance.

purpose may, by oral direction or otherwise, cause any person who attempts to interrupt or disturb such meeting to be removed to such a distance from the same as may effectually prevent such interruption or disturbance, and by an instrument in writing under his hand, on his own view, may adjudge any person who so attempts to interrupt or disturb such meeting guilty of such attempted interruption or disturbance, upon which conviction any Justice of the Peace may, by warrant under his hand, forthwith commit such person to the Common Gaol of the County or District, or to any other place of temporary confinement that such Justice may appoint, for any period not exceeding forty-eight hours from the time of commitment signed, and until the lawful costs of the constable and gaoler for the arrest, transmission and detention of such person are paid or satisfied. C. S. C. c. 82, s. 11.

To call on Justices of the Peace, constables, &c., for assistance.

12. For the purpose of keeping the peace and preserving good order at every such public meeting, the person required or appointed to preside at such meeting as aforesaid may command the assistance of all Justices of the Peace, constables, and other persons to aid and assist him in so doing. C. S. C. c. 82, s. 12.

Justices to swear in special constables on requisition of Chairman.

13. Any Justice of the Peace present at any such meeting, upon the written application of the person so required or appointed to preside at the same, shall swear in such a number of special constables as such Justice may deem necessary for the preservation of the public peace at such meeting. C. S. C. c. 82, s. 13.

Actions to be brought within 12 months.

14. Every action to be brought against any person for anything by him done under authority of this Act, or chapter eighty-two of the Consolidated Statutes of Canada, must be brought within twelve months next after the cause of such action accrued. C. S. C. c. 82, s. 21.

[*Sections* 14 *to* 20 *of C. S. C. c.* 82, *enact as follows:*—

Persons of certain ages refusing to be sworn in, guilty of a misdemeanor.

14. If any person between the ages of eighteen and sixty, upon being required to be sworn in as a special constable by any Justice of the Peace, upon any such occasion, omits or refuses to be sworn, unless for some cause to be allowed by such Justice at the time, such person shall be guilty of a misdemeanor, and such Justice may thereupon record the refusal of such person so to be sworn, and adjudge him to pay a fine of not more than eight dollars, which fine shall be levied and made by the like process as other fines imposed by summary proceedings before Justices of the Peace, or such person may be proceeded against by indictment or information as in other cases of misdemeanor. 7 V. c. 7, s. 14.

15. Any Justice of the Peace within whose jurisdiction any such meeting is appointed to be holden, may demand, have and take, of and from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as fire-arms, swords, staves, bludgeons or the like, with which any such person is so armed, or which any such person has in his hands or possession; and every such person who upon such demand declines or refuses to deliver up, peaceably and quietly, to such Justice of the Peace any such offensive weapon as aforesaid, shall be deemed guilty of a misdemeanor, and such Justice may thereupon record the refusal of such person to deliver up such weapon, and adjudge him to pay a fine of not more than eight dollars, which fine shall be levied and made by the like process as other fines imposed by summary proceedings before Justices of the Peace, or such person may be proceeded against by indictment or information as in other cases of misdemeanor, but such conviction shall not interfere with the power of such Justice or any other Justice to take such weapon or cause the same to be taken from such person without his consent and against his will, by such force as may be necessary for that purpose. 7 V. c. 7, s. 15.

Justices of the Peace may disarm persons.

16. Upon reasonable request to any Justice of the Peace to whom any such weapon has been peaceably and quietly delivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned by such Justice of the Peace to the person from whom the same was received. 7 V. c. 7, s. 16.

Weapons to be returned to parties in certain cases.

17. No such Justice of the Peace shall be held liable to return any such weapon, or make good the value thereof, in case the same by unavoidable accident has been actually destroyed or lost out of the possession of such Justice without his wilful default. 7 V. c. 7, s. 17.

If accidentally lost, &c.

18. Any person convicted of a battery committed within the distance of two miles of the place appointed for the holding of such public meeting, and during any part of the day whereon any such meeting has been appointed to be held, shall be punishable by a fine of not more than one hundred dollars, and imprisonment for not more than three months, or either, in the discretion of the Court, whose duty it may be to pass the sentence of the law upon such person. 7 V. c. 7, s. 17.

Persons guilty of battery within two miles of the meeting to be punished by certain penalties.

19. Except the High Sheriff, Under Sheriff, and Justices of the Peace for the District or County, or the Mayor and High Bailiff and Justices of the Peace for the City or Town respectively in which any such meeting is to be held, and the constables and special constables employed by them, or any of them, for the preservation of the public peace at such meeting, no person shall, during any part of the day upon which such meeting is appointed to be held, come within two miles of the place appointed for such meeting, armed with any offensive weapon of any kind as firearms, swords, staves, bludgeons or the like; and any person who offends against the provisions in this section contained shall be guilty of a misdemeanor, punishable by fine not exceeding one hundred dollars, and imprisonment not exceeding three months, or both, at the discretion of the Court whose duty it may be to pass the sentence of the law upon such person. 7. V. c. 7, s. 18.

No one to approach armed within two miles of meeting.

Persons guilty of lying in wait, how to be punished.

20. Any person who lies in wait for any person returning, or expected to return, from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanor directed to, at or against such person, to provoke such person, or those who may accompany him, to a breach of the peace, shall be guilty of a misdemeanor punishable by fine not exceeding two hundred dollars, and imprisonment not exceeding six months, or both, at the discretion of the Court. 7 V. c. 7, s. 19.]

SCHEDULE "A."

(*Section* 5.)

TO THE INHABITANTS OF THE COUNTY OF A. (*or as the case may be*), AND ALL OTHERS HER MAJESTY'S SUBJECTS WHOM IT DOTH OR MAY IN ANYWISE CONCERN :

Whereas I, A. B., Sheriff of, &c., *or* we, C. D. and E. F., two (*or whatever the number may be*) of Her Majesty's Justices of the Peace for the County (*or* District) of A., resident within the said County (*or* District) having received a requisition, signed by I, J, K, L, &c., &c., (*inserting the names of at least twelve of the requisitionists and as many more as conveniently may be, and mentioning the number of the others; thus*) (and fifty-six (*or as the case may be*) others, who (*or* twelve of whom) are freeholders of the said County (*or* District) (*or* citizens of the said City) having a right to vote for members to serve in the Legislative Assembly in respect of the property held by them within the said County (*or* District *or* City, *&c., as the case may be*), requesting me (*or* us) to call a public meeting of (*here recite the requisition*) : And whereas I (*or* we) have determined to comply with the said requisition :

Now, therefore, I (*or* we) do hereby appoint the said meeting to be held at (*here state the place*) on , the day of next (*or* instant), at of the clock in the noon, of which all persons are hereby required to take notice. And whereas the said meeting has been so called by me (*or* us) in conformity with the provisions of chapter 177 of "*The Revised Statutes of Ontario*," entitled "*An Act respecting Public Meetings*," the said meeting, and all persons who attend the same, will therefore be within the protection of the said Act, of all which premises all manner of persons are hereby in her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

Witness my hand (*or* our hands) at , in the of , this day of , 18 .

A. B., Sheriff,
or C. D., J.P.
E. F., J.P.

SCHEDULE "B."

(*Section 6.*)

TO THE INHABITANTS OF THE COUNTY OF A (*or as the case may be*) AND ALL OTHERS HER MAJESTY'S SUBJECTS, WHOM IT DOTH OR MAY IN ANYWISE CONCERN :

Whereas, by information on oath taken before D. E., Esquire, one of Her Majesty's Justices of the Peace, for the County of C. (*or* City, *or* District, (*or as the case may be*), within which the meeting hereinafter mentioned is appointed to be held, it appears that a Public Meeting of the inhabitants (*or* householders, *&c., as the case may be*) of the County of G. (*or as the case may be*) is appointed to be held at , in the said County (*or as the case may be*), on , the day of next (*or* instant), at of the clock in the noon, (*or* at some other hour on the same day), and that there is reason to believe that great numbers of persons will be present at such meeting ; and whereas it appears expedient to us C. D. and E. F., two (*or whatever the number may be*) of Her Majesty's Justices of the Peace having jurisdiction within the said County (*or as the case may be*), that, with a view to the more orderly holding of the said meeting, and the better preservation of the public peace at the same, the said meeting, and all persons who may attend the same, should be declared within the protection of chapter 177 of "*The Revised Statutes of Ontario,*" entitled "*An Act respecting Public Meetings*:"

Now, therefore, in pursuance of the provisions of the said Act, and the authority in us vested by virtue of the same, we, the said Justices, do hereby give notice of the holding of the said meeting, and do hereby declare the said public meeting, and all persons who attend the same, to be within the protection of the said Act.

Of all which premises all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

Witness our hands at , in the of , this day of , 18 .

C. D., J.P.
E. B., J.P.
&c.

An Act to exempt Firemen from certain Local Services.

R. S. O. Cap. 178.

Formation of Fire Companies may be authorized, s. 1.
And certificates of enrolment granted, s. 2.
Holder exempt from certain services, s. 2.
But certificate may be forfeited, s. 3.
Certificate may be granted on seven years' service, ss. 4, 5.
Exemptions under, s. 6.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Formation of Fire Companies.

1. It shall be in the discretion of the corporate authorities or Boards of Police in any City or Town, or place in which the formation of Companies of Firemen is by law authorized and regulated, or, where there are no such authorities or Board, it shall be in the discretion of the Justices of the Peace of the District or County in which such City or Town is situate, in General Sessions assembled, or the majority of them, to consent to the formation of a Fire Company in such City, Town or place, or to defer the same until circumstances in their opinion render it expedient that such Company should be formed ; and they may also, in their discretion, from time to time, discontinue or renew any such Company or Companies. C. S. C. c. 87, s. 3.

Discontinuance or renewal.

Certificated members of such Company to be exempted from serving as jurors,

2. Whenever any Company or Companies of Firemen have been regularly enrolled in any such City, Town or place, the corporate authorities, or Board of Police in such City or Town, or the Justices of the Peace for the District or County, or the majority of them, as aforesaid, respectively, being

satisfied of the efficiency of such persons and accepting their enrolment, shall direct the Clerk of the Peace for the District or County to grant to each member of such Company a certificate that he is enrolled on the same, which certificate shall exempt the individual named therein, during the period of his enrolment, and his continuance in actual duty as such Fireman, from serving as a juryman or a constable, and from all municipal offices. C. S. C. c. 87, s. 1.

and from certain other offices.

3. The corporate authorities or Board of Police in any City or Town, or where there are no such authorities or Board, the Justices of the Peace for the District or County, or the majority of them, at any General or adjourned Sessions, upon complaint to them made of neglect of duty, by any individual of such Fire Company, shall examine into the same; and for any such cause, and also, in case any individual of such Company is convicted of a breach of any of the rules legally made for the regulation of the same, may strike off the name of any such individual from the list of the Company, and thenceforward the certificate granted to such individual, as aforesaid, shall have no effect in exempting him from any duty or service in the next preceding section of this Act mentioned. C. S. C. c. 87, s. 2.

Such exemption may be taken away in case of misconduct on the part of any member of any such Company.

4. When any member of any Company of Firemen, regularly enrolled in any City, Town or place in which the formation of Companies of Firemen is by law authorized and regulated, has regularly and faithfully served for the space and term of seven consecutive years in the same, the said member shall be entitled to receive, upon producing due proof of his having served seven consecutive years as aforesaid, a certificate from the Clerk of the Peace of the District or County in which he resides, or from the Clerk of the corporate body or Board of Police under whose authority the said Company has been established, that he has been regularly enrolled and served as a member of the said Fire Company for the space of seven years; and such certificate shall exempt the individual named therein from serving as a constable, and from all municipal offices, but this shall not exempt any such Fireman from serving as a juryman. C. S. C. c. 87, s. 4.

Firemen having served seven years exempted from serving in certain offices.

5. The Municipal Council of any City wherein the formation of Companies of Firemen is by law authorized and regulated, may, by by-law, enact, that when a member of any

Firemen having served seven years enti-

tled to a certificate to that effect.

Company of Firemen regularly enrolled in such City has regularly and faithfully served in such Company for the space and term of seven years consecutively, such member, upon producing due proof of his having so served, shall receive a certificate from the Clerk of the Council of the City or the Clerk of the corporate body under whose authority the Company was established, that he has been regularly enrolled and served as a member of the said Fire Company for the space of seven years. C. S. C. c. 87, s. 5.

Such certificates shall exempt from statute labour tax and from serving as jurors.

6. Such certificate shall exempt the individual named therein from the payment of any personal statute labour tax thereafter, and from serving as a juror on the trial of any cause in any Court of Law within this Province. C. S. C. c. 87, s. 6.

[*See also, as to exemption of Firemen from jury service, Rev. Stat. c.* 48, *s.* 7 (31); *and as to exemption from municipal offices, Rev. Stat. c.* 174, s. 75.]

An Act respecting the Support of Destitute Insane Persons.

R. S. O. Cap. 179.

Accounts of money for maintaining destitute insane persons to be laid before Grand Jury of General Sessions, s. 1.
Payments for such purposes, s. 2.
Witnesses may be called before Grand Jury, s. 3.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Clerk of the Peace to lay before the Grand Jury of the General Sessions an account of money necessary for maintaining insane persons.

1. The Clerk of the Peace shall once in each year lay before the Grand Jury of the General Sessions of the Peace in each County an account in detail of all sums of money expended during the last preceding twelve months, or necessary to be advanced during the next ensuing twelve months, for the purpose of maintaining and supporting insane destitute persons received into the Gaol of the County, and the said Grand Jury may at such General Sessions present such just and reasonable sum as they in their discretion think necesary for the purpose of maintaining and supporting insane destitute persons, either in the Gaol or some other place within the County, for the year next ensuing the said Sessions; which presentment shall be made once in each year, and in each year the like account in detail of the moneys expended during the past year shall be laid before the Grand Jury as aforesaid. C. S. U. C. c. 122, s. 1.

The sum of money presented to be paid by the Treasurer.

2. The Chairman of the General Sessions may, from time to time, issue his warrant for the payment of such sum of money to the amount, but not exceeding the amount, so presented, and such money shall be payable by the Treasurer of the County out of the moneys of the County in his hands and unappropriated, and the account so laid before the Grand

Jury from time to time, so far as the same has been approved of, and the said warrant, shall be a sufficient discharge and indemnity to all persons concerned in the expenditure of such sum of money. C. S. U. C. c. 122, s. 2.

Witnesses may be summoned before the Grand Jury.

3. The Courts of General Sessions respectively shall from time to time, by writ of subpœna, call before them any person required by the Grand Jury, and shall swear such person in open Court true answer to make to all such questions as may be asked of him by the Grand Jury, touching and concerning insane destitute persons in the County, and their maintenance and support, and every such person shall be examined on the said oath before the Grand Jury. C. S. U. C. c. 122, s. 3.

An Act to regulate Travelling on Public Highways and Bridges.

R. S. O. Cap. 183.

Highways:
Vehicles meeting, s. 1.
Overtaking and passing, ss. 2-3.
Penalty for driving when intoxicated, s. 4,
For furious driving or blasphemy, s. 5.
Sleigh bells necessary, s. 6.
Bridges:
Notice to be put up on, s. 7.
Penalty for defacing, s. 8.
Fast driving on prohibited, s. 9.
Penalties:
How recoverable, ss. 10-12.
Recovery of not to prevent a civil action for damages, s. 13.
Application of, s. 14.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

HIGHWAYS.

Carriages meeting to drive to the

1. In case any person travelling or being upon any highway in charge of a vehicle drawn by one or more horses, or

one or more other animals, meets another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met one-half of the road. C. S. U. C. c. 56, s. 1. right, giving half the road.

2. In case any person travelling or being upon any highway in charge of a vehicle as aforesaid, or on horseback, is overtaken by any vehicle or horseman travelling at greater speed, the person so overtaken shall quietly turn out to the right and allow the said vehicle or horseman to pass. C. S. U. C. c. 56, s. 2. Carriages overtaken to turn to the right.

3. In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting or on the vehicle so overtaken the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other vehicle, and if required so to do, he shall assist the person in charge thereof to pass without damage. C. S. U. C. c. 56, s. 3. If the weigh of one of them prevents this.

4. In case any person in charge of a vehicle, or of a horse or other animal used as the means of conveyance, travelling or being on any highway as aforesaid, is through drunkenness unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this Act. C. S. U. C. c. 56, s. 4. Penalty on drivers, &c., too drunk to manage their horses.

5. No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language upon any highway. C. S. U. C. c. 56, ss. 5 & 6. Racing, swearing, etc., on highways, forbidden.

6. Every person travelling upon any highway with a sleigh, sled or cariole, drawn by horse or mule, shall have at least two bells attached to the harness. C. S. U. C. c. 56, s. 7. Sleigh horses to have bells.

BRIDGES.

7. Every person who has the superintendence and management of any bridge exceeding thirty feet in length shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed in the following form : Notice to be posted at the bridges to which this Act applies.

"Any person or persons riding or driving on or over this bridge at a faster rate than a walk will, on conviction thereof, be subject to a fine, as provided by law." Form of.

C. S. U. C. c. 56, s. 8.

Penalty on persons defacing such notice.

8. In case any person injures, or in any way interferes with such notice, he shall incur a fine of not less than one nor more than eight dollars, to be recovered in the same manner as other penalties imposed by this Act. C. S. U. C. c. 56, s. 9.

Fast driving over bridges forbidden.

9. If, while such notice continues up, any person rides or drives a horse or other beast of burden over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. C. S. U. C. c. 56, s. 10.

RECOVERY AND APPLICATION OF PENALTIES.

Penalty for contravening this Act.

10. In cases not otherwise specially provided for, if any person contravenes this Act, and such contravention is duly proved, by the oath of one credible witness, before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than one dollar nor more than twenty dollars, in the discretion of such Justice, with costs. C. S. U. C. c. 56, s. 11.

To be enforced by distress.

11. If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender, under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty and costs and charges of sale, shall be returned, on demand, to the owner of such goods and chattels. C. S. U. C. c. 56, s. 12.

Or by imprisonment.

12. In default of payment of distress the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the Common Gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs and charges are sooner paid. C. S. U. C. c. 56, s. 13.

Not to bar action for damages.

13. No such fine or imprisonment shall be a bar to the recovery of damages by the injured party before any Court of competent jurisdiction. C. S. U. C. c. 56, s. 14.

Application penalties.

14. Every fine collected under this Act shall be paid to the Treasurer of the local Municipality or place in which the offence was committed, and shall be applied to the general purposes thereof. C. S. U. C. c. 56, s. 15.

An Act exempting certain Vehicles, Horses and other Cattle from Tolls on Turnpike Roads.

R. S. O. Cap. 184.

Exemptions:
Volunteers, s. 1.
Persons going to Divine Service, s. 2.
Persons owning farms divided by toll road, s. 3.
Persons drawing manure in certain cases, s. 4.
Act not to apply to certain bridges, s. 5.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Exemption from tolls in certain cases.

1. Officers, non-commissioned officers and men of the Volunteers, being in proper staff or regimental uniform, dress or undress, and their horses (but not when passing in any hired or private vehicle, unless when on duty or proceeding to or from the same), shall be exempt from the payment of any duty or toll on passing any turnpike or toll-gate, or any road, wharf or landing-place or bridge in this Province. 27 V. c. 3, s. 20.

Persons going to or returning from divine service exempted from toll.

2. All persons going to or returning from Divine service on any Sunday or obligatory holiday, in or upon and with their own carriages, horses or other beasts of draught, and also their families, and servants being in or upon and with such carriages, horses or other beasts of draught, shall pass toll-free through every turnpike or toll-gate on any turnpike road through which they may have occasion to pass, whether such turnpike road and the tolls thereon belong to the Province, or to any local or Municipal authority, or body of trustees or commissioners for local purposes, or to any incorporated or unincorporated Company, or to any other body or person. C. S. C. c. 86, s. 1.

Vehicles, cattle, &c., crossing roads when a farm divided by the road, exempt from toll—when.

3. No vehicle, laden or unladen, and no horses or cattle belonging to the proprietor or occupier of any lands divided by any turnpike road, shall be liable to toll on passing through any toll-gate on such road (at whatever distance the same may be from any City or Town) for the sole purpose of going from one part of the lands of such proprietor or occupier to another part of the same: Provided such vehicle, horses or cattle do not proceed more than half a mile along such turnpike road, either in going or in returning, and are using such road for farming or domestic purposes only. C. S. C. c. 86, s. 2.

Vehicles, &c., laden with manure passing from cities and towns exempt from toll.

4. Every vehicle laden solely with manure, brought from any City, Town or incorporated Village in this Province, and employed to carry manure into the country parts for the purposes of agriculture, and the horse or horses, or other beast of draught, drawing such vehicle, shall pass toll free through every turnpike-gate or toll-gate on any turnpike or macadamized road within twenty miles of such City, Town or incorporated Village, as well in going from such City, Town or incorporated Village, as in returning thereto, if the vehicle is then empty. C. S. C. c. 86, s. 3; 32 V. c. 40, s. 1.

This Act not to apply to certain bridges.

5. This Act shall not extend to any toll bridge, the tolls on which are vested in any person other than the Crown. C. S. C. c. 86, s. 4.

An Act respecting Double Tracks in Snow Roads.

R. S. O. CAP. 185.

Interpretation, s. 1.
County Council may pass by-law for double track, s. 2.
Nature of tracks, s. 3.
Right of road, s. 4.
Duties and powers of path-masters, s. 5.
Powers of County Councils in default of Township Councils, s. 6.
Penalties:
Refusing to work under path-master, s. 7.
Travelling in wrong track, s. 8.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Interpretation of the word "team."

1. In this Act, the word "Team" shall be taken to mean a vehicle drawn by one horse or other animal, or a greater number of horses or other animals, as the case may be. 36 V. c. 46, s. 8.

County Council may pass by-laws for making double tracks on roads during sleighing season.

2. The County Council of each County may provide by by-law for the making of a double track, during the season of sleighing in each and every year, upon such public or leading roads within the County, whether county roads or not, as such Council deems advisable. 36 V. c. 46, s. 1.

Nature of tracks.

3. Whenever a County Council has passed such a by-law, the double track to be made shall be so made that teams shall be able to pass without being obliged to turn out when meeting each other. 36 V. c. 46, s. 2.

Right of road.

4. The right hand track shall always be that in which a team shall be required to travel, and if any person is driving his team in the wrong track, it shall be his duty to leave the same whenever he meets another team rightfully entitled to use such track. 36 V. c. 46, s. 3.

Duties and powers of path-masters or road-masters.

5. A County Council may also provide by by-law that Path-masters appointed by Township Councils shall cause the roads on which double tracks are to be made to be kept open for travel within their respective Municipalities, or in the event of there being no such Path-masters available, may appoint Road-masters to perform that duty; and such Path-masters or Road-masters shall have full power to call out persons liable to perform statute labour, to assist in keeping open such roads within their respective Municipalities, and may give to such persons as may be employed in so doing, certificates of having performed statute labour to the amount of the days' work done, and such work shall be allowed for to such persons in their next season's statute labour; and such County Council may also provide for the application by such Township Council of so much of the commutation of statute labour fund as may be necessary for the keeping open such roads as aforesaid within their respective Municipalities. 36 V. c. 46, s. 4.

If township refuse to make tracks, county may do so and impose a rate.

Rev. Stat. c. 180.

6. In the event of a Township Council neglecting or refusing to keep such roads open for travel as mentioned in the next preceding section of this Act, the County Council shall be entitled to do so, and to impose upon the Township so in default a rate sufficient for that purpose, and such rate shall be levied and collected in the manner provided by "*The Assessment Act*" as to the collection of County rates. 36 V. c. 46, s. 5.

Penalty for persons refusing to work under path-masters.

7. Any person who is liable to perform statute labour, and refuses or neglects to turn out and work under any Path-master or Road-master who warns him out for that purpose under the authority of this Act, shall be liable to a fine not exceeding twenty dollars, nor less than one dollar, over and above costs, and in case of non-payment, to imprisonment for a term not exceeding twenty-one days. 36 V. c. 46, s. 6.

Penalty for travelling on left hand track and refusing to turn out.

8. Any person travelling in the wrong or left hand track, and refusing or neglecting to leave the same when met by a person who is travelling therein with his team as of right, shall be liable to a penalty of not less than one dollar, nor more than twenty dollars, over and above the costs of prosecution, and in case of non-payment, to imprisonment for a term not exceeding twenty-one days. 36 V. c. 46, s. 7.

An Act to authorize and regulate the use of Traction Engines on Highways.

R. S. O. Cap. 186.

Traction Engines may be used on Highways, s. 1.
Conditions :
Weight of engine, s. 2.
Speed, s. 3.
Width of wheels, s. 4.
Meeting and passing, ss. 5-6.
Lights to be carried, s. 7.
In Cities and Towns, s. 8.
Exclusion from certain streets in Cities and Towns, s. 9.
Bridges on non-toll roads to be strengthened, s. 10.
On toll roads :—
Notice to toll-keepers, s. 11.
Subsequent proceedings, ss. 12-13.
Tolls leviable, s. 14.
Arbitration in case of dispute, s. 14.
Collection of tolls, s. 15.
Penalty for contravening of this Act, s. 16.
How enforced, ss. 17-18.
Appropriation of penalties, s. 19.
No bar to civil suit, s. 20.
Rev. Stat. c. 152, s. 2, made applicable to Traction Engine Cos., s. 21.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Traction engines on highways.

1. It shall be lawful for any person to employ traction engines for the conveyance of freight and passengers, or both, over any public highway in this Province, subject to the provisions hereinafter contained. 31 V. c. 34, s. 1.

GENERAL CONDITIONS.

Weight.

2. No traction engine, so employed, shall exceed in weight twenty tons. 31 V. c. 34, s. 2.

Speed

3. The speed of any traction engine shall at no time exceed the rate of six miles per hour, and in Cities, Towns and Incorporated Villages, the rate of three miles per hour. 31 V. c. 34, s. 3.

Width of wheels.

4. The width of the driving wheels of all such engines shall be at least twelve inches, and the wheels of the trucks or waggons drawn thereby shall be four inches in width for the first two tons capacity, load and weight of truck included, and an additional half inch for each further ton. 31 V. c. 34, s. 5.

Rev. Stat. c. 183 applicable.

5. The provisions of *The Act to Regulate Travelling on Public Highways and Bridges* shall be applicable to the running of any traction engine upon the highway. 31 V. c. 34, s. 6.

Horsemen or vehicles meeting or passing engine to stop.

6. In case of any difficulty, or the prospect of any difficulty in the meeting or passing of an engine upon the highway by any mounted horseman or vehicle, it shall be the duty of the engine driver to stop the engine, and in every reasonable way to assist such mounted horseman, or the person in charge of such vehicle, to pass the engine. 31 V. c. 34, s. 7.

Lights to be carried after dark.

7. Every engine run after dark shall carry a bright red light in a conspicuous place in front, and a green light on the rear of the train. 31 V. c. 34, s. 8.

IN CITIES AND TOWNS.

Running through a city, town, &c.

8. No engine shall be run through a City, Town or Village unless a messenger is sent at least fifteen and not more than thirty rods in advance, carrying a red flag by day and a bright red light by night. 31 V. c. 34, s. 9.

Traction engines may be excluded from certain streets, but not entirely from passing through a municipality.

9. In case the Municipal Corporation of any City or Town deems it necessary to exclude traction engines from the right to pass through any particular street or streets within the Municipality, it shall be lawful for such Corporation to apply to the Judge of the County Court of the County within which the Municipality is situated, and such Judge shall direct notice to be given to the owner of the engine, and upon the return of such notice may, in his discretion, make or refuse an order to prevent or regulate the running of engines upon certain streets: but it shall not be lawful under this section so to exclude the engines from any streets as entirely to prevent their passage through the Municipality by the then existing opened streets. 31 V. c. 34, s. 10.

BRIDGES TO BE STRENGTHENED.

Parties running engines to

10. Before it shall be lawful to run such engines over any highway whereon no tolls are levied, it shall be the duty of

the person or persons proposing to run the same to strengthen at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used. **strengthen bridges, etc.**

2. The costs of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts. 31 V. c. 34, s. 4. **Owners of different engines to contribute.**

SPECIAL PROVISIONS AS TO TOLL ROADS.

11. Before it shall be lawful to run a traction engine over any highway upon which a toll is established, it shall be the duty of the person proposing to run the same, to leave a notice in writing to that effect with the keeper of any toll-gate on such road, at least two months previous to the running of such engine, and such notice shall also contain a correct statement of the weight of the heaviest engine proposed to be used. 31 V. c. 34, s. 11. **Notice before use of toll roads.**

12. The owner or owners of such toll roads, within two months after the delivery of such notice as aforesaid, and upon receiving security to the amount of the cost of required improvements, may cause all bridges and culverts upon the said road to be so strengthened as, in the opinion of the County Engineer of the County in which any such bridge or culvert is situated, to render the same safe for the constant passing of such engines. 31 V. c. 34, s. 12. **Owners of toll roads to strengthen bridges, &c.**

13. In the event of the owners of such toll roads neglecting or refusing to comply with the requirements of the last preceding section, it shall be lawful for the parties about to run such engines themselves to do the necessary work at their own expense; such outlay to be repaid to them by the remission of tolls upon the passage of engines and trains through the gates upon such road, until the whole of such outlay is repaid. **If they do not, owners of engines may do the work, to be reimbursed out of tolls.**

2. Such works shall be performed to the satisfaction of the County Engineer or other officer appointed for that purpose by the Municipality within which the highway or the greater part thereof is situated. 31 V. c. 34, s. 13. **Work to be done to satisfaction of County Engineer.**

14. The owners of such toll roads may levy such tolls as may be imposed by them upon the passage of any engine or truck through every lawful gate; and if the owner of the engine is dissatisfied with the rate of toll, the same may be referred to the decision of three Arbitrators, one of whom **Tolls.** **Provision for arbitration.**

shall be nominated by the owner of the engine, and one by the proprietors of the road, and the two so appointed shall choose a third, and the decision of the said Arbitrators or the majority of them shall be binding; and in the event of the two Arbitrators first appointed as aforesaid failing or neglecting within one month to appoint a third Arbitrator as herein provided, then the appointment of such third Arbitrator may be made by the County Judge of the County within which the said tolls are to be collected. 31 V. c. 34, s. 14.

Collection of tolls.

15. It shall be lawful for the owners of any such road to enforce the payment of the aforesaid tolls in the manner provided by law for the collection of the ordinary tolls upon such roads. 31 V. c. 34, s. 15.

PENALTIES.

Penalty for contravening Act.

16. If any person contravenes this Act, and such contravention is duly proved by the oath or one credible witness before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than five dollars, nor more than twenty-five dollars, in the discretion of such Justice, with costs. 31 V. c. 34, s. 17.

To be enforced by distress.

17. If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender, under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty and costs and charges of sale shall be returned, on demand, to the owner of such goods and chattels. 31 V. c. 34, s. 18.

Or by imprisonment.

18. In default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the Common Gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs and charges are sooner paid. 31 V. c. 34, s. 19.

Application of fines.

19. Every fine collected under this Act shall be paid to the Treasurer of the local Municipality in which the offence was committed, and shall be applied to the general purposes thereof. 31 V. c. 34, s. 21.

Recovery of damages.

20. No fine or imprisonment under this Act shall be a bar to the recovery of damages by the injured party

before any Court of competent jurisdicton. 31 V. c. 34, s. 20.

21. Section two of "*The General Road Companies Act*," shall apply to Companies established for manufacturing or purchasing traction engines, and working the same. 31 V. c. 34, s. 16. Rev. Stat. c. 152, s. 2, to apply.

An Act to encourage the Planting of Trees along Highways.

R. S. O. CAP. 187.

"Highway" defined, s. 1.
Application of the Act in the case of cities and towns, s. 2.
Property in trees on highways, s. 3.
Planting trees, s. 4.
Injuring trees, s. 5.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The word "highway," whenever it occurs in this Act, shall be held to mean and include any public highway, street, road, lane, alley, or other communication, as well as any public place or square. 34 V. c. 31, s. 6. Interpretation of the word "highway."

2. Sections three and four of this Act shall not apply to incorporated Cities, Towns and Villages, unless the Council thereof first passes a by-law making the same apply thereto. 34 V. c. 31, s. 6. By-law necessary to make this Act apply to cities and towns.

3. For the purpose of this Act, every shade tree, shrub and sapling now growing on either side of any highway in this Province shall, upon, from and after the passing of this Act, be deemed to be the property of the owner of the land adjacent to such highway opposite to which such tree, shrub or sapling is. 34 V. c. 31, s. 1. Property of trees on highways vested in the owners of adjacent land.

Planting trees.

4. Any person owning land adjacent to any highway may plant trees, shrubs or saplings on the portion thereof contiguous to his land; but no tree, shrub or sapling shall be so planted that the same is or may become a nuisance in the highway or obstruct the fair and reasonsable use of the same.

Property in.

2. Every tree shrub or sapling so planted in any highway shall for the purposes of this Act be deemed to be the property of the owner for the time being of the land whose owner planted the same. 34 V. c. 31, s. 2.

Injuring trees.

5. Any person who ties or fastens any animals to any such tree, shrub or sapling so growing or planted upon any highway, or who injures or destroys, or suffers or permits any animal in his charge to injure or destroy, or who removes any such shrub, tree or sapling, or receives the same knowing it to be so removed, shall, upon conviction thereof before a Justice of the Peace, forfeit and pay such sum of money not exceeding twenty-five dollars besides costs as such Justice may award, and in default of payment the same may be levied of the goods and chattels of the person offending, or such person may be imprisoned in the Common Gaol of the County within which the Municipality is, for a period not exceeding thirty days.

Penalty.

Application of.

2. One-half of such fine shall go to the person laying the information, and the other half to the Municipality within which such tree, shrub or sapling was growing. 34 V. c. 31, s. 4.

[*See also Rev. Stat.* c. 174, s. 454 (16).]

An Act to prevent the Spreading of Canada Thistles.

R. S. O. 188.

Occupants of land to cut down Canada thistles every year before maturity, s. 1.
Overseers of Highways:
To carry out Act in their Highway Divisions, s. 2.
To notify land owners, s. 3.
And cut down thistles on default of owner, s. 3.
To enter on lands of Railway Co. after notice by Municipal Clerk, s. 4.
To return account of expenses to Municipal Council, ss. 5-6.
Municipal Clerks to notify Station Masters, s. 4.
Expenses of carrying out Act:
How paid to Overseer, ss. 5-6.
Appeal against, s. 7.
How recovered by Municipality, s. 8.
Penalties:
For selling seed of Canada Thistle, s. 9.
For neglect of duty by Overseer, s. 10.
How recoverable, s. 11.
Application of, s. 11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Occupants of land to cut down thistles growing on their lands.

1. It shall be the duty of every occupant of land to cut or cause to be cut down all the Canada thistles growing thereon, so often in each and every year as is sufficient to prevent them from going to seed; and if any owner, possessor or occupier of land knowingly suffers any Canada thistles to grow thereon and the seed to ripen so as to cause or endanger the spread thereof, he shall upon conviction be liable to a fine of not less than two nor more than ten dollars for every such offence. 29 V. c. 40, s. 1.

Penalty.

Duty of overseers of highways under this Act.

2. It shall be the duty of the Overseers of Highways in any Municipality, having first obtained authority from the Municipal Council of which they are the officers, to see that the provisions of this Act are carried out within their respective highway divisions by cutting or causing to be cut all the

Canada thistles growing on the highways or road allowances within their respective divisions. 29 V. c. 40, s. 2; 32 V. c. 41, ss. 1 & 2.

And notify owners.

3. Every such Overseer shall give notice in writing to the owner, possessor or occupier of any land within the said division whereon Canada thistles are growing and in danger of going to seed, requiring him to cause the same to be cut down within five days from the service of such notice.

And enter lands on default.

2. In case such owner, possessor or occupier refuses or neglects to cut down the said Canada thistles within the period aforesaid, the said Overseer of Highways shall enter upon the land and cause such Canada thistles to be cut down with as little damage to growing crops as may be, and he shall not be liable to be sued in action of trespass therefor:

Proviso as to lands sown with grain.

3. But no such Overseer of Highways shall have power to enter upon or cut thistles on any land sown with grain, and where such Canada thistles are growing upon non-resident lands it shall not be necessary to give any notice before proceeding to cut down the same. 29 V. c. 40, s. 2.

As to non-resident lands.

Clerks of Municipalities to warn station masters to cut down thistles on railways.

4. It shall be the duty of the Clerk of any Municipality in which Railway property is situated to give notice in writing to the Station Master of said Railway resident in or nearest to the said Municipality, requiring him to cause all the Canada thistles growing upon the property of the said Railway Company within the limits of the said Municipality to be cut down as provided for in the first section of this Act.

Overseer to enter on default.

2. In case such Station Master refuses or neglects to have the said Canada thistles cut down within ten days from the time of service of the said notice, then the Overseers of Highways of the said Municipality shall enter upon the property of the said Railway Company and cause such Canada thistles to be cut down, and the expense incurred in carrying out the provisions of this section shall be provided for in the same manner as in the next following section of this Act. 29 V. c. 40, s. 3.

Account of expenses to be kept by Overseer.

5. Each Overseer of Highways shall keep an accurate account of the expense incurred by him in carrying out the provisions of the preceding sections of this Act with respect to each parcel of land entered upon therefor, and shall deliver a statement of such expenses, describing by its legal description the land entered upon, and verified by oath, to the

And delivered to occupant of

owner, possessor, or occupier of such resident lands, requiring him to pay the amount. resident lands.

2. In case such owner, possessor or occupier of such resident lands refuses or neglects to pay the same within thirty days after such application, the said claim shall be presented to the Municipal Council of the Corporation in which such expense was incurred, and the said Council is hereby authorized and required to credit and allow such claim, and order the same to be paid from the funds for general purposes of the said Municipality. 29 V. c. 40, s. 4. If the owner refuses to pay. Council to re-imburse overseer.

6. The said Overseer of Highways shall also present to the said Council a similar statement of the expenses incurred by him in carrying out the provisions of this Act upon any non-resident lands; and the said Council is hereby authorized and empowered to audit and allow the same in like manner. 29 V. c. 40, s. 4. Expense in case of non-resident lands.

7. If any owner, occupant or possessor, amenable under the provisions of this Act, deems such expense excessive, an appeal may be had to the said Council (if made within thirty days after the delivery of such statement), and the said Council shall determine the matter in dispute. 29 V. c. 40, s. 4. Appeal allowed.

8. The Municipal Council of the Corporation shall cause all such sums as have been so paid under the provisions of this Act to be severally levied on the lands described in the statement of the Overseers of Highways, and to be collected in the same manner as other taxes; and the same when collected shall be paid into the treasury of the said Corporation to reimburse the outlay therefrom aforesaid. 29 V. c. 40, s. 5. How expenses shall be recovered by municipality.

9. Any person who knowingly vends any grass or other seed among which there is any seed of the Canada thistle shall for every such offence, upon conviction, be liable to a fine of not less than two nor more than ten dollars. 29 V. c. 40, s. 6. Penalty on sale of any seed mixed with thistle seed.

10. Every Overseer of Highways or other officer who refuses or neglects to discharge the duties imposed on him by this Act, shall be liable to a fine of not less than ten nor more than twenty dollars. 29 V. c. 40, s. 7. Penalty on Overseer neglecting his duty.

11. Every offence against the provisions of this Act shall be punished, and the penalty hereby enforced for each Recovery of penalties.

offence shall be recovered and levied, on summary conviction, before any Justice of the Peace; and all fines imposed shall be paid into the treasury of the Municipality in which such conviction takes place. 29 V. c. 40, s. 8.

All Councils may authorize the carrying out of this Act.

12. Any Municipal Corporation in Ontario may authorize the carrying out of the provisions of this Act. 32 V. c. 41, s. 2.

[*See also Rev. Stat.* c. 174, s. 461 (15).]

An Act to prevent the Profanation of the Lord's Day.

R. S. O. CAP. 189.

Acts prohibited, ss. 1-6.
Sales and purchases on Sunday void, s. 7.
Penalty, s. 8.
Appropriation of, s. 9.
Summary Convictions:—
Procedure, ss. 10-11.
Defects of form, s. 12.
Imprisonment, s. 13.
Limitation of prosecutions, s. 14.
Actions, etc., against Officers:—
Limitation of, s. 15.
Notice of, s. 15.
Tender of amends, s. 16.
Costs, s. 16.
Act not to apply to Indians, s. 17.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

No sale to take place on Sunday.

1. It is not lawful for any merchant, tradesman, artificer, mechanic, workman, labourer or other person whatsoever, on the Lord's day, to sell or publicly show forth, or expose, or offer for sale, or to purchase, any goods, chattels, or other personal property, or any real estate whatsoever, or to do or exercise any worldly labour, business or work of his ordinary calling, (conveying travellers or Her Majesty's Mail, by land or by water, selling drugs and medicines, and other works of

Or ordinary work.

necessity and works of charity only excepted). C. S. U. C. c. 104, s. 1. Exception.

2. It is not lawful for any person on that day to hold, convene or to attend any public political meeting, or to tipple, or to allow or permit tippling in any inn, tavern, grocery or house of public entertainment, or to revel, or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance, or annoyance to Her Majesty's peaceable subjects. C. S. U. C. c. 104, s. 2. Political meetings, tippling, etc., prohibited on Sunday.

3. It is not lawful for any person on that day to play at skittles, ball, foot-ball, racket, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot, or on horseback, or in carriages, or in vehicles of any sort. C. S. U. C. c. 104, s. 3. Games and amusements prohibited.

4. Except in defence of his property from any wolf or other ravenous beast or a bird of prey, it is not lawful for any person on that day to go out hunting or shooting, or in quest of, or to take, kill or destroy, any deer or other game, or any wild animal, or any wild fowl or bird, or to use any dog, gun, rifle or other engine, net or trap, for the above mentioned purpose. C. S. U. C. c. 104, s. 4. Hunting and shooting.

5. It is not lawful for any person on that day to go out fishing, or to take, kill or destroy any fish, or to use any gun, fishing rod, net or other engine for that purpose. C. S. U. C. c. 104, s. 5. Fishing.

6. It is not lawful for any person on that day to bathe in any exposed situation in any water within the limits of any incorporated City or Town, or within view of any place of public worship, or private residence. C. S. U. C. c. 104, s. 6. Bathing.

7. All sales and purchases, and all contracts and agreements for sale or purchase, of any real or personal property whatsoever, made by any person or persons on the Lord's day, shall be utterly null and void. C. S. U. C. c. 104, s. 8. Sales and agreements made on Sunday to be void.

8. Any person convicted before a Justice of the Peace of any act hereinbefore declared not to be lawful, upon the oath or affirmation of one or more than one credible witness, or upon view had of the offence by the said Justice himself, shall for every such offence be fined in a sum not exceeding forty dollars, nor less than one dollar, together with the costs Penalty.

and charges attending the proceedings and conviction. C. S. U. C. c. 104, s. 7.

Application of penalties.

9. All sums of money awarded or imposed as fines or penalties, by virtue of this Act, shall be paid as follows, that is to say: one moiety thereof shall be paid to the party charging the offence in writing before the Justice, and the other moity to the Treasurer of the County or City wherein the offence was committed, to be by him accounted for in the same manner as for other moneys deposited with or paid over to him. C. S. U. C. c. 104, s. 18.

Justice to summon accused party.

10. Where any person has been charged upon oath or otherwise, in writing, before any Justice of the Peace, with any offence against this Act, the said Justice shall summon the person so charged to appear before him, at a time and place to be named in such summons, and if such person fails or neglects to appear accordingly, then (upon proof of due service of the summons upon such person, by delivering or leaving a copy thereof at his house, or usual or last place of abode, or by reading the same over to him personally) the said Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself, or some other Justice of the Peace having jurisdiction within the same County or Municipality; and the Justice before whom the person charged appears or is brought, shall proceed to hear and determine the case, or the said Justice, on view of the offence, may verbally order, or if on the complaint of a third party, then may, in writing, order the offender to be at once committed (although it be on the Lord's day) to the Common Gaol of the place, or into other safe custody, there to remain until the morrow, or some other day, according to circumstances until the case be heard and disposed of. C. S. U. C. c. 104, s. 9.

Commitment.

Form of conviction.

11. The Justice before whom any person is convicted of any offence against this Act, may cause the conviction to be drawn up in the form of the Schedule to this Act, or in any other form of words to the same effect as the case may require. C. S. U. C. c. 104, s. 10.

Conviction and commitment not to be void for want of form.

12. A conviction under this Act shall not be quashed for want of form; nor shall any warrant of commitment be held void by reason of any defect therein, if it is therein alleged that the party has been convicted, and there is a good and valid conviction to sustain the commitment. C. S. U. C. c. 104, s. 11.

13. In default of payment of any fine imposed under this Act, together with the costs attending the same, within the period by the Justice of the Peace before whom such conviction takes place, specified for the payment thereof at the time of conviction, such Justice of the Peace (if he deems it expedient so to do) may issue his warrant, directed to any constable, to levy the amount of such fine and costs within a certain time, to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount is found, he may commit the offender to the Common Gaol of the County wherein the offence was committed for any term not exceeding three months, unless the fine and costs are sooner paid. C. S. U. C. c. 104, s. 12. In default, may levy fine. Commitment.

14. The prosecution for any offence punishable under this Act shall be commenced within one month after the commission of the offence, and not afterwards. C. S. U. C. c. 104, s. 13; 36 V. c. 10, s. 4. Limitation of time for prosecution.

15. All actions and prosecutions against any person for anything done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and shall be commenced within six months after the fact committed, and not afterwards; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the action, and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial had thereupon. C. S. U. C. c. 104, s. 16. Where actions, etc., are to be tried. Defendant may plead general issue.

16. No plaintiff shall recover in such action, if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into Court after such action brought by or on behalf of the defendant; and if a verdict passes for the defendant, or the plaintiff becomes non-suited, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment be given against the plaintiff, the defendant may recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases. C. S. U. C. c. 104, s. 17. Tender of amends, etc. Defendant if successful to have full costs.

17. This Act shall not extend to the people called Indians. C. S. U. C. c. 104, s. 19. Not to extend to Indians.

SCHEDULE.

(*Section* 11.)

Be it remembered, that on the day of in the year of our Lord one thousand eight hundred and at , in the County of (*or* at the City of *as the case may be*), A. B., of is convicted before me, C. D., one of Her Majesty's Justices of the Peace for the said County (*or* City *as the case may be*), for that he the said A. B. did (*specify the offence, and the time and place when and where the same was committed, as the case may be*); and I, the said C. D., adjudge the said A. B., for his offence to pay (immediately, *or* on or before the day of) the sum of , and also the sum of for costs; and in default of payment of the said sums respectively, to be imprisoned in the Common Gaol of the said County (*or* City, *as the case may be*) for the space of months, unless the said sums are sooner paid; and I direct that the said sum of (*the penalty*) shall be paid as follows, that is to say: one moiety thereof to the party charging the offence, and the other moiety to the Treasurer of the County (*naming the one in which the offence was committed, or* of the said City, *as the case may be*), to be by him applied according to the provisions of chapter one hundred and eighty-nine of "*The Revised Statutes of Ontario,*" entitled "*An Act to prevent the Profanation of the Lord's Day.*"

Given under my hand and seal, the day and year first above mentioned.

C. D., J.P. [L.S.]

An Act respecting the Public Health.

R. S. O. Cap. 190.

Interpretation, s. 1.
Municipalities and Police Villages:
Who to be health officers of, s. 2.
Power to enter premises, s. 3.
And order cleansing of, s. 4.
And cleanse on default of owner or occupant, s. 5.
May order medical examination. s. 6.
When inhabitants of a house may be removed, ss. 6, 7.
Powers of Lieutenant-Governor:
Regulation of vessels, passengers and cargoes, s. 8.
Proclamation suspending sections 2-7, ss. 9-11.
Appointment of Central Board of Health, s. 12.
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Meeting to be called to nominate, s. 14.
Who may be appointed, s. 15.
When meeting must be called, s. 16.
When Lieut.-Governor may appoint Local Board, s. 17.
Municipal Health Officers to act in the interim, s. 18.
How Local Board of Health dissolved, s. 19.
Powers of Central Board of Health:
To make regulations for preventing infection, ss. 20, 21.
To require Local Boards to carry out these regulations, s. 22.
And to compel removal of inhabitants of certain houses, s. 23.
When and how long such regulations shall be in force, s. 24.
Powers of Local Boards:
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And laid before Legislative Assembly, s. 30.
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For disobedience or neglect of orders or regulations, s. 32.
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How recoverable, s. 32.
Committal of offender, s. 33.
Application of penalties, s. 34.
Conviction may be had through proclamation no longer in force, s. 35.
No proceedings to be quashed for want of form, s. 36.
Or removed by *certiorari*, s. 36.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Interpretation.

1. In this Act, the following words and expressions shall have the meaning hereinafter assigned to them respectively, unless such meaning is repugnant to or inconsistent with the context, that is to say :—

"Place."

"Place" shall mean and include a City, Town, Village, Township, or any other territorial division recognized or designated by law as a separate Municipality or municipal division, and shall also mean and include a Police Village;

"Street."

"Street" shall include every highway, road, square, row, lane, mews, court, alley, and passage, whether a thoroughfare or not. 36 V. c. 43, s. 36.

MUNICIPAL HEALTH OFFICERS.

Who shall and may be health officers.

2. The members of the Municipal Council of every Township, City, Town and incorporated Village, and the Trustees of every Police Village shall be Health Officers within their respective Municipalities, under the next five sections of this Act; but any such Council may by by-law delegate the power of its members as such Health Officers to a committee of their own number, or to such persons, either including or not including one or more of themselves, as the Council thinks best. 36 V. c. 43, s. 6.

Health officers may enter and examine premises.

3. The Health Officers of any Municipality or Police Village, or any two of them, may, in the day time, as often as they think necessary, enter into and upon any premises in the place for which they hold office, and examine such premises. 36 V. c. 43, s. 1.

Power to order cleansing.

4. If upon such examination they find that the premises are in a filthy or unclean state, or that any matter or thing is there which, in their opinion, may endanger the public health, they or any two of them may order the proprietor or occupant of the premises to cleanse the same and to remove what is so found there. 36 V. c. 43, s. 2.

Powers to officers to cleanse.

5. Such Health Officers, in case the proprietor or occupier of the premises neglects or refuses to obey their directions, may call to their assistance all constables and any other persons they think fit, and may enter on the premises and cleanse the same, and remove therefrom and destroy what in their opinion it is necessary to remove or destroy for the preservation of the public health. 36 V. c. 43, s. 3.

6. Such Health Officers or a majority of them may also by warrant under their hands, authorize any two medical practitioners to enter in and upon any house, out-house, or premises in the day time for the purpose of making enquiry and examination with respect to the state of health of any person therein; and may also, upon the report of such medical practitioners in writing recommending the same, cause any person found therein infected with a dangerously contagious or infectious disease to be removed to some hospital or other proper place; but no such removal shall take place unless the said medical practitioners state in their said report that such person can be removed without danger to life, and that such removal is necessary in order to guard against the spread of such disease to the adjoining house or houses. 36 V. c. 43, s. 5.

Medical men may be authorized by the officers to examine.

On report of medical men, persons infected may be removed.

7. Wherever a disease of a malignant and fatal character is discovered to exist in any dwelling-house or out-house temporarily occupied as a dwelling, in a City, Town, Village, or Township in Ontario, or within a mile thereof, and such house is situated in an unhealthy or crowded part of the City, Town, Village, or Township or adjoining country, or is in a filthy and neglected state, or is inhabited by too many persons, the Health Officers of the Municipality or a majority of them may, at the expense of the Municipality, compel the inhabitants of such dwelling-house or out-house to remove therefrom, and may place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken under the direction and at the expense of the Municipality, for the immediate cleansing, ventilation, purification, and disinfection of such dwelling-house or out-house. 36 V. c. 43, s. 4.

When inhabitants of a house may be removed.

POWERS OF LIEUTENANT-GOVERNOR.

8. The Lieutenant-Governor in Council may make and declare such regulations concerning the entry or departure of boats or vessels at the different ports or places in Ontario, and concerning the landing of passengers or cargoes from such boats or vessels, or the receiving passengers or cargoes on board of the same, as may be thought best calculated to preserve the public health. 36 V. c. 43, s, 7.

Lieutenant-Governor may regulate vessels in port, and landing, of passengers and cargoes.

9. Whenever this Province, or any part thereof, or place therein, appears to be threatened with any formidable epidemic, endemic, or contagious disease, the Lieutenant-Gover-

When epidemic, etc., probable, Lieut.-Governor

may proclaim following sections in force.

nor may, by proclamation, to be by him from time to time issued, by and with the advice and consent of the Executive Council, declare the subsequent sections of this Act to be in force in this Province, or in any part thereof or place therein, mentioned in such proclamation; and it shall thereupon be in force accordingly. 36 V. c. 43, s. 8.

Power to revoke, renew, and limit duration of proclamation.

10. The Lieutenant-Governor may, in like manner, from time to time, as to all or any of the parts or places to which any such proclamation extends, revoke or renew any such proclamation; and subject to revocation and renewal, as aforesaid, every such proclamation shall have effect for six months, or for any shorter period in such proclamation expressed. 36 V. c. 43, s. 9.

On proclamation, sections two to seven suspended unless excepted.

11. Upon the issuing of any such proclamation, and whilst the same is in force, sections two to seven inclusive of this Act shall be suspended as to every place mentioned in such proclamation, or being within any part of this Province included thereby, unless it is by the said proclamation declared that such sections or any of them shall be continued in force. 36 V. c. 43, s. 10.

Central Board of Health, appointment of.

12. From time to time, after the issuing of any such proclamation, and whilst it is in force, the Lieutenant-Governor may, by commission under his hand and seal, appoint five or more persons, to be "The Central Board of Health," and also such officers and servants as he deems necessary to assist the Board; and the powers and duties of the said Board may be exercised and executed by any three members thereof; and during any vacancy in the said Board, the continuing members or member may act as if no vacancy had occurred. 36 V. c. 43, s. 11.

Powers and duties of, how exercised.

Commission appointing Central Board determined by revocation of proclamation.

13. Every such commission shall, *ipso facto*, be determined by the revocation of the proclamation under which it issued, as to all the places included in such proclamation, or by the expiration of six months from the date of such proclamation, or of any shorter period expressed in such proclamation as that during which it is to be in force, unless such proclamation is renewed as to all or some of such parts and places. 36 V. c. 43, s. 12.

LOCAL BOARDS OF HEALTH.

Meeting to nominate Local Board of Health.

14. From time to time, while any such proclamation is in force, the Mayor or other head of the Municipal Corporation,

Inspecting Trustee or other chief Municipal officer of any and every place mentioned in such proclamation, or included thereby, may call a special meeting of the Council or of the Police Trustees of such place, over which he presides, for the purpose of nominating a Local Board of Health. 36 V. c. 43, s. 13.

Local Boards of Health, how appointed.

15. Such Municipal Corporation or Police Trustees shall nominate not less than three persons, resident within the limits of their respective jurisdictions (or in the case of a City, Town or Village, within seven miles thereof), to be "The Local Board of Health" for such place. 36 V. c. 43, s. 14.

Meeting to nominate Board of Health imperative on certain requisitions.

16. Such Mayor, or other head of such municipal corporation, Inspecting Trustee, or other chief municipal officer, shall call such special meeting within two days from the receipt of a written requisition to that effect, signed by ten or more inhabitants, householders of the place, under the jurisdiction of the body over which he presides, on pain of being personally liable to the penalty hereinafter mentioned. 36 V. c. 43, s. 15.

When Lieut.-Governor may appoint Local Board.

17. If at any time while any such proclamation is in force, it is certified to the Lieutenant-Governor, by any ten or more inhabitant householders of any place included in such proclamation, that the Mayor or other head of such Municipal Corporation, or Inspecting Trustee, or other chief municipal officer of such place, has failed to comply with such requisition, within such time as aforesaid, or that such Council or Trustees have failed to nominate a Local Board, the Lieutenant-Governor in Council may forthwith appoint not less than three persons, resident within the limits of such place (or in the case of a City, Town or Village, within seven miles thereof), to be the Local Board of Health for such place. 36 V. c. 43, s. 16.

Till appointment of local board, health officers may act as such.

18. Until a Local Board of Health is appointed under the provisions of the three preceding sections, the Health Officers of the Municipality shall exercise and perform the powers, authorities and duties of the Local Board, in conformity with the regulations of the Central Board, and shall act in every respect as if they were a Local Board of Health appointed under the fifteenth section of this Act. 36 V. c. 43, s. 17.

Appointment of local board, when determined

19. Every nomination or appointment of a Local Board of Health under the fifteenth or seventeenth sections of this Act shall, *ipso facto*, be determined by the revocation as to the

by revocation of commission.

place within the limits of which such Local Board is authorized to act, or as to any place in which it is included, or as to the whole Province, of the proclamation under which such Local Board was appointed, or by the expiration of six months from the date of such proclamation, or of any shorter period expressed in such proclamation as that during which it is to be in force, unless such proclamation is renewed as to such place, or any place in which it is included, or as to the whole Province. 36 V. c. 43, s. 18.

POWERS OF CENTRAL BOARD OF HEALTH.

Power of Central Board to make regulations to prevent infection, &c.

20. The Central Board of Health, or any three or more members thereof, may from time to time issue such regulations as they think fit, for the prevention, as far as possible, or the mitigation of such epidemic, endemic or contagious diseases, and may revoke, renew or alter any such regulations, or substitute such new regulations, as to them or any three of them appear expedient. 36 V. c. 43, s. 19.

Power of Central Board as to regulations.

21. The said Board may, by such regulations, provide,

1. For the frequent and effectual cleansing of streets by the Road Surveyors or Overseers of Highways and others, entrusted with the care and management thereof, or by the owners or occupiers of houses and tenements adjoining thereto;

2. For the cleansing, purifying, ventilating and disinfecting of houses, dwellings, railway stations, churches, buildings, and places of assembly, steamboats, railway carriages and cars, and other public conveyances, by the owners and occupiers, and persons having the care and ordering thereof;

3. For the removal of nuisances;

4. For the speedy interment of the dead;

5. For preventing or mitigating such epidemic, endemic or contagious diseases, in such manner as to the said Central Board seems expedient. 36 V. c. 43, s. 20.

Power to Central Board to require local board to execute their regulations, etc.

22. The said Central Board may by any such regulations authorize and require the Local Boards of Health to superintend and see to the execution of any such regulations; and (where it appears that there may be default or delay in the execution thereof, by want or neglect of such Surveyors, Overseers, or others entrusted as aforesaid, or by reason of poverty of occupiers or otherwise) to execute or aid in exe-

cuting the same within their respective limits; and to provide for the dispensing of medicine and for affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases, such medical aid as may be required; and to do and provide all such acts, matters and things as are necessary for superintending or aiding in the execution of such regulations, or for executing the same as the case may require. 36 V. c. 43, s. 21.

And to remove inmates of certain houses.

23. The Central Board of Health may also by any such regulations authorize and require the Local Boards of Health, in all cases in which diseases of a malignant and fatal character, are discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, situate in an unhealthy or crowded locality, or being in a neglected or filthy state, at the proper costs and charges of such Local Boards of Health to compel the inhabitants of any such dwelling-house or out-house, to remove therefrom and to place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken by and under the directions of the Local Boards of Health, for the immediate cleansing, ventilation, purification and disinfection of the said dwelling-house or out-house. 36 V. c. 43, s. 22.

Regulations, extent of locality to which applicable.

24. The directions and regulations to be issued as aforesaid shall extend to all parts or places in which this Act is, for the time being, in force, under any such proclamation as aforesaid, unless such regulations are expressly confined to some of such parts or places, and then to such parts or places as in such directions and regulations are specified, and (subject to the power of revocation and alteration herein contained) shall continue in force so long as this Act is in force under such proclamation in the parts or places to which such regulations extend. 36 V. c. 43, s. 23.

POWERS OF LOCAL BOARDS OF HEALTH.

Members of local boards to be health officers; powers of.

25. The members of the said Local Boards of Health shall be called Health Officers; and any two or more of them acting in the execution of any such regulations as aforesaid, may exercise the like powers and authorities as are conferred upon Health Officers by sections six and seven of this Act. 36 V. c. 43, s. 24.

Powers of officers if their orders disobeyed.

26. In case the owner or occupier of any dwelling or premises neglects or refuses to obey the orders given by such

Health Officers, in pursuance of such regulations, such Health Officers may call to their assistance all Constables and peace officers, and such other persons as they think fit, and may enter into such dwelling or premises, and execute the same or cause to be executed therein such regulations, and remove therefrom and destroy whatsoever, in pursuance of such regulations it is necessary to remove and destroy for the preservation of the public health. 36 V. c. 43, s. 25.

MISCELLANEOUS PROVISIONS.

Expenses of central and local boards, how defrayed.

27. The expenses incurred by the said Central Board of Health shall be defrayed out of any moneys appropriated by the Legislature for that purpose; and the expenses incurred by the said Local Boards of Health in the execution or in superintending the execution of the regulations of the Central Board, shall be defrayed and provided for in the same manner and by the same means as expenses incurred by the Municipal Corporations, having jurisdiction over the respective places for which such Local Boards of Health were appointed, are by law required to be defrayed and provided for. 36 V. c. 43, s. 26.

Any two members of local board may order municipal treasurer to pay.

28. The Treasurer of the Municipality shall forthwith upon demand pay out of any moneys of the Municipality in his hands the amount of any order given by the members of the Local Board, or any two of them, for services performed under their direction by virtue of this Act. 36 V. c. 43, s. 27.

Proclamation to be published. Regulations of central board invalid till confirmed and published.

29. Every proclamation of the Lieutenant-Governor in Council under this Act shall be published in the *Ontario Gazette*; and no direction or regulation of the said Central Board of Health shall have any force or effect until it has been confirmed by the Lieutenant-Governor in Council, and has thereafter been published in the *Ontario Gazette*. 36 V. c. 43, s. 28.

Publication to be evidence of certain facts.

Regulations and proclamation to be laid before Legislative Assembly.

30. Such publication of any such proclamation or regulation shall be conclusive evidence of the proclamation or regulation so published, and of the confirmation of such regulation as aforesaid, and of the dates thereof respectively to all intents and purposes; and every such proclamation and regulation shall forthwith upon the issuing thereof be laid before the Legislative Assembly, if it is then sitting, and if

not, within the fourteen days next after the commencement of the next Session thereof. 36 V. c. 43, s. 29.

On publication of regulations certain municipal by-laws cease.

31. Upon the publication of any such regulations as aforesaid, and whilst they continue in force, all by-laws of the Municipal Corporation of any place to which such regulations or any of them relate, made for preserving the inhabitants thereof from contagious diseases, or for any other of the purposes for which such regulations are by this Act required to be issued, shall become and be suspended. 36 V. c. 43, s. 30.

PENALTIES AND PROSECUTIONS.

Penalty for disobedience of orders of officers and regulations.

32. Any person who wilfully disobeys or resists any lawful order of the Health Officer, or wilfully obstructs any person acting under the authority or employed in the execution of this Act either before or after the appointment of a Central Board of Health, or wilfully violates any regulations made and declared by the Lieutenant-Governor in Council or issued by the Central Board of Health under this Act, or neglects or refuses to comply with such regulations, or with the requirements of this Act in any manner whatsoever, shall be liable for every such offence to a penalty not exceeding twenty dollars, to be recovered by any person before any two Justices or a Police Magistrate, and to be levied by distress and sale of the goods and chattels of the offender, with the costs of such distress and sale by warrant, under the hands and seals of the Justices, or hand and seal of the Police Magistrate, before whom the same are recovered, or under the hands and seals of any other two Justices. 36 V. c. 43, s. 31.

Committal of offender.

33. If it appears to the satisfaction of such Justices or Police Magistrate before or after the issuing of their or his warrant, either by the confession of the offender or otherwise, that he has not goods and chattels within their or his jurisdiction sufficient to satisfy the amount, they or he may commit him to any Gaol, Lock-up or House of Correction for any time not exceeding fourteen days, unless the amount is sooner paid, in the same manner as if a warrant of distress had issued, and a return of *nulla bona* had been made thereon. 36 V. c. 43, s. 32.

Penalties to be payable to municipality.

34. All penalties whatever, recovered under this Act, shall be paid to the Treasurer of the Municipality in which such penalties have been incurred, for the use of the Municipality. 36 V. c. 43, s. 33.

Offences may be prosecuted though proclamation no longer in force.

35. All offences committed against this Act while the same is in force in this Province, or in any part thereof, shall be prosecuted and the parties committing the same, convicted and punished therefor as herein provided, as well after as during the time that such proclamation or proclamations are in force. 36 V. c. 43, s. 34.

No proceeding to be quashed for want of form, or be removable into Superior Court.

36. No order or any other proceeding, matter or thing done or transacted in, or relating to the execution of this Act shall be vacated, quashed or set aside for want of form or be removed or removable by *certiorari*, or other writ or process whatsoever, into any of the Superior Courts. 36 V. c. 43, s. 35.

An Act respecting Vaccination and Inoculation.

R. S. O. Cap. 191.

Hospitals, etc. :
- To keep vaccine matter on hand, s. 1.
- And set apart a small-pox ward, s. 3.
- Otherwise not to receive public moneys, ss. 2, 3.
- Annual report to Legislature, s. 4.

Councils of Cities :
- To provide for free vaccination, s. 5.
- And appoint a place therefor in every Ward, s. 6.

Duties of parents :
- To have child vaccinated within three months after birth, s. 7.
- And exhibit it to vaccinator eight days afterwards, s. 8.

And of Vaccinator :
- Certificate of vaccination to be given to parent, s. 9.
- And sent to City Clerk, s. 10.
- If child found unfit for vaccination, s. 10.
- If child not susceptible of vaccine disease, s. 11.
- Fees for vaccination, s. 12.

Penalties :
- For not having child vaccinated, s. 13.
- Plea of previous convictions, s. 14.
- For inoculating with vario matter, C. S. C. c. 39, s. 1.
- If offender a medical man, license forfeited, s, 15.
- But may be restored, s. 15.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The Trustees, Governors, Directors, or other officers or persons having at any time the control and management of any Hospital or Dispensary receiving aid from the public funds of this Province, shall keep at all times in such Hospital or Dispensary an adequate supply of vaccine matter for the following purposes, viz. : Trustees, &c., of Hospitals to keep vaccine matter for certain purposes.

First.—For the vaccination, by a legally qualified medical practitioner attached to such Hospital or Dispensary, at the expense of the same, of all poor persons, and at their own expense of all other persons, who attend at such Hospital or Dispensary for that purpose, during one day in every week; the fee to be charged for such vaccination not in any case to exceed fifty cents, and to be used and applied for the benefit of the Hospital or Dispensary; For the vaccination of the poor. Fee. How applied.

Second.—For the purpose of furnishing, on application, to each and every legally qualified medical practitioner, such reasonable quantities of the said matter as he from time to time requires; For furnishing legally qualified medical practitioners.

Third.—For the purpose of furnishing, on application, to the Superintendent-General of Indian Affairs, or his Assistant, or to any Visiting Superintendent of Indian Affairs, such reasonable quantities of the said matter as he may from time to time require for the use and benefit of any settlement of Indians. C. S. C. c. 39, s. 3. For the use of the Indians.

2. No warrant shall hereafter issue for the payment of any sum of money granted by the Legislature to any Hospital or Dispensary, unless a certificate has been filed in the office of the Clerk of the Executive Council, signed by a medical officer of such Hospital or Dispensary, to the effect that there is actually on hand in such Hospital or Dispensary a supply of vaccine matter which is expected to be sufficient for the purposes aforesaid from the date of such certificate, or setting forth reasons and grounds in explanation of any deficiency in such supply to the satisfaction of the Lieutenant-Governor in Council, nor unless nor until a certificate, signed as aforesaid, to the effect that at no time since the date of the then last certificate in this behalf, has the demand upon such Hospital or Dispensary for such matter for the purposes aforesaid, exceeded the supply thereof on hand in such Hospital or Dispensary, or setting forth reasons and grounds in explanation of any deficiency of such supply, to the satisfaction of the Lieutenant-Governor in Council, has been filed as aforesaid. C. S. C. c. 39, s. 4. No warrant for the payment of money to issue to any Hospital unless it has a sufficient quantity of vaccine matter on hand, &c.

No public money to be paid to any Hospital unless it has a small pox ward.

3. No warrant shall issue for the payment of any sum of money granted by the Legislature to any Hospital, unless a certificate has been filed with the Clerk of the Executive Council, signed by a medical officer of such Hospital to the effect that there is in such Hospital a distinct and separate ward set apart for the exclusive accommodation of patients afflicted with small pox. 24 V. c. 24, s. 1.

Annual statement to be laid before Legislature respecting vaccination.

4. The Trustees, Governors, Directors, or other officers or persons having for the time being the control and management of any Hospital or Dispensary to which aid has been granted during any Session of the Legislative Assembly of this Province, shall cause to be transmitted to the Lieutenant-Governor, through the Provincial Secretary, in time to admit of copies thereof being laid before the Legislative Assembly, during the first fifteen days of the then next Session, a statement certified by the proper officers of such Hospital or Dispensary, shewing the number of persons who have applied for and received free vaccination, the number of persons who have applied for and received vaccination at their own expense, and the number, amount and application of fees charged and received for vaccination. C. S. C. c. 39, s. 5.

SPECIAL PROVISIONS AS TO CITIES.

Certain cities may employ medical practitioners to vaccinate the citizens, &c.

5. It shall be lawful for the Council of every City now being or which may hereafter be in this Province, and they are hereby respectively empowered and required, to contract with some legally qualified and competent medical practitioner or practitioners, for the period of one year, and so from year to year, as such contract expires, for the vaccination, at the expense of the City, of all poor persons, and, at their own expense, of all other persons, resident in such City, who come to such medical practitioner or practitioners for that purpose.

Remuneration to depend on success.

2. It shall be a condition of every such contract, that the amount of the remuneration to be received under the same shall depend on the number of persons who, not having been previously successfully vaccinated, are successfully vaccinated by such medical practitioner or medical practitioners, respectively so contracting. 24 V. c. 24, s. 2; 40 V. c. 7, *Sched.* A (203).

City to appoint a convenient place in each

6. The Council of each such City shall appoint a convenient place in each Ward of such City for the performance, at least once in each month, of such vaccination, and shall take effec-

tual means for giving, from time to time, to all persons resident within each such Ward, due notice of the days and hours at which the medical practitioner or one of the medical practitioners contracted with for such purpose will attend, once at the least in each month, at such place, to vaccinate all persons not successfully vaccinated who may then appear there, and also at the days and hours at which such medical practitioner will attend at such place to inspect the progress of such vaccination in the persons so vaccinated. 24 V. c. 24, s. 3. Ward for the purpose.

7. The father or mother of every child born in any such City, shall, at some such appointed time, within three calendar months after the birth of such child, or in the event of the death, illness, absence, or inability of the father and mother, then the person who has the care, nurture or custody of the child, shall at some such appointed time, within four calendar months after the birth of such child, take or cause to be taken, the said child to the medical practitioner in attendance at the appointed place in the Ward in which the said child is resident, according to the provisions of the preceding sections of this Act, for the purpose of being vaccinated, unless such child has been previously vaccinated by some legally qualified medical practitioner and the vaccination duly certified; and the said medical practitioner so appointed, shall, and he is hereby required, thereupon, or as soon after as it can conveniently and properly be done, vaccinate the said child. 24 V. c. 24, s. 4. Parents, &c., bound to take children to be vaccinated.

8. Upon the eighth day following the day on which any child has been vaccinated as aforesaid, the father or mother, or other person having the care, nurture or custody of the said child as aforesaid, shall again take or cause to be taken the said child to the medical practitioner by whom the operation was performed, or other similarly appointed medical practitioner in attendance as aforesaid, in order that such medical practitioner may ascertain by inspection the result of such operation. 24 V. c. 24, s. 5. And exhibit them to the medical practitioner on the eighth day.

9. Upon and immediately after the successful vaccination of any child born in any such City, the medical practitioner who performed the operation shall deliver to the father or mother, or other person having the care, nurture or custody of said child as aforesaid, a certificate under his hand, according to the form of Schedule A. to this Act, that the said child has been successfully vaccinated, and shall also transmit Certificate of successful vaccination to be given.

a duplicate of the said certificate to the Clerk of the City in which the operation was performed.

What to be evidence of.

2. Such certificate shall, without further proof, be admissible as evidence of the successful vaccination of such child in any information or complaint brought against the father or mother of such child, or against the person who has had the care, nurture or custody of such child as aforesaid, for non-compliance with the provisions of this Act. 24 V. c. 24, s. 6.

If the child be found unfit for vaccination.

10. If any medical practitioner appointed as aforesaid is of opinion that any child brought to him as aforesaid is not in a fit and proper state to be successfully vaccinated, he shall deliver to the father or mother of such child, or the person having the care, nurture or custody, of such child as

Certificate.

aforesaid on demand and without fee or reward, a certificate under his hand, according to the form of Schedule B to this Act, that the child is in an unfit state for successful vaccination.

How long to be in force.

2. Such certificate, or any similar certificate of a legally qualified medical practitioner, respecting any child born as aforesaid, shall remain in force for two months from its delivery as aforesaid; and the father or mother of the said child, or the person having the care, nurture or custody of the said child as aforesaid, shall, (unless they have within each succeeding period of two months obtained from a legally qualified medical practitioner a renewal of such certificate) within two months after the delivery of the said certificate as aforesaid, and if said child is not vaccinated at or by the termination of such period of two mouths, then during each

Re-presentation of the child to be repeated until successful vaccination.

succeeding period of two months until such child has been successfully vaccinated, take or cause to be taken to the said medical practitioner, so appointed as aforesaid, such child to be vaccinated by him; and if the said medical practitioner deems the said child to be then in a fit and proper state for such successful vaccination, he shall forthwith vaccinate it accordingly, and shall, upon or immediately after the successful vaccination of such child, deliver to the father or mother of such child, or the person having the care, nurture or

Certificate.

custody of such child as aforesaid, a certificate under his hand, according to the form of Schedule A to this Act, that such child has been successfully vaccinated; but if the said medical practitioner is of opinion that the said child is still in an unfit state for successful vaccination, then he shall again

deliver to the father or mother of such child, or to the person having the care, nurture or custody of such child, as aforesaid, a certificate under his hand, according to the form of Schedule B to this Act, that the child is still in an unfit state for successful vaccination, and the said medical practitioner, so long as such child remains in an unfit state for vaccination and unvaccinated, shall at the expiration of every succeeding period of two months, deliver, if required, to the father or mother of such child, or to the person having the care, nurture or custody of such child, a fresh certificate under his hand, according to the form of Schedule B of this Act.

Effect of certificate.

3. The production of such certificate or of any similar certificate from any legally qualified medical practitioner, shall be a sufficient defence against any complaint brought against the father or mother, or person having the care, nurture or custody of such child, for non-compliance with the provisions of this Act. 24 V. c. 24, s. 7.

If the child is found insusceptible of vaccine disease.

11. In the event of any medical practitioner employed under the provisions of this Act, or any other duly qualified medical practitioner being of opinion that any such child as aforesaid, that has been vaccinated by him, is insusceptible of the vaccine disease, he shall deliver to the father or mother of such child, or to the person having, as aforesaid, the care, nurture or custody of such child, a certificate under his hand, according to the form of Schedule C to this Act; and the production of such certificate shall be a sufficient defence against any complaint which may be brought against the father or mother, or person having the care, nurture or custody of such child, for non-compliance with the provisions of this Act. 24 V. c. 24, s. 8.

Fees under this Act.

12. In all contracts to be made under the provisions of this Act, the sums contracted to be paid shall not be more than twenty-five cents for every person successfully vaccinated, including all or any of the certificates required by this Act. 24 V. c. 24, s. 9.

Penalty for non-compliance with the requirements of this Act.

13. If any father or mother, or person so having as aforesaid the care, nurture or custody of any such child as aforesaid, does not cause such child to be vaccinated within the periods prescribed by this Act, or does not, on the eighth day after the vaccination has been performed, take or cause to be taken such child for inspection, according to the provisions in

this Act respectively contained, then such father or mother, or person having the care, nurture or custody of such child as aforesaid, so offending, shall be liable to a penalty not exceeding five dollars, recoverable on summary conviction before the Police Magistrate for the City in which the offence was committed, or if there is no such officer, then before any two Justices of the Peace sitting and having jurisdiction in such City.

Recovery.

Rev. Stat. c. 74.

2. The provisions of *The Act respecting Summary Convictions before Justices of the Peace*, shall be applicable to the recovery of such penalties. 24 V. c. 24, s. 10.

How far and when plea of conviction shall avail.

14. After the expiration of two months from the conviction of any person for an offence against this Act, in respect of any child, no plea of such conviction shall be a sufficient defence against any complaint which may then be brought against the same or any other person for non-compliance with the provisions of this Act in respect of the same child.

2. The production of a certificate in the form of Schedule A or C, under the hand of a legally qualified medical practitioner, shall be a sufficient defence against any such complaint; but the production of a certificate in the form of Schedule B shall not be a sufficient defence, unless the vaccination is thereby postponed to a day subsequent to that on which the complaint is brought. 24 V. c. 24 s. 11.

The license of the person contravening C. S. C. c. 39, s. 1, to become null.

15. If any person licensed to practice Medicine, Surgery, or Midwifery in this Province, is convicted of an offence against the first section of chapter thirty-nine of the Consolidated Statutes of Canada, entitled "*An Act respecting Inoculation and Vaccination*," the license of such person in that behalf shall thereby become null and void and of no effect, and such person shall, from and after the date of such conviction, be liable to the same penalty in the event of his practising Medicine, Surgery, or Midwifery in Ontario, as he would have been liable to for so doing if he had never been licensed to practice the same; But it shall be lawful for the Lieutenant-Governor, on the certificate of the College of Physicians and Surgeons of Ontario, at any time after the expiration of the term of imprisonment of any such person so convicted as aforesaid, again to license such person to practise Medicine, Surgery, and Midwifery as aforesaid, and thereupon and thereafter such person shall no longer be liable to any fine or penalty for so doing. C. S. C. c. 39, s. 2.

Proviso: license may be renewed, &c.

[*Section* 1 *of C. S. C.* c. 39, *is as follows :*

15. Any person producing or attempting to produce, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article or thing impregnated with variolous matter, or wilfully, by any other means whatsoever, the disease of small-pox in any person in this Province, shall be liable to be proceeded against and convicted summarily before any two Justices, and for every such offence shall, upon conviction, be imprisoned for any term not exceeding one month. 16 V. c. 170, s. 1.] Penalty against persons inoculating with variolous matter.

SCHEDULE "A."

(*Sections* 9, 10 *and* 14.)

CERTIFICATE OF VACCINATION.

I, the undersigned, hereby certify that , the child of , aged , of Ward, in the City of , has been successfully vaccinated by me

(Signed,) A. B.

Dated this day of , 18 .

SCHEDULE "B."

(*Sections* 10 *and* 14.)

CERTIFICATE OF UNFITNESS FOR VACCINATION.

I, the undersigned, hereby certify that I am of opinion that , the child of , of Ward, in the City of , aged , is not now in a fit and proper state to be successfully vaccinated, and I do hereby postpone the vaccination until the day of .

(Signed,) A. B.

Dated this day of , 18 .

SCHEDULE "C."

(*Sections* 11 *and* 14.)

CERTIFICATE OF INSUSCEPTIBILITY TO VACCINE DISEASE.

I, the undersigned, hereby certify that I am of opinion that the child of , of Ward, in the City of , is insusceptible of the vaccine disease.

(Signed,) A. B.

Dated this day of , 18 .

An Act to regulate the Means of Egress from Public Buildings.

R. S. O. CAP. 192.

Doors of public buildings to open outwards, s. 1.
Liability of Corporation not conforming to this Act, s. 2.
Penalties, s. 3.
Officers to enforce this Act, ss. 4, 5.
Act not to apply to convents, &c., s. 6.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Doors of churches, &c., to be hung so as to open outwards.

1. In all churches, theatres, halls or other buildings heretofore or hereafter constructed or used for holding public meetings, or for places of public resort or amusement, all the doors shall be so hinged that they may open freely outwards, and all the gates of outer fences, if not so hinged, shall be kept open by proper fastenings during the time such buildings are publicly used, to facilitate the egress of people, in case of alarm from fire or other cause. 29-30 V. c. 22, s. 1.

Congregations incorporated and

2. Congregations possessing corporate powers, and all trustees holding churches or buildings used for churches under

The Act respecting the property of Religious Institutions, and incumbents and churchwardens holding churches, or buildings used for churches, under the Act of the Parliament of the late Province of Upper Canada, passed in the third year of the reign of Her Majesty, Queen Victoria, chapter seventy-four, intituled "*An Act to make provision for the management of the Temporalities of the United Church of England and Ireland in this Province, and for other purposes therein mentioned*," and all other persons holding churches or buildings used for churches, under any other Act, shall be severally liable as trustees for such societies or congregations, to the provisions of this Act. 29-30 V. c. 22, s. 3 (2).

trustees holding for congregations under Rev. Stat. c. 216, and rectors, &c., holding under 3 Vict. c. 74, liable for neglecting the provisions of this Act.

3. Individuals, companies and corporations owning or possessing public halls, churches or other buildings used for public meetings, who violate the provisions of this Act, shall be liable to a fine not exceeding fifty dollars, recoverable on information before any two of her Majesty's Justices of the Peace, or before the Mayor or Police Magistrate of any City or Town; one moiety of such fine shall be paid to the party laying the information, and the other moiety to the Municipality within which the case arises: and parties so complained against shall be liable to a further fine of five dollars for every week succeeding that in which the complaint is laid, if the necessary changes are not made. 29-30 V. c. 22, s. 3 (1).

Individuals, companies and corporations liable to fine for neglecting the provisions of this Act.

4. In Cities, Towns and incorporated Villages, it shall be the duty of the High Bailiff, Chief Constable, or Chief of Police, to enforce the provisions of this Act, and such officers neglecting the performance of such duties shall be liable to a fine not exceeding fifty dollars, recoverable in the manner and before the Justice of the Peace, and payable to the parties mentioned in the third section of this Act. 29-30 V. c. 22, s. 6.

Duties of municipal officers.

5. County and Township Municipalities may, by by-law, appoint an officer to enforce the provisions of this Act. 29-30 V. c. 22, s. 7.

Officer to enforce this Act.

6. This Act shall not be construed to apply to convents or private chapels connected therewith. 29-30 V. c. 22, s. 8.

Not to apply to convents.

[*See also Rev. Stat.* c. 174, s. 454 (11).]

An Act to require the Owners of Threshing and other Machines to guard against Accidents.

R. S. O. CAP. 193.

Machinery to be protected by guards, s. 1.
Penalty for infringement of this Act, ss. 2, 3.
Application of penalties, s. 4.
Limitation of prosecutions, s. 5.
Defects of form in convictions, s. 6.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Certain machines to be so protected as to prevent injury to persons near them.

1. All persons owning or running any threshing machine, wood-sawing or other machine, which is connected to a horse-power by means of a tumbling rod or line of shafting, shall cause each of the knuckles, couplings or joints and jacks of such tumbling rod or line of shafting to be safely boxed or secured while running, with wood, leather or metal covering in such manner as to prevent injury to persons passing over or near such tumbling rod, and the knuckles, couplings or joints and jacks thereof; and shall cause all oiling cups attached to arbors or journals to which driving belts are attached, to be furnished with tubes of tin or other material, which shall extend above the belts in such manner as shall prevent damage from oiling when the machine is in motion; and shall further cause a driver's platform to be placed on any horse-power used for driving machinery, of such size as to cover the gearing constituting said horse-power, and in such manner as to prevent accident arising to any person from contact with said gearing. 37 V. c. 12, s. 1.

Penalty for non-compliance with provisions of this Act.

2. Any person or persons owning or running any threshing, wood-sawing or other machine, connected to a horse-power by means of a tumbling rod or line of shafting, who

neglect or refuse to comply with the provisions of this Act, shall on summary conviction, on information or complaint before one or more Justices of the Peace, be liable to a fine of not less than one dollar nor more than twenty dollars, over and above the costs of prosecution, and in default of payment of such fine and costs, the offender shall be imprisoned in the nearest Common Gaol for a period of not less than two or more than twenty days, at the discretion of such Justice or Justices of the Peace. 37 V. c. 12, s. 2.

No action for services rendered if provisions of this Act are not complied with.

3. No action shall be maintained, nor shall any legal liability exist for services rendered by or with any machine, such as is mentioned in the first section of this Act, when it is made to appear that the said section has not been complied with. 37 V. c. 12, s. 3.

Disposition of fines

4. All fines imposed and collected under this Act shall be paid, one half to the complainant or prosecutor, and the other half to the Treasurer of the School Section in which the offence was committed, for the use of the Public School in such Section. 37 V. c. 12, s. 4, *part.*

Proceedings to be commenced within thirty days.

5. All proceedings against any person for any violation of the first section of this Act shall be commenced within thirty days after the commission of the offence. 37 V. c. 12, s. 4, *part.*

Convictions defective in form.

6. No conviction under this Act shall be annulled or vacated for any defect in the form thereof, or for any omission or informality in any summons or other proceeding under this Act, so long as no substantial injustice results therefrom. 37 V. c. 12, s. 5.

An Act to impose a Tax on Dogs and for the Protection of Sheep.

R. S. O. Cap. 194.

Tax on Dogs:
To be levied annually, s. 1.
Unless dispensed with by County by-law, s. 2.
But may be restored in any Township by by-law, s. 2.
Duties of Assessors, s. 3.
Duties of owners of dogs, s. 4.
Duties of Collectors, ss. 5, 6.
Non-tax paying dogs may be ordered to be destroyed, s. 6.
Moneys collected to form a fund for paying damages to sheep, s. 7.
Unless County Council otherwise declares by by-law, s. 8.
Which may be repealed and re-enacted, s. 9.
Protection of Sheep:
Dogs pursuing sheep may be destroyed, s. 10.
General issue by statute pleadable in such case, s. 11.
Dogs accustomed to worry sheep may be destroyed. Procedure, ss. 12, 14.
Besides civil remedy for damages, s. 15.
By action or summary proceedings, s. 16.
Proof of defendant's knowledge unnecessary, s. 16.
Dogs worrying sheep to be destroyed on notice to owner, s. 17.
When Municipal Council to pay for damage to sheep, ss. 18, 19.
Claim thenceforth to belong to the Municipality, s. 20.
No claim if sheep running at large, s. 21.
Civil remedy for damages when dog tax dispensed with, s. 22.
Fees to magistrates under this Act, s. 23.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

TAX ON DOGS.

Annual tax on dogs.

1. Subject to the provisions of the next section, there shall be levied annually, in every Municipality in Ontario, upon the owner of each dog therein, an annual tax of one dollar for each dog, and two dollars for each bitch. 32 V. c. 31, s. 2.

Unless dispensed with by County by-law.

2. In case the Council of any County or Union of Counties deems it advisable to dispense with the levy of the said tax, it shall be lawful for such Council to declare by by-law that the said tax shall not be levied in any of the municipalities within its jurisdiction.

Tax may be restored by Township by-law.

2. Immediately upon the passing of any such County by-law the Council shall cause its Clerk to transmit a copy of the same to the Assessor or Assessors of every Municipality within its jurisdiction; and the County by-law shall have effect within every such Municipality, unless the Council thereof by by-law declares this Act to be in force therein, whereupon the said County by-law shall not apply to or have any effect within such Municipality. 32 V. c. 31, s. 2; 39 V. c. 30, s. 1.

Duty of assessors herein.

3. The Assessor or Assessors of every Municipality within which this Act has not been dispensed with, as provided in the foregoing section, shall, at the time of making their annual assessment, enter on the assessment roll, in a column prepared for the purpose, opposite the name of every person assessed, and also opposite the name of every resident inhabitant not otherwise assessed, being the owner or keeper of any dog or dogs, the number by him or her owned or kept. 32 V. c. 31, s. 3. *See Rev. Stat.* c. 180, s. 12 (4), & *Sched.* B.

Duty of owners of dogs.

Penalty.

4. The owner or keeper of any dog shall, when required by the Assessor or Assessors, deliver to him or them, in writing, the number of dogs owned or kept, whether one or more; and for every neglect or refusal to do so, and for every false statement made in respect thereof, shall incur a penalty of five dollars, to be recovered with costs before any Justice of the Peace for the Municipality. 32 V. c. 31, s. 4.

Tax entered on collector's roll.

5. The Collector's roll of the Municipality shall contain the name of every person entered on the assessment roll as the owner or keeper of any dog or dogs, with the tax hereby imposed, in a separate column; and the Collector shall proceed to collect the same, and at the same time and with the like authority, and make returns to the Treasurer of the Municipality, in the same manner, and subject to the same liabilities in all respects for paying over the same to the Treasurer, as in the case of other taxes levied in the Municipality. 32 V. c. 31, s. 5.

Proceedings where collector has failed to collect taxes from parties assessed for dogs.

6. In cases where parties have been assessed for dogs, and the Collector has failed to collect the taxes authorized by this Act, he shall report the same under oath to any Justice of the Peace, and such Justice shall, by an order under his hand and seal, to be served by any duly qualified constable, require such dogs to be destroyed by the owner or owners thereof; and if such owner or owners neglect or refuse to obey the said order, he or they shall be liable to the penalty, to be recovered in the same way and manner as provided in section sixteen of this Act; and in case any collector neglects to make the aforesaid report within the time required for paying over the taxes levied in the Municipality, he shall be liable to a penalty of ten dollars and costs, to be recovered in the same manner as provided in section sixteen of this Act. 32 V. c. 31, s. 13.

Penalty.

Penalty.

Tax to form fund for damages, &c.

7. The money collected and paid to the Clerk or Treasurer of any Municipality under the preceding sections, shall constitute a fund for satisfying such damages as arise in any year from dogs killing or injuring sheep or lambs in such Municipality; and the residue, if any, shall form part of the assets of the Municipality for the general purposes thereof; but when it becomes necessary, in any year for the purpose of paying charges on the same, the fund shall be supplemented to the extent of the amount which has been applied to the general purposes of the Municipality. 32 V. c. 31, s. 6.

Provision for cases in which council maintains taxes, but does not apply proceeds thereof.

8. In case the Council of any County or Union of Counties deems it advisable that the tax by this Act established should be maintained, but that the application of the proceeds thereof by this Act provided should be dispensed with, it shall be lawful for such Council by by-law to declare, that such application shall be dispensed with; and thereafter, during the continuance of such by-law, the clauses of this Act numbered six, seven, and sixteen to twenty-two inclusive shall have no force or effect in any of the Municipalities within the jurisdiction of such Council; and the moneys collected and paid to the Clerk or Treasurer of any such Municipality, under the remaining clauses of this Act, shall be the property of such Municipality, and shall be subject to its disposition in like manner as other local taxes. 32 V. c. 31, s. 17.

County council may repeal by-laws passed under Act.

9. The Council of any County or Union of Counties shall by them have power, from time to time, to repeal any by-law passed under the authority of this Act, and to enact or re-

enact any by-law authorized by this Act. 32 V. c 31, s. 18.

PROTECTION OF SHEEP.

Dogs seen worrying sheep may be killed.

10. Any person may kill any dog which he sees pursuing, worrying or wounding any sheep or lamb. 27 V. c. 20, s. 1; 32 V. c. 31, s. 11.

Plea to action for killing a dog.

11. The defendant in any action of damages for killing a dog under the circumstances in the preceding section mentioned, may plead the general issue and give this Act and the special matter in evidence. 27 V. c. 20, s. 7.

Persons owning dogs addicted to worrying may be summoned before a Justice of the Peace.

12. On complaint made in writing on oath before any Justice of the Peace for any City, Town or County or Union of Counties, that any person residing in such City, Town or County, or Union of Counties, owns or has in his possession a dog which has within six months previous worried and injured or destroyed any sheep, such Justice of the Peace may issue his summons, directed to such person, stating shortly the matter of such complaint, and requiring such person to appear before him, at a certain time and place therein stated, to answer to such complaint, and to be further dealt with according to law. 27 V. c. 20, s. 2.

Proceedings, how regulated.

Rev. Stat. c. 74.

13. The proceedings on such complaint and summons shall be regulated by *The Act respecting Summary Convictions before Justices of the Peace*, which shall apply to cases under this Act. 27 V. c. 20, s. 3.

On conviction of the fact, dog to be ordered to be destroyed and owner fined.

14. In case any person is convicted, on the oath of a credible witness, of owning or having in his possession a dog which has worried and injured or destroyed any sheep, the Justice of the Peace may make an order for the killing of such dog (describing the same according to the tenor of the description given in the complaint and in the evidence) within three days, and in default thereof may in his discretion impose a fine upon such person, not exceeding twenty dollars with costs; and all penalties imposed under this section shall be applied to the use of the Municipality in which the defendant resides. 27 V. c. 20, s. 4.

Conviction no bar to action for damages.

15. No conviction under this Act shall be a bar to any action by the owner or possessor, as aforesaid, of any sheep for the recovery of damages for the injury done to such sheep, in respect of which such conviction is had. 27 V. c. 20, s. 5.

Extent of liability of owner or keeper of dog.

16. The owner of any sheep or lamb killed or injured by any dog shall be entitled to recover the damage occasioned thereby from the owner or keeper of such dog, by an action for damages or by summary proceedings before a Justice of the Peace, on information or complaint before such Justice, who is hereby authorized to hear and determine such complaint, and proceed thereon in the manner provided by *The Act respecting Summary Convictions before Justices of the Peace*, in respect to proceedings therein mentioned; and such aggrieved party shall be entitled so to recover on such action or proceedings, whether the owner or keeper of such dog knew or did not know that it was vicious or accustomed to worry sheep. 27 V. c. 20, s. 6; 32 V. c. 31, s. 7.

Rev. Stat. c. 74.

Dogs known to worry sheep to be killed by owner.

17. The owner or keeper of any dog or dogs, to whom notice is given of any injury done by his dog or dogs to any sheep or lamb, or of his dog or dogs having chased or worried any sheep or lamb, shall, within forty-eight hours after such notice, cause such dog or dogs to be killed; and for every neglect so to do he shall forfeit a sum of two dollars and fifty cents for every such dog, and a further sum of one dollar and twenty-five cents for each such dog for every forty-eight hours thereafter, until the same is killed—if it is proved to the satisfaction of the Justice of the Peace before whom proceedings are taken for the recovery of such penalties, that such dog or dogs has or have worried or otherwise injured such sheep or lamb: but no such penalties shall be enforced in case it appears to the satisfaction of such Justice of the Peace that it was not in the power of such owner or keeper to kill such dog or dogs. 32 V. c. 31, s. 12.

Penalty.

Proviso.

Proviso.

Provision for cases where there is a conviction, but distress insufficient.

18. In case the owner of any sheep or lamb so killed or injured proceeds against the owner or keeper of the dog that committed the injury, before a Justice of the Peace, as provided by this Act, and is unable on the conviction of the offender, to levy the amount ordered to be paid, for want of sufficient distress to levy the same, then the Council of the Municipality in which the offender resided at the time of the injury shall order their Treasurer to pay to the aggrieved party the amount ordered to be paid by the Justice under such conviction, saving and excepting the costs of the proceedings before such Justice and before the Council. 32 V. c. 31, s. 9.

Provision for cases in which owner

19. The owner of any sheep or lamb killed or injured by any dog, the owner or keeper of which is not known, may,

within three months, apply to the Council of the Municipality in which such sheep or lamb was so killed or injured, for compensation for the injury; and if such Council (any member of which shall be competent to administer an oath or oaths in examining parties in the premises) is satisfied that the aggrieved party has made diligent search and inquiry to ascertain the owner or keeper of such dog, and that such owner or keeper cannot be found, they shall award to the aggrieved party for compensation a sum not exceeding two-thirds of the amount of the damage sustained by him; and the Treasurer of such Municipality shall pay over to him the amount so awarded. 32 V. c. 31, s. 8.

Where dog not known.

20. After the owner of such sheep or lamb has received from the Municipality any money under either of the preceding sections, his claim shall thenceforth belong to such Municipality; and they may enforce the same against the offending party for their own benefit, by any means or form of proceeding that the aggrieved party was entitled to take for that purpose, but in case such Municipality recovers from the offender more than they had paid to the aggrieved party, besides their costs, they shall pay over the excess to such aggrieved party for his own use. 32 V. c. 31, s. 10.

After compensation paid by municipality, claims to belong to them.

Proviso.

21. The owner of any sheep or lamb killed or injured while running at large upon any highway or unenclosed land, shall have no claim under this Act to obtain compensation from any Municipality. 32 V. c. 31, s. 15.

Cases where owner of sheep, etc., has no compensation.

22. If the Council of any County or Union of Counties, by by-law, decides to dispense with the levy of the aforesaid tax in the Municipalities within its jurisdiction, the owner of any sheep or lamb to the contrary may notwithstanding sue the owner or keeper of any dog or dogs for the damage or injury done by the said dog or dogs to the said sheep or lamb; and the same shall be recovered in the way and manner provided by section sixteen of this Act. 32 V. c. 31, s. 14.

Liability of dog owner to sheep owner where tax not imposed.

23. Every Justice of the Peace shall be entitled to charge such fees in cases of prosecutions or orders under this Act as it is lawful for him to charge in other cases within his jurisdiction; and he shall make the returns usual in cases of conviction, and also a return in each case to the Clerk of the Municipality, whose duty it shall be to enter the same in a book to be kept for that purpose. 32 V. c. 31, s. 16.

Fees and returns by Justices.

An Act respecting Pounds.

R. S. O. Cap. 195.

Act to be in force unless superseded by municipal by-law, s. 1.
Land-owner or occupant liable for damage by animals under his charge, s. 2.
What animals may be impounded, s. 3.
Where, if pound not safe, s. 4.
Statement of damage and security to be furnished to pound-keeper, s. 5.
When distrainor may himself detain the animal, s. 6.
Notice to owner, in such case, s. 7.
Or to Township Clerk if owner unknown, s. 8.
Duty of Clerk thereon, s. 9.
Notice in newspaper, when, s. 10.
Notice of sale—
If animal impounded, s. 11.
If animal not impounded, s. 12.
Contents of, s. 13.
Pound-keeper to feed impounded animals, s. 14.
And may recover allowance therefor, s. 15.
By summary proceedings, s. 16.
Or by sale of animal, ss. 17, 18.
Application of surplus, s. 18.
If damages disputed, s. 19.
Fence viewers to arbitrate, s. 20.
And certify award to pound-keeper, s. 21.
Penalties:
For neglecting to feed impounded animals, s. 22.
For neglect of duty by fence-viewers, s. 23.
How to be recovered, s. 24.
Application of, s. 25.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Act may be superseded by by-laws under Rev. Stat. c. 174, s. 463.

1. Until varied or other provisions are made by by-laws passed under the authority of section four hundred and sixty-three of "*The Municipal Act*," this Act shall be in force in every Township, City, Town, and incorporated Village in Ontario. 29-30 V. c. 51, s. 355.

Liability for damage done.

2. The owner or occupant of any land shall be responsible for any damage or damages caused by any animal or animals under his charge and keeping, as though such animal or animals were his own property, and the owner of any animal not permitted to run at large by the by-laws of the Munici-

pality shall be liable for any damage done by such animal, although the fence enclosing the premises was not of the height required by such by-laws. 29-30 V. c. 51, s. 355 (1).

What animals to be impounded.

3. If not previously replevied, the Pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig, or other cattle, geese or any other poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same; or if the owner of any geese or other poultry refuses or neglects to prevent the same from trespassing on his neighbours' premises after a notice in writing has been served upon him of their trespass, then the owner of such poultry may be brought before any Justice of the Peace and fined such sum as the Justice directs. 29-30 V. c. 51, s. 355 (2).

Poultry.

When the common pound is not safe.

4. When the common pound of the Municipality or place wherein a distress has been made is not secure, the Pound-keeper may confine the animal in any enclosed place within the limits of the Pound-keeper's division within which the distress was made. 29-30 V. c. 51, s. 355 (3).

Statement of demand to be made to pound-keeper by impounder.

5. The owner of any animal impounded shall at any time be entitled to his animal, on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the Pound-keeper for all costs, damages and poundage fees that may be established against him, but the person distraining and impounding the animal shall, at the time of such impounding, deposit poundage fees, if such are demanded, and within twenty-four hours thereafter deliver to the Pound-keeper duplicate statements in writing of his demands against the owner for damages (if any), not exceeding twenty dollars, done by such animal, exclusive of such poundage fees, and shall also give his written agreement (with a surety if required by the Pound-keeper) in the form following, or in words to the same effect:

Form of agreement with pound-keeper.

"I (*or* we *as the case may be*) do hereby agree that I, (*or* we) will pay to the owner of the (*describing the animal*) by me (A. B.) this day impounded, all costs to which the said owner may be put in case the distress by me the said A. B. proves to be illegal, or in case the claim for damages now put in by me the said A. B. fails to be established."

29-30 V. c. 51, s. 355 (4).

If the animal is of a certain kind.

6. In case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if the same is distrained

by a resident of the Municipality for straying within his premises, such person, instead of delivering the animal to a Pound-keeper, may retain the animal in his own possession, provided he makes no claim for damages done by the animal, and duly gives the notices hereinafter in that case required of him. 29-30 V. c. 51, s. 355 (5).

If the owner is known.

7. If the owner is known to him, he shall forthwith give to the owner notice in writing of having taken up the animal. 29-30 V. c. 51, s. 355 (6).

If unknown, notice to clerk of municipality.

8. If the owner is unknown to the person taking up and retaining possession of the animal, such person shall, within forty-eight hours, deliver to the Clerk of the Municipality a notice in writing of having taken up the animal, and containing a description of the colour, age and natural and artificial marks of the animal, as near as may be. 29-30 V. c. 51, s. 355 (7).

Duty of clerk thereon.

9. The Clerk, on receiving such notice, shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post the notice he receives, or copy thereof, in some conspicuous place on or near the door of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner. 29-30 V. c. 51, s. 355 (8).

If the animals are worth $10 or over.

10. If the animal or any number of animals taken up at the same time is or are of the value of ten dollars or more, the distrainer shall cause a copy of the notice to be published in a newspaper in the County, if one is published therein and if not, then in a newspaper published in an adjoining County, and to be continued therein once a week for three successive weeks. 29-30 V. c. 51, s 355 (9).

Notice of sale.

When sale may be made.

11. In case an animal is impounded, notices for the sale thereof shall be given by the Pound-keeper or person who impounded the animal within forty-eight hours afterwards, but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same. 29-30 V. c. 51, s. 355 (10).

If animal is not impounded, but retained.

12. In case the animal is not impounded, but is retained in possession of the party distraining the same, if the animal is a pig, goat or sheep, the notices for the sale thereof shall not be given for one month, and if the animal is a horse or

other cattle, the notices shall not be given for two months after the animal is taken up. 29-30 V. c. 51, s. 355 (11).

Notice of sale unless redeemed.

13. The notices of sale may be written or printed, and shall be affixed and continued for three clear successive days, in three public places in the Municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf, paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the Pound-keeper, and also of the Fence-viewers (if any); and the expenses of the animal's keeping. 29-30 V. c. 51, s. 355 (12).

Keeper to feed impounded cattle.

14. Every Pound-keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal in any common pound or in any open or close pound, or in any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter, during the whole time that such animal continues impounded or confined. 29-30 V. c. 51, s. 355 (13).

And may recover the value.

15. Every such person who furnishes the animal with food, water and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises. 29-30 V. c. 51, s. 355 (14).

In what manner such value may be recovered.

16. The value or allowance as aforesaid may be recovered, with costs, by summary proceeding before any Justice of the Peace within whose jurisdiction the animal was impounded, in like manner as fines, penalties or forfeitures for the breach of any by-law of the Municipality may by law be recovered and enforced by a single Justice of the Peace; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of Pound-keepers' fees and charges established by the by-laws of the Municipality. 29-30 V. c. 51, s. 355 (15).

Other mode of enforcing.

17. The Pound-keeper, or person so entitled to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereinafter mentioned. 29-30 V. c. 51, s. 355 (16).

Sale, how effected, etc.; and purchase money, how applied.

18. In case it is by affidavit proved before one of the Justices aforesaid, to his satisfaction, that all the proper notices had been duly affixed and published in the manner and for the respective times above prescribed, then if the owner or some one for him does not within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the Pound-keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any Pound-keeper, but retained the same in his own possession, then any Pound-keeper of the Municipality may publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and after deducting the penalty and the damages (if any) and fees and charges, shall apply the produce in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and of the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable (not exceeding twenty dollars,) to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and shall return the surplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the Pound-keeper shall pay such surplus to the Treasurer of and for the use of the Municipality. 29-30 V. c. 51, s. 355 (17).

Disputes regarding such demand, how determined.

19. If the owner, within forty-eight hours after the delivery of such statements, as provided in the fifth section, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three Fence-viewers of the Municipality, one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the Pound-keeper. 29-30 V. c. 51, s. 355 (18).

Fence-viewers to view and appraise damage.

20. Such Fence-viewers or any two of them shall, within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the statutes or by-laws in that behalf at the time of the trespass; and if it was a lawful fence, then they shall appraise the damages committed, and, within twenty-four hours after having made the view, shall deliver to the Pound-keeper a written statement signed by at

least two of them of their appraisement, and of their lawful fees and charges. 29-30 V. c. 51, s. 355 (19).

Proceedings where fence-viewers decide against the legality of a fence.

21. If the Fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the Pound-keeper, who shall, upon payment of all lawful fees and charges, deliver such animal to the owner if claimed before the sale thereof, but if not claimed, or if such fees and charges are not paid, the Pound-keeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned at the time and place appointed in the notices. 29-30 V. c. 51, s. 355 (21).

Liability of pound-keeper refusing to feed animal impounded.

22. In case any Pound-keeper or person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide and supply the animal with good and sufficient food, water and shelter as aforesaid, he shall, for every day during which he so refuses or neglects, forfeit a sum not less than one dollar nor more than four dollars. 29-30 V. c. 51, s. 355 (22).

Penalty for neglect of duty by fence-viewers.

23. Any Fence-viewer neglecting his duty as arbitrator as aforesaid, shall incur a penalty of two dollars, to be recovered for the use of the Municipality, by summary proceedings before a Justice of the Peace upon the complaint of the party aggrieved, or the Treasurer of the Municipality. 29-30 V. c. 51, s. 355 (20).

Recovery and enforcement of penalties.

24. Every fine and penalty imposed by this Act may be recovered and enforced, with costs, by summary conviction, before any Justice of the Peace for the County, [illegible] of the Municipality in which the offence was committed [illegible]nd, in default of payment, the offender may be committ[illegible] to the Common Gaol, House of Correction, or Lock-up House of such County or Municipality, there to be imprison[illegible] for any time, in the discretion of the convicting and committing Justice, not exceeding fourteen days, unless su[illegible] fine and penalty, and costs, including the costs of the co[illegible]mittal, are sooner paid. 29-30 V. c. 51, s. 355 (23).

Imprisonment in default of payment.

Application of penalties.

25. When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner: one moiety to the City, Town, Village or Township in which the offence was committed, and the other moiety thereof, with

full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice seems proper. 29-30 V. c. 51, s. 355 (25).

An Act respecting the investigation of Accidents by Fire.

R. S. O. Cap. 196.

When investigation to be held, s. 1.
Power of Coroner as to evidence, s. 2.
As to empanelling a jury, s. 3.
As to attendance of witnesses, s. 4.
As to jurors, s. 5.
These powers are in addition to those already vested in Coroner, s. 6.
Allowance to Coroner, s. 7.
By whom payable, s. 8.
Municipality, when liable for, s. 9.
Costs of adjournments, when allowed, s. 10.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Coroner to inquire into the origin of fires.

1. Whenever any fire has occurred, whereby any house or other building has been wholly or in part consumed, the Coroner within whose jurisdiction the locality is situated, shall institute an inquiry into the cause or origin of such fire, and whether it was kindled by design, or was the result of negligence or accident, and act according to the result of such inquiry; C. S. C. c. 88, s. 1.

Such inquiry not to take place except under certain circumstances.

2. But it shall not be the duty of the Coroner to institute an inquiry into the cause or origin of any fire or fires by which any house or other building has been wholly or partly consumed, nor shall such inquiry be had, until it has first been made to appear to such Coroner that there is reason to believe that such fire was the result of culpable or negligent conduct

or design, or occurred under such circumstances as in the interests of justice and for the due protection of property require an investigation. C. S. C. c. 88, s. 3.

Evidence to be taken on oath.

2. For the purpose of such investigation, such Coroner shall summon and bring before him all persons whom he deems capable of giving information or evidence touching or concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing, and return the same to the Clerk of the Peace for the District or County within which they have been taken. C. S. C. c. 88, s. 2.

Jury may be empanelled in certain cases.

3. The Coroner may in his discretion, or in conformity with the written requisition of any agent of an Insurance Company, or of any three householders in the vicinity of any such fire, empanel a jury chosen from among the householders resident in the vicinity of the fire, to hear the evidence that may be adduced touching or concerning the same, and to render a verdict under oath thereupon in accordance with the facts. C. S. C. c. 88, s. 4.

Coroner may enforce attendance of witnesses.

4. If any person summoned to appear before any Coroner acting under this Act, neglects or refuses to appear at the time and place specified in the summons, or if any such person, appearing in obedience to any such summons, refuses to be examined or to answer any questions put to him in the course of his examination, the Coroner may enforce the attendance of such person, or compel him to answer, as the case may require, by the same means as such Coroner might use in like cases at ordinary inquests before him. C. S. C. c. 88, s. 5.

Punishment of jurors not attending, &c.

5. If any person having been duly summoned as a juror upon any such inquiry, does not, after being openly called three times, appear and serve as such juror, the Coroner may impose upon the person so making default such fine as he thinks fit, not exceeding four dollars; and such Coroner shall make out and sign a certificate containing the name, residence, trade or calling of such person, together with the amount of the fine imposed, and the cause of such fine, and shall transmit the certificate to the Clerk of the Peace in the District or County in which such defaulter resides, on or before the first day of the General Sessions of the Peace then next ensuing for such District or County, and shall cause a copy of such certificate to be served upon the person so fined, by leaving it at his residence, within a reasonable time after such inquest;

Fines and how levied.

and all fines and forfeitures so certified by such Coroner shall be estreated, levied and applied in like manner, and subject to like powers, provisions and penalties in all respects, as if they had been part of the fines imposed at such General Sessions. C. S. C. c. 88, s. 6.

Certain powers of coroner not to be affected.

6. Nothing herein contained shall affect any power by law vested in any Coroner for compelling any person to attend and act as a juror, or to appear and give evidence before him on any inquest or other proceeding, or for punishing any person for contempt of Court in not so attending and acting or appearing and giving evidence, or otherwise, but all such powers shall extend to and be exercised in respect of inquiries under this Act. C. S. C. c. 88, s. 7.

Allowance to coroners holding inquiries.

7. Where any such inquiry has been held by the Coroner, in respect of fire in any City, Town or Incorporated Village, in conformity with this Act, the Coroner holding the same shall be entitled therefor to the sum of ten dollars, and should the said inquiry extend beyond one day, then to ten dollars *per diem* for each of two days thereafter, and no more; and in the case of an investigation concerning a fire occurring in any place, not within a City, Town, or Incorporated Village the allowance to the Coroner shall be five dollars for the first day, and should the inquiry extend beyond one day, then four dollars for each of two days thereafter, and no more. C. S. C. c. 88, s. 9; 23 V. c. 35, s. 1.

Party requiring it to pay the costs.

8. In all cases, the party requiring any such investigation shall alone be responsible for the expenses of and attending such investigation. 24 V. c. 33, s. 1.

When only a municipality shall be liable.

9. No Municipality shall be liable for any such expense unless the investigation is required by an instrument under the hands and seals of the Mayor or other head officer of the Municipality, and of at least two other members of the Council thereof; and such requisition shall not be given to charge any Municipal Corporation, unless there are strong special and public reasons for granting the same. 24 V. c. 33, s. 2.

In what case only costs of an adjournment shall be allowed.

10. No expenses of or for an adjournment of any such inquest shall be chargeable against or payable by the party or Municipal Corporation calling for or requesting the investigation to be held, unless it is clearly shown by the Coroner, and certified under his hand, why and for what purpose an adjournment took place or became necessary in his opinion. 24 V. c. 33, s. 3.

An Act respecting abandoned Oil Wells.

R. S. O. Cap. 197.

Owners of oil wells affected by water from any abandoned oil well may apply to Council for leave to fill up such abandoned well, s. 1.

Powers of Council, s. 1 (2).

Notice to owner of abandoned well, s. 2.

Right of complainant on default of owner, s. 3.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Owners of well injured may apply to Municipal Councils to fill up abandoned wells.

1. If the working of any oil well is retarded or injured by the water existing in or flowing into any abandoned oil well in the vicinity of the well so injured, it shall and may be lawful for the owner of such well so injured to apply to the Municipal Council of the Municipality in which such abandoned well is situated, for the purpose of being allowed by such Council to either fill up such abandoned well or in some other effectual way to shut off the water flowing therein.

Powers of the Council.

2. The Council shall, upon such application being made in writing by the person injured or aggrieved briefly setting forth the grievance, order some Engineer or other competent person to examine the said abandoned well, and after such examination to report to the said Council in writing whether in his opinion the person complaining is injured as alleged, and whether the said abandoned well should be filled up, or the water flowing therein shut off in some other and what manner. 35 V. c. 39, s. 1.

If engineer reports a well should be filled up,

2. In case the said Engineer or other competent person reports to the Council that in his opinion the said abandoned well so complained of should be filled up, or that the water

owners thereof to be notified.

flowing therein should be shut off in some other way, the Clerk of the Council shall mail to the owner or owners of such abandoned well, or to some one of such owners, or to his or their agent in charge of the premises where such abandoned well is situate, a copy of such report, with a notice in writing, signed by said Clerk, stating that unless said abandoned well is filled up or the water flowing therein is effectually shut off in accordance with the opinion contained in the said report, that the person complaining will proceed to do the work as provided in the next section. 35 V. c. 39, s. 2.

Cases wherein complainant may fill up.

3. If the said abandoned well is not filled up, or the water flowing therein otherwise shut off in accordance with the opinion contained in said report, within twenty days from the time of the mailing of the said notice, then it shall be lawful for the person complaining to proceed to the filling up of the said abandoned well, or the shutting off of the water flowing therein, in accordance with the terms of the said report; and no action of trespass or other action for damages shall lie or be maintainable against the person, his servants or agents, for so doing. 35 V. c. 39, s. 3.

An Act respecting Line Fences.

R. S. O. Cap. 198.

Short Title, s. 1.
Duty of adjoining owners as to Line Fences, s. 2.
Proceedings in case of dispute :—
Notice to owner, s. 3 (1).
And to fence-viewers, s. 3 (2).
Occupant to notify owner, s. 4.
Duties of fence-viewers, s. 5.
Award :—
What to contain, s. 6.
To be filed with Clerk. s. 7.
How enforced, s. 8.
Award :—
To be a lien, s. 9.
Fees payable on, s. 10.
Appeals to County Judge :—
Procedure on, s. 11 (1), (2).
Notice of hearing, s. 11 (3).
Powers of Judge, s. 11 (4), (5).
Agreements as to Line Fences, s. 12.
Removal of Line Fences, s. 13.
Trees falling upon Line Fences, s. 14.
Forms, use of, s. 15.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Line Fences Act.*"

Duties of owners of adjoining lands as to fences.

2. Owners of occupied adjoining lands (*a*) shall make, keep up and repair a just proportion of the fence which marks the boundary between them, or if there is no fence, they shall so make, keep up and repair the same proportion, which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands, shall, upon their being occupied, be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned. 37 V. c. 25 s. 2.

Disputes between owners, how to be settled.

3. In case of dispute between owners respecting such proportion, the following proceedings shall be adopted :

Notice to owner or

1. Either owner may notify (Form 1) the other owner or the occupant of the land of the owner so to be notified, that

(*a*) By 41 Vict. c. 10, s. 1, it is enacted that, "The expression 'occupied lands' shall not include so much of the lot, parcel, or farm as is unenclosed, although a part of such lot, parcel, or farm is enclosed, and in actual use and occupation."

**IMAGE EVALUATION
TEST TARGET (MT-3)**

6″

occupant of adjoining land.

he will, not less than one week from the service of such notice, cause three Fence-viewers of the locality to arbitrate in the premises.

And to fence-viewers.

2 Such owners so notifying shall also notify (Form 2) the Fence-viewers, not less than one week before their services are required.

What to contain.

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat; or in case of such lands being untenanted, by leaving such notice with any agent of such owner.

When Judge to appoint fence-viewers.

4. The owners notified may, within the week, object to any or all of the Fence-viewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the Fence-viewers who are to arbitrate. 37 V. c. 25, s. 3.

Duty and liability of occupants as to notifying owners.

4. An occupant, not the owner of land notified in the manner above mentioned, shall immediately notify the owner; and if he neglects so to do, shall be liable for all damage caused to the owner by such neglect. 37 V. c. 25, s. 9.

Duties and powers of fence-viewers.

5. The Fence-viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation as in Courts of Law. 37 V. c. 25, s. 4.

Award of fence-viewers.

6. The Fence-viewers shall make an award (Form 3) in writing signed by any two of them, respecting the matters so in dispute; which award shall specify the locality, quantity,

Contents.

description and the lowest price of the fence it orders to be made, and the time within which the work shall be done, and shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of such costs.

Character of fence.

2. In making such award, the Fence-viewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally the suitableness of the fence ordered to the wants of each party.

Location of fence.

3. Where, from the formation of the ground, by reason of streams or other causes, it is found impossible to locate the

fence upon the line between the parties, it shall be lawful for the Fence-viewers to locate the said fence either wholly or partially on the land of either of the said parties, where to them it seems to be most convenient; but such location shall not in any way affect the title to the land.

Employment of surveyor.

4. If necessary, the Fence-viewers may employ a Provincial Land Surveyor, and have the locality described by metes and bounds. 37 V. c. 25, s. 5.

Deposit of award.

Award may be evidence.

Notification of award.

7. The award shall be deposited in the office of the Clerk of the Council of the Municipality in which the lands are situate, and shall be an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents; and notice of its being made shall be given to all parties interested. 37 V. c. 25, s. 6.

Award, how enforced.

8. The award may be enforced as follows:—The person desiring to enforce it shall serve upon the owner or occupant of the adjoining lands a notice in writing, requiring him to obey the award, and if the award is not obeyed within one month after service of such notice, the person so desiring to enforce it may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality; but the Judge of such Division Court may, on application of either party, extend the time for making such fence to such time as he may think just. 37 V. c. 25, s. 7.

Award to be a charge on lands, if registered.

9. The award shall constitute a lien and charge upon the lands respecting which it is made, when it is registered in the Registry Office of the County, or other Registration Division in which the lands are.

How registered.

Rev. Stat. c. 111.

2. Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of "*The Registry Act.*" 37 V. c. 25, s. 8.

Fees to fence-viewers, surveyors and witnesses.

10. The Fence-viewers shall be entitled to receive two dollars each for every day's work under this Act. Provincial Land Surveyors and witnesses shall be entitled to the same compensation as if they were subpœnaed in any Division Court. 37 V. c. 25, s. 10.

Appeals.

11. Any person dissatisfied with the award made may appeal therefrom to the Judge of the County Court of the

County in which the lands are situate, and the proceedings on such appeal shall be as follows:—

Notice of appeal.

1. The appellant shall serve upon the Fence-viewers, and all parties interested, a notice in writing of his intention to appeal within one week from the time he has been notified of the award; which notice may be served as other notices mentioned in this Act.

To clerk.

2. The appellant shall also deliver a copy of such notice to the Clerk of the Division Court of the Division in which the land lies, and the Clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said Clerk as will be a sufficient indemnity against costs of the appeal.

Notice of hearing.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the Clerk, who shall notify the Fence-viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act.

Powers of the Judge.

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and, if he so pleases, may inspect the premises; and may order payment of costs by either party, and fix the amount of such costs.

Decision of Judge to be final.

5. His decision shall be final; and the award as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

6. The practice and the proceedings on the appeal, including the fees payable for subpœnas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the Division Court. 37 V. c. 25, s. 11; 40 V. c. 7, *Sched.* A (202); 40 V. c. 8, s. 58.

Registration of agreements.

12. Any agreement in writing (Form 4) between owners respecting such line fence may be filed or registered and enforced as if it was an award of Fence-viewers. 37 V. c. 25, s. 12.

Owner of division fence which forms part of another person's land

13. The owner of the whole or part of a division or line fence which forms part of the fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence,

(*a*) Without giving at least six months previous notice of his intention to the owner or occupier of such adjacent enclosure; not to remove same except upon notice, &c.

(*b*) Nor unless such last mentioned owner or occupier after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum, to be determined as provided in the sixth section of this Act;

(*c*) Nor if such owner or occupier will pay to the owner of such fence or of any part thereof, such sum as the Fence-viewers may award to be paid therefor under the sixth section of this Act. 40 V. c. 29, s. 1.

2. The provisions of this Act relating to the mode of determining disputes between the owner of occupied adjoining lands; the manner of enforcing awards and appeals therefrom; and the schedules of forms attached hereto, and all other provisions of this Act, so far as applicable, shall apply to proceedings under this section. 40 V. c. 29, s. 2. Provisions of this Act to apply to cases under this section.

14. If any tree is thrown down, by accident or otherwise, across a line or division fence, or in any way in and upon the property adjoining that upon which such tree stood, thereby causing damage to the crop upon such property or to such fence, it shall be the duty of the proprietor or occupant of the premises on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damage caused by the falling of such tree. Provision, when a tree is thrown down across a line fence.

2. On his neglect or refusal so to do for forty-eight hours after notice in writing to remove the same, the injured party may remove the same, or cause the same to be removed, in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of such tree from the party liable to pay it under this Act. When injured party may remove tree.

3. For the purpose of such removal the owner of such tree may enter into and upon such adjoining premises for the removal of the same without being a trespasser, avoiding any unnecessary spoil or waste in so doing. Entry to remove tree not to be a trespass, &c.

4. All disputes arising between parties relative to this section, and for the collection and recovery of all or any sums of money becoming due thereunder, shall be adjusted by Fence-viewers to decide disputes.

three Fence-viewers of the Municipality, two of whom shall agree. 29-30 V. c. 51, s. 355 (28).

Forms.

15. The forms in the Schedule hereto are to guide the parties, being varied according to circumstances. 37 V. c. 25, s. 13.

SCHEDULE OF FORMS.

FORM 1.

(*Section* 3.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. , Mr. , and Mr. , three fence-viewers of this locality, will attend on the day of , 18 , at the hour of , to view and arbitrate upon the line fence in dispute between our properties, being Lots (*or* parts of Lots) *One* and *Two* in the Concession of the Township of , in the County of .

Dated this day of , 18 .

A. B.,
Owner of Lot 1.

To *C. D.*,
Owner of Lot 2.

FORM 2.

(*Section* 3.)

NOTICE TO FENCE-VIEWERS.

Take notice, that I require you to attend at on the day of , A.D. 18 , at o'clock A.M., to view and arbitrate on the line fence between my property and that of Mr. , being Lots (*or* parts of Lots) Nos. *One* and *Two* in the Concession of the Township of , in the County of .

Dated this day of , 18 .

A. B.,
Owner of Lot 1.

FORM 3.

(*Section* 6.)

AWARD.

We, the fence-viewers of (*name of the locality*), having been nominated to view and arbitrate upon the line fence between by (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe properties*), and having examined the premises and duly acted according to "*The Line Fences Act*," do award as follows: That part of the said line which commences at and ends at (*describe the points*) shall be fenced, and the fence, maintained by the said , and that part thereof which commences at , and ends at (*describe the points*), shall be fenced, and the fence maintained by the said . The fence shall be of the following description (*state the kind of fence, height, material, &c.*), and shall cost at least per rod. The work shall be commenced within days, and completed within days from this date, and the costs shall be paid by (*state by whom paid; if by both, in what proportion*).

Dated this day of , A.D. 18 .

(*Signatures of fence-viewers.*)

FORM 4.

(*Section* 12.)

AGREEMENT.

We and , owners respectively of Lots (*or* parts of Lots) *One* and *Two* in the Concession of the Township of , in the County of , do agree that the line fence which divides our said properties shall be made and maintained by us as follows: (*follow the same form as award.*)

Dated this day of , A.D. 18 .

(*Signatures of parties.*)

An Act respecting Ditching Water-courses.

R. S. O. CAP. 199.

Short Title, s. 1.
Application of Act, s. 2.
Duty of adjoining owners as to ditches, s. 3.
Proceedings in case of dispute, s. 4.
Notice to owner, s. 4 (1).
Notice to Fence-viewers, s. 4 (2).
Occupant to notify owner, s. 5.
Duty of Fence-viewers, s. 6.
Award :—
What to contain, s. 7.
To be filed with Clerk, s. 8.
To be a lien on land, s. 9.
How enforced, s. 10.
Fees payable on, s. 11.
Appeals from, s. 12.
Act applies to Municipal Corporations, s. 13.
Subsequent parties, s. 14.
Agreement may be registered, s. 15.
Forms, s. 16.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Ditches and Water Courses Act.*"

Certain Acts not affected by this Act.

2. This Act shall not affect the Acts relating to Municipal Institutions or the Acts respecting Drainage, as this Act is intended to apply to individual, and not to public or local interests, rights, or liabilities. 38 V. c. 26, s. 2.

Owners to construct ditches in certain proportions.

3. In case of owners occupying adjoining or adjacent (*a*) lands which would be benefited by making a ditch or drain, or by deepening or widening a ditch or drain already made in a water-course, or by making, deepening or widening a natural ditch or drain for the purpose of taking off surplus water from swamps or low miry land, in order to enable the owners or occupiers thereof to cultivate the same, such several owners shall open and make, deepen or widen a just and fair proportion of such ditch or drain, according to their several interests

(*a*) Printed as amended by 41 Vict. c. 12, s. 3. See p. 977.

in the construction of the same; and such ditches or drains shall be kept and maintained so opened, deepened or widened, by the said owners respectively, and their successors in such ownership, in such proportions as they have been so opened, deepened or widened, unless in consequence of altered circumstances the Fence-viewers hereinafter named otherwise direct, which they are hereby empowered to do upon application of any party interested, in the same form and manner as is hereinafter prescribed in respect of the original opening, deepening or widening; and in case the Fence-viewers find no reason for such application, all costs caused thereby shall be borne by the applicant. 38 V. c. 26, s. 3.

Disputes to be referred to fence-viewers.

4. In case of dispute between owners respecting such proportion, the following proceedings shall be adopted:—

Notice to owner or occupier of adjoining land.

1. Either owner may notify (Form 1) the other owner or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three Fence-viewers of the locality to arbitrate in the premises.

And to fence-viewers.

2. Such owner so notifying shall also notify (Form 2) the Fence-viewers not less than one week before their services are required.

Contents of notice.

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat, or in case of a non-resident, by leaving such notice with any agent of such owner.

When Judge to appoint fence-viewers.

4. The owner notified may, within the week, object to any or all of the Fence-viewers notified; and in case of disagreement the Judge (*b*) hereinafter mentioned shall name the Fence-viewers who are to arbitrate. 38 V. c. 26, s. 4.

Selection of fence-viewers where land adjoins different municipalities.

5. Where the lands are situate in different municipalities the said fence viewers shall be selected as follows: two from the fence viewers of the municipality in which the land of the other owner or occupant so notified is situate, and the third from the fence viewers of the municipality in which

(*b*) The Judge of the County Court of the County wherein the land of the owner to be notified lies. See 41 Vict. c. 12, s. 2.

See p. 976.

the land of the party giving the notice is situate. In case of a disagreement as provided in subsection four of this section, the county judge may appoint the vence viewers indifferently from either or both municipalities. (c)

Occupants to notify owners.

5. An occupant not the owner of land notified in the manner above mentioned, shall immediately notify the owner; and if he neglects so to do, shall be liable for all damage caused to the owner by such neglect. 38 V. c. 26, s. 12.

Duties of fence-viewers.

6. The Fence-viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation as in Courts of Law. 38 V. c. 26, s. 5.

Awards.

7. The Fence-viewers shall make an award (Form 3) in writing, signed by any two of them, respecting the matters so in dispute, which award shall specify the locality, quality, and description and cost of the ditch or drain it orders to be made, and the time within which the work shall be done; and shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of such costs.

Contents of.

What to be considered.

2. In making such award the Fence-viewers shall regard the nature of the ditches or drains in use in the locality, and generally the suitableness of the ditch or drain ordered to the wants of the parties; and the Fence-viewers may, if they think necessary, employ a Provincial Land Surveyor for the purpose of taking levels, or of making a plan for the parties to follow in making the ditch or drain, or for other purposes.

Estimates exceeded.

Supplementary award.

3. If the expense of the ditch or drain exceeds the expense as estimated by the Fence-viewers, the same Fence-viewers may be again notified in the same manner herein provided, and shall attend, and, if they see fit, make a supplementary award respecting such expense which award shall have the same effect, and may be dealt with in all respects as if it were part of the first award. 38 V. c. 26, s. 6.

Fence-viewers may order opening of ditch across another person's land.

4. If it appears to the Fence-viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening up the ditch or water-course to make him liable to perform any part thereof, and at the same time that it is

(c) This sub-section was added by 41 Vict. c. 12, s. 1. See p. 976.

necessary for the other party that such ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award, the last mentioned party may open the ditch or water-course across the tract, at his own expense, without being a trespasser. 40 V. c. 8, s. 59.

Deposit of award to be evidence.

8. The award and any plan made as above provided for, shall be deposited in the office of the Clerk of the Municipality (*d*) in which the lands are situate, and the award and plan shall be official documents, and may be given in evidence in any legal proceedings by certified copies, as are other official documents, and notice of their being made shall also be given to all parties interested. 38 V. c. 26, s. 7.

Notification of award.

Award to be a lien on the land.

9. The award shall constitute a lien and charge upon the lands respecting which it is made when it is registered in the Registry Office of the County or other Registration Division in which the lands are.

Registration of award.

Rev. Stat. c. 111.

2. Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any instrument which is within the meaning of "*The Registry Act.*" 38 V. c. 26, s. 9.

Enforcing award.

10. The award may be enforced as follows:—The person desiring to enforce it, provided the work is not done within the time specified by the award, may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality; but the Judge of such Division Court may, on application of either party, extend the time for making such ditch to such time as he may think just. 38 V. c. 26, s. 8.

Fence-viewers' and witnesses' fees.

11. The Fence-viewers shall be entitled to receive two dollars for every day's work under this Act. Provincial Land Surveyors and witnesses shall be entitled to the same compensation as if they were subpœnaed in any Division Court. 38 V. c. 26, s. 13.

Appeal.

12. Any person dissatisfied with the award made may appeal therefrom to the Judge of the County Court of the County (*e*) in which the lands are situate; and the proceedings on such appeal shall be as follows:—

(*d*) The Clerk of the Municipality wherein the land of the owner to be notified lies. See 41 Vict. c. 12, s. 2. See p. 976.

(*e*) See note *b* to sec. 4, sub. 4 of this Act.

Notice of.

1. The appellant shall serve upon the Fence-viewers and all parties interested, a notice in writing of his intention to appeal, within one week from the time he has been notified of the award, which notice shall be served as other notices mentioned in this Act.

To Clerk.

2. The appellant shall also deliver a copy of such notice to the Clerk of the Division Court of the Division (*f*) in which the land or a portion thereof lies, and the Clerk shall immediately

And Judge.

notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said Clerk as will be a sufficient indemnity against costs of the appeal.

Notice of hearing.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the Clerk, who shall notify the Fence-viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act.

Powers of Judge.

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and, if he so pleases, inspect the premises, and he may order payment of costs by either party, and fix the amount of such costs.

No appeal.

5. His decision shall be final; and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from. 38 V. c. 26, s. 14.

Liabilities of municipal corporations.

13. In case any Municipal Corporation would be benefited by the construction of such ditch or drain, such Corporation shall be in the same position as an individual owner under this Act. 38 V. c. 26, s. 10. 40 V. c. 8, s. 60.

Persons desiring to use ditches or drains after construction.

14. In case any person during or after the construction of the ditches or drains herein provided for, desires to avail himself of such ditches or drains for the purpose of draining other lands than those contemplated by the original proceedings, he may avail himself of the provisions of this Act, as if he were or had been a party to such original proceedings;

(*f*) The Clerk of the Division Court of the Division wherein the land of the owner to be notified lies. 41 Vict. c. 12, s. 2. See p. 976.

but no person shall make use of the ditches or drains constructed under the provisions of this Act unless under agreement or award pursuant to its provisions as to use of the land of others, as to enlargement of the original ditch or drain, so as to contain additional water therein, and as to the time for the completion of such enlargement. 38 V. c. 26, s. 11.

Agreements as to ditches may be registered and enforced.

15. Any agreement in writing (Form 4), between owners respecting such ditch, may be filed or registered, and enforced as if it was an award of the Fence-viewers. 38 V. c. 26, s. 15.

Forms.

16. The forms in the Schedule hereto are to guide the parties, being varied according to circumstances. 38 V. c. 26, s. 16.

SCHEDULE OF FORMS.

FORM 1.

(*Section* 4.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. , Mr. , and Mr. , three fence-viewers of this locality, will attend on the day of , A.D., 18 , at the hour of , to view our properties, being Lots (*or* parts of Lots) *One* and *Two* in the Concession and Township of , in the County of , and arbitrate respecting the ditch in dispute upon our said Lots.

Dated this day of , 18 .

A. B.,
Owner of Lot 1.

To *C. D.*,
Owner of Lot 2 (*or as the case may be.*)

FORM 2.

(*Section* 4.)

NOTICE TO FENCE-VIEWERS.

Take notice, that I require you to attend at on the day of , A.D. 18 , at o'clock to view my property, and that of Mr. , being Lots (*or*

parts of Lots) Nos. *One* and *Two* in the Concession of the Township of , in the County of , and arbitrate on the ditch required on said Lots.

Dated this day of A.D. 18 .

A. B.,
Owner of Lot 1.

FORM 3.

(*Section* 7.)

AWARD.

We, the Fence-viewers of (*name of the locality*), having been nominated to view and arbitrate between (*name and description of owner who notified*) and (*name and description of owner notified*) upon a ditch required on the property of (*name of owner notified*), which ditch is to be made and maintained on said property; and having examined the premises and duly acted according to *The Act respecting Ditching Water-courses*, do award as follows: A ditch shall be made and maintained by the said commencing at (*state point of commencement and then give course and point of ending*). The ditch shall be of the following description (*state kind of ditch, depth, width, &c.; if a plan has been made by Provincial Land Surveyor, describe course, kind of ditch, &c., by reference to plan*). The work shall be commenced within days, and completed within days from this date; and the costs shall be paid (*state by whom to be paid, and if by both, in what proportion*).

Dated this day of , A.D. 18 .

Witness : (*Signatures of Fence-Viewers.*)

FORM 4.

(*Section* 15.

AGREEMENT.

We and owners respectively of Lots (*or* parts of Lots) *One* and *Two* in the Concession of the Township of in the County of , do agree that a ditch shall be made and maintained by us as follows (*follow same form as in award*).

Dated this day of , A.D. 18 ,

Witness : (*Signatures of parties.*)

An Act for the Protection of Insectivorous and other Birds beneficial to Agriculture.

R. S. O. Cap. 201.

To what birds Act not applicable, s. 1.
What birds may be killed, s. 2.
Capturing, etc., all other birds forbidden, s. 3.
And traps for them may be destroyed, s. 3.
Nests, young birds and eggs protected, s. 4.
Birds unlawfully taken to be liberated, s. 5.
Eggs or birds for scientific purposes, s. 6.
Penalties:
How recoverable, s, 7 (1).
Application of, s. 7 (2).
Imprisonment in default of payment, s. 7 (3).
Conviction not to be set aside for informality, s. 8.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Not to affect Rev. Stat. c. 200.

1. Nothing in this Act contained shall be held to effect *The Act for the Protection of Game and Fur-bearing Animals*, (*a*) or to apply to any imported cage birds or other domesticated bird or birds generally known as cage birds, or to any bird or birds commonly known as poultry. 36 V. c. 45, ss. 5 & 9.

Cage birds and poultry.

Birds that may be killed.

2. It shall not be lawful to shoot, destroy, wound or injure, or to attempt to shoot, destroy, kill, wound or injure any bird whatsoever, save and except eagles, falcons, hawks, owls, wild pigeons, king-fishers, jays, crows, ravens, plover and black birds, (*b*) and the birds especially mentioned in *The Act for the Protection of Game and Fur-bearing Animals*: provided that rails may be shot between the first day of September and the first day of January. 36 V. c. 45, s. 2.

Rev. Stat. c. 200.

Selling or exposing for

3. It shall not be lawful to take, capture, buy, sell, expose for sale or have in possession any bird whatsoever, save the

(*a*) R. S. O. c. 200 was repealed by 41 Vict. c. 18. See p. 978.

(*b*) This section is printed as amended by 41 Vict. c. 22. See p. 981.

Sale or trapping certain birds.

kinds hereinbefore or hereinafter excepted, or to set, wholly or in part, any net, trap, springe, snare, cage or other machine or engine by which any bird whatsoever, save and except eagles, falcons, hawks, owls, wild pigeons, king-fishers, jays, crows and ravens might be killed and captured; and any net, trap, springe, snare, cage or other machine or engine, set either wholly or in part for the purpose of either capturing or killing any bird or birds, save and except eagles, falcons, hawks, owls, wild pigeons, king-fishers, crows, jays and ravens, may be destroyed by any person, without such person incurring any liability therefor. 36 V. c. 45, s. 3.

Power to seize nets, traps, etc.

Nest, young or egg not to be taken.

4. It shall not be lawful to take, injure, destroy or have in possession any nest, young or egg of any bird whatsoever, except of eagles, falcons, hawks, owls, wild pigeons, king-fishers, jays, crows and ravens. 36 V. c. 45, s. 4.

Power to seize birds unlawfully possessed.

5. Any person may seize, on view, any bird unlawfully possessed, and carry the same before any Justice of the Peace, to be by him confiscated, and if alive to be liberated; and it shall be the duty of all Market Clerks and Policemen or Constables, on the spot to seize and confiscate, and if alive, to liberate such birds. 36 V. c. 45, s. 5.

Eggs or birds required for scientific purposes.

6. The Commissioner of Agriculture, and all persons authorized by him to that effect, may grant written permission to any person or persons who may be desirous of obtaining birds or eggs for *bona fide* scientific purposes, to procure them for that purpose, and such person or persons shall not be liable to any penalty under this Act. 36 V. c. 45, s. 6.

Penalties.

7. The violation of any provision of this Act shall subject the offender to the payment of not less than one dollar, and not not more than twenty dollars with costs, on summary conviction, on information or complaint before one or more Justices of the Peace.

Application of fines.

2. The whole of such fine shall be paid to the prosecutor, unless the convicting Justice or Justices have reason to believe that the prosecutor is in collusion with and for the purpose of benefiting the accused, in which case the said Justice or Justices may order the disposal of the fine as in ordinary cases.

Imprisonment.

3. In default of payment of such fine and costs, the offender shall be imprisoned in the nearest Common Gaol for a period of not less than two and not more than twenty

days, at the discretion of such Justice or Justices of the Peace. 36 V. c. 45, s. 7.

8. No conviction under this Act shall be annulled or vacated for any defect in the form thereof, or for any omission or informality in any summons or other proceeding under this Act, so long as no substantial injustice results therefrom. 36 V. c. 45, s. 8. Conviction not invalid for want of form.

An Act to encourage the Destroying of Wolves.

R. S. O. Cap. 202.

Bounty payable on production of wolf's head, s. 1.
Magistrate to give a certificate, s. 2.
On production of which County Treasurer to pay bounty, s. 3.
Provided other expenses have been first paid, s. 4.
Certificate a legal tender in payment of County rates, s. 5.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any County in Ontario, and makes oath or affirmation (as the case may be), or otherwise proves to the satisfaction of such Justice, that the wolf was killed within that County, or within one mile of an actual settlement in the County, he shall be entitled to receive from the Treasurer of the County the sum of six dollars as a bounty for the same. C. S. U. C. c. 60, s. 1. When any person producing to a J. P. the head of a wolf with the ears on, entitled to a reward.

2. In case the Justice of the Peace before whom the head of the wolf is produced, is satisfied of the fact that the wolf was killed as in the preceding section mentioned, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been killed as in the J. P. to give his certificate.

last section mentioned has been proved to his satisfaction, and such certificate shall authorize the person holding the same to demand and receive from the Treasurer of the County the said bounty of six dollars. C. S. U. C. c. 60, s. 2.

Treasurer to pay the reward if in funds.

3. The Treasurer of the County shall forthwith pay such bounty to the person presenting the certificate, provided the County funds in his hands enable him so to do; and if the said funds do not so enable him, then the said Treasurer shall pay the same out of the moneys of the County which next thereafter come into his hands. C. S. U. C. c. 60, s. 3.

Other County expenses to be first paid.

4. The Treasurer of a County shall not pay the bounty to which any such certificate entitles the person presenting the same, until he has paid the annual expenses of the County, arising from the building of a Court House and Gaol, and keeping the same in repair, the fees of the Clerk of the Peace, the salary of the Gaoler, and the maintenance of the prisoners. C. S. U. C. c. 60, s. 4.

If not paid certificate may be tendered in discharge of rates.

5. When the funds of any County do not enable the Treasurer thereof to pay the bounty, the certificate thereof shall be a lawful tender to the full value of the amount therein specified, for and towards the discharge of any County rate or assessment to be collected from any person within the County in which the wolf was destroyed, and shall be accepted and taken by the Collector of any Township within the County as equivalent to so much of the current money of Canada, and may be by him paid and delivered over to the County Treasurer, by whom the same shall in like manner be taken and accepted as equivalent to so much of the current money aforesaid. C. S. U. C. c. 60, s. 5.

An Act to amend the Line Fences Act.

41 VICT. CAP. 10.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Interpretation of the words "occupied lands."

1. In the Line Fences Act, being chapter one hundred and ninety-eight of the Revised Statutes of Ontario, the expression "occupied lands," shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation.

An Act respecting Bridges in Villages.

41 VICT. CAP. 11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Assumption by villages of bridges under control of county.

1. The councils of every county and incorporated village may pass by-laws for carrying out any arrangement between them for the assumption by the village municipality of any bridge within its limits under the jurisdiction of the county council, and for such bridge being toll free ; and for the payment by the village municipality to the county municipality of any part of the cost of the construction of such bridge ; and after the passing of such by-laws the bridge shall be and

remain under the exclusive jurisdiction of the village municipality; and the village municipality shall be subject to all the liabilities in the premises, which but for the transfer would have devolved on the county municipality; and the bridge shall be and remain toll free.

An Act to amend the Revised Statute respecting Ditching Water Courses.

41 VICT. CAP. 12.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

R.S.O. c. 199, s. 4 amended.

1. The following shall be added to and shall form subsection five to section four of the Revised Statute respecting ditching water courses.

Selection of fence-viewers where land adjoins different municipalities.

5. Where the lands are situate in different municipalities the said fence viewers shall be selected as follows: two from the fence viewers of the municipality in which the land of the other owner or occupant so notified is situate, and the third from the fence viewers of the municipality in which the land of the party giving the notice is situate. In case of a disagreement as provided in subsection four of this section, the County Judge may appoint the fence viewers indifferently from either or both municipalities.

Interpretation of the words Judge and Clerk.

2. The Judge referred to in subsection four of section four, and in section twelve of the Revised Statute; the Clerk of the municipality referred to in section eight; and the Clerk of the Division Court referred to in subsection two of section twelve, shall be respectively the Judge of the County Court of the County, the Clerk of the Division Court of the Division, and the Clerk of the municipality wherein the land of the to be notified lies.

3. Section three of the said Act is hereby amended by adding after the word "adjoining" in the first line, the words "or adjacent." R.S.O. c. 199, s. 3 amended.

An Act to amend the Assessment Act.

41 VICT. CAP. 13.

WHEREAS doubts exist as to the right of appeal from the equalization of assessments under the provisions of the Assessment Act, where County Valuators have been appointed, and it is expedient to remove such doubts;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The right of appeal provided for by section sixty-eight of the Revised Statutes, respecting "The Assessment Act," shall exist whether County Valuators have been appointed or not, and upon any such appeal the report of the County Valuators shall be open to review by the County Judge. Appeal in cases of equalization of assessment.

An Act to amend the law for the protection of Game and Fur-bearing Animals.

41 Vict. Cap. 18.

WHEREAS it is expedient to amend the law respecting the preservation of game and fur-bearing animals in Ontario;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

R. S. O. c. 200 repealed.

1. Chapter two hundred of the Revised Statutes of Ontario is hereby repealed.

Periods within which certain animals and birds may be killed.

2. None of the animals or birds hereinafter mentioned shall be hunted, taken or killed within the periods hereinafter limited: Deer, Elk, Moose, Reindeer, or Cariboo, between the fifteenth day of December and the fifteenth day of September in the following year; (2) Wild Turkeys, Grouse, Pheasants, Prairie Fowl or Partridge, between the first day of February, and the first day of October; (3) Quail, between the first day of January and the first day of October; (4) Woodcock, between the first day of January and the first day of August; (5) Snipe, between the first day of May and the fifteenth day of August; (6) Waterfowl, which are known as Mallard, Grey Duck, Black Duck, Wood or Summer Duck, and all kinds of Duck known as Teal, between the first day of January and the first day of September; (7) Other Ducks, Wild Swans or Geese, between the first day of May and the first day of September; (8) Hares or Rabbits, between the first day of March and the first day of September.

Possession during such periods how far lawful.

3. The said animals or birds may be exposed for sale for one month, and no longer, after the beginning of the periods above respectively limited for their protection, and may be had in possession for the private use of the owner and his family at any time, but in all cases the proof of the time of

killing or taking shall be upon the person so in possession; (1) Except as aforesaid, no person shall have in his possession any of the said animals or birds, or any part or portion of any of such animals or birds, during the periods in which they are so protected.

Protection of eggs.

4. No eggs of any of the birds above mentioned shall be taken, destroyed or had in possession by any person at any time.

Trapping forbidden except as to certain animals.

Power to destroy traps, &c.

5. None of the said animals or birds, except the animals mentioned in the seventh section of this Act, shall be trapped, or taken by means of traps, nets, snares, gins, baited lines, or other similar contrivances, nor shall such traps, nets, snares, gins, baited lines or contrivances be set for them, or any of them at any time; and such traps, nets, snares, gins, baited lines, or contrivances may be destroyed by any person without such person thereby incurring any liability therefor.

Batteries, &c., for wild fowls forbidden.

6. None of the contrivances which are described as batteries, sunken punts, sunken boats or night lights shall be used at any time for taking or killing the wild fowl known as Swans, Geese or Ducks, nor shall any wild Ducks be killed during the night time, that is to say from dark until daylight.

Fur-bearing animals, close season.

Destruction of traps, &c.

7. No Beaver, Muskrat, Mink, Sable, Martin, Racoon, Otter, or Fisher shall be hunted, taken or killed, or had in the possession of any person between the first day of May and the first day of November; nor shall any traps, snares, gins or other contrivances be set for them during such period, nor shall any Muskrat house be destroyed at any time, and any such traps, snares, gins, or other contrivances so set may be destroyed by any person without such person thereby incurring any liability therefor; provided that this section shall not apply to any person destroying any of the said animals in defence or preservation of his property.

Penalties.

8. Offences against this Act shall be punished upon summary conviction on information or complaint before a Justice of the Peace as follows with costs:

1. In the case of Deer, Elk, Moose, Reindeer or Cariboo, by a fine not exceeding fifty dollars, nor less than ten dollars for each animal.

2. In the case of birds or eggs, by a fine not exceeding twenty-five dollars nor less than five dollars for each bird or egg.

3. In the case of fur-bearing animals mentioned in the seventh section of this Act by a fine not exceeding twenty-five dollars, nor less than five dollars for each animal.

4. In the case of other breaches of this Act, by a fine not exceeding twenty-five dollars, nor less than five dollars.

Disposition of penalties

9. The whole of such fine shall be paid to the prosecutor unless the convicting justice has reason to believe that the prosecution is in collusion with and for the purpose of benefiting the accused, in which case the said justice may order the disposal of the fine as in ordinary cases.

Confiscation of game illegally killed.

10. In all cases confiscation of game shall follow conviction, and the game so confiscated shall be given to some charitable institution or purpose at the discretion of the convicting justice.

Game imported for breeding not to be killed.

11. In order to encourage persons who have heretofore imported or hereafter import different kinds of game with the desire to breed and preserve the same on their own lands, it is enacted that it shall not be lawful, to hunt, shoot, kill, or destroy any such game without the consent of the owner of the property wherever the same may have been bred.

Poisoning animals.

12. It shall not be lawful for any person to kill or take any animals or birds mentioned in this Act by the use of poison or poisonous substances, nor to expose poison, poisoned bait or other poisoned substances in any place or locality where dogs or cattle may have access to the same.

Hunting deer, &c., for exportation forbidden.

13. No person shall at any time hunt, take, or kill any Deer, Elk, Moose, Reindeer or Cariboo, for the purpose of exporting the same out of Ontario; and in all cases the onus of proving that any said Deer, Elk, Moose, Reindeer or Cariboo so hunted, taken or killed is not intended to be exported as aforesaid, shall be upon the person hunting, killing, or taking the same:

Penalty.

(1). Offences against this section shall be punished by a fine not exceeding twenty-five dollars nor less than five dollars for each animal.

Owners of dogs used to hunt deer, to restrain them during close season.

14. No owner of any dog trained or accustomed to hunt deer shall permit any such dog to run at large (if such dog is accustomed or is likely to resort to the woods unaccompanied by such owner or any of his family or other person) during the period hereinbefore prohibited for hunting, taking or killing deer; and any such owner permitting any such dog

to run at large during the said period shall, on conviction thereof, be liable to the penalty mentioned in sub-section four of section eight of this Act; and any person harbouring any such dog or claiming to be the owner thereof shall be deemed to be the owner thereof for the purposes of this Act.

An Act to amend the Revised Statutes for the Protection of Insectivorous and other Birds beneficial to Agriculture.

41 VICT. CAP. 22.

Preamble. WHEREAS it is expedient to amend the law providing for the protection of insectivorous and other birds referred to in the Act for the protection in Ontario of insectivorous and other birds beneficial to agriculture;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

R. S. O. c. 201 s. 2. 1. From and after the passing of this Act, chapter two hundred and one of the Revised Statutes of Ontario, is amended as follows:—After the word "ravens" in the fourth line of the second section of the said Act the words "plover, and black birds" shall be inserted, and after the last word in said section shall be added, "provided that rails may be shot between the first day of September and the first day of January."

RULES OF COURT

FOR THE

TRIAL OF CONTESTED ELECTIONS, AND TARIFF OF FEES.

In the Court of Queen's Bench and Common Pleas.

MICHAELMAS TERM, 14TH VICTORIA.

WHEREAS, by an Act passed by the Parliament of this Province in the twelfth year of Her Majesty's reign (cap. 81), entitled, "An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada," power was given to Her Majesty's Court of Queen's Bench in Upper Canada, and the several Judges thereof, to try and decide all matters relating to contested Municipal Elections as therein provided; and whereas, by the Act of the last session of Parliament (chapter 64), entitled, "An Act for correcting certain errors and omissions in the Act of Parliament of this Province, passed in the last session thereof, entitled, 'An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada,' for amending certain of the provisions of the said Act, and making some further provisions for the better accomplishment of the object thereof," the powers conferred on the said Court and Judges have been extended to the Court of Common Pleas and the Judges thereof, and additional powers have been thereby given in the premises to the said Courts and Judges respectively; and it being, among other things, in effect enacted, that it should and might be lawful for the Judges of Her Majesty's two Superior Courts of Common Law at Toronto, or the majority of them, by any rule or rules to be by them for that purpose made, from time to time in Term time, as occasion may require, to settle the forms of all such writs,

12 Vict. cap. 81, sec. 146, *et seq.*

16 Vict. cap. 181, sec. 27.

whether of summons, certiorari, mandamus, execution, or of or for whatever other kind or purpose, as are authorized by the said Act. Therefore, in order to settle the said forms, and to regulate the practice and proceedings in the said Courts in the matter aforesaid,

IT IS ORDERED, that the following Rules be substituted for the Rules made in Hilary Term last, by the Judges of the said Court of Queen's Bench, for the trial of such elections; and that the forms of such writs, and the practice to be observed with respect to the matters aforesaid, shall be as follows, that is to say :—

1. The relator entitled to complain of any election shall in person or by attorney, by written motion, apply to one of the said Courts of Queen's Bench or Common Pleas in Term time, or to the Judge presiding in Chambers in vacation, for a writ of summons in the nature of a quo warranto, which motion must, according to the statute, be made within six weeks after the election complained against or within one month after the person whose election is questioned shall have accepted the office, and not afterwards.

2. Such motion shall be founded, first, on a written statement which shall be annexed to the motion paper, setting forth the interest which the relator has in the election, as candidate or voter, and setting forth also specifically, under distinct heads separately numbered (if there be more than one), all such grounds of objection as he intends to urge against the validity of the election complained against, and in favour of the validity of the election of the relator or another or other person or persons, when he shall claim that he or they or any of them have been duly elected; and at the foot of such statement there shall be an affidavit, made and signed by the relator, that he believes such grounds to be well founded: and, secondly, on an affidavit or affidavits of the relator, or other person or persons, setting forth fully and in detail the facts and circumstances which shall support the application.

The statement of the relator may be after the following form *mutatis mutandis :*

STATEMENT OF THE RELATOR.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The statement and relation of ——, of ——, who, complaining that ——, of —— (*here inserting the names and additions of all, if more than one person*), hath (*or* have) not been duly elected, and hath

(*or* have) unjustly usurped and still doth (*or* do) usurp the office of ——, in the Town of —— (*or* Township of ——, *as the case may be*), in the County (*or* United Counties) of ——, under the pretence of an election held on ——, at ——, in the said County (*or* United Counties) [and (*when it is claimed that the relator, or the relator and another, or others, ought to have been returned*) that (*here name the party or parties so entitled*) was (*or* were) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a ——, states and shows the following causes why the election of the said —— to the said office should be declared invalid and void. [And (*when so claimed*) the said —— (*naming the party or parties*) be duly elected thereto.]

First—That (*for example*) the said election was not conducted according to law, in this, that, &c.

Second—That the said —— was not duly or legally elected or returned, in this, that, &c.

Third—That, &c.

Signed by the relator in person, or by C. D. his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

3. If the Court or Judge applied to shall find sufficient ground for issuing a writ of summons in the nature of a *quo warranto*, then upon such recognizance being entered into as the Act directs, and a proper affidavit of justification made, and the sufficiency of the sureties allowed by such Court or Judge, a writ shall issue, sealed and tested as other writs of summons in cases between party and party, and attached thereto shall be a copy of the relator's statement of objections and grounds, and of the names and additions of the person who shall have made the affidavits upon which the writ was moved.

The recognizance and fiat for summons, and the writ of summons in these Rules mentioned, may be in the following forms:

FORM OF RECOGNIZANCE.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

UPPER CANADA, County (*or* United Counties) of ——. Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me, ——, of ——, Chief Justice (*or* a Justice, *or* a Commissioner for taking bail) in Her Majesty's Court of Queen's Bench (*or* Common Pleas) for Upper Canada, cometh ——, of ——, and ——of ——, and acknowledge themselves severally and respectively to owe to ——, of —— (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said ——, the sum of fifty pounds, and the said ——and —— the sum of twenty-

five pounds each, upon condition that if the said —— do prosecute with effect, the writ of summons in the nature of a *quo warranto* to be issued on an order or fiat to be made at the instance and upon the relation of the said ——, against the said ——, to show by what authority he (*or* they) the said —— claims *or* (claim) to be (*here state the office so claimed*) and why he (*or* they) the said —— should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (*or the party or parties entitled*) should not be declared duly elected, and be admitted to the said office]; and if the said ——, do pay to the said —— all such costs as the said Court of —— (*or the Judge presiding in Chambers, at the City of Toronto, in the County of York*) shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned.

Before me, ——.

FORM OF A JUDGE'S FIAT ORDERING A WRIT TO ISSUE IN VACATION.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

Upon reading the statement of ——, of ——, in the County of ——, complaining of the undue election and usurpation of the office of ——, by —— [and (*if so, stating*) that the said —— (*relator or other person named*) was (*or* were) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement, and also upon reading the recognizance of the said ——, and sureties therein named, and the same being allowed as sufficient, I do order that a writ of summons do issue, calling upon the said —— (*the party whose election is complained of*) to show by what authority he (*or* they) the said —— (*the party whose election is complained of*) now exercises or enjoys (*or* exercise and enjoy) the said office [and why (*if so claimed*) he (*or* they) the said —— should not be removed therefrom, and the said ——(*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto.]

Dated this ——day of ——, 18—.

NOTE.—If by Rule of Court, the above form should be modified accordingly.

FORM OF WRIT OF SUMMONS.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

To ——, of ——, &c., in the County (*or* United Counties) of ——.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada, presiding in Chambers at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of ——, which office, upon the relation of ——, having, as he says, an interest in the election to the said office as a ——, we are

informed that you have usurped and do still usurp [and that (*if so claimed*) the said —— (*relator or party or parties mentioned*) was (*or* were) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness the Honourable ——, Chief Justice of our said Court of —— (*or other Justice in whose name the writ is tested*), at Toronto, this —— day of ——, 18—, and in the —— year of our reign.

FORM OF NOTICE TO BE ENDORSED ON OR ANNEXED TO THE WRIT OF SUMMONS.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

The Queen upon the relation of ——, against ——.

To —— and ——, named in the within (*or annexed*) writ of summons.

The within (*or* annexed) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or* with the Clerk in Chambers at the City of Toronto), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said —— (*the relator, or* ——, *the party or parties, if any, alleged to be entitled*) therein named, be declared duly elected and will be admitted thereto in your place.]

A. B. in person.
or by
C. D., his Attorney.

The above mentioned deponents are:

——, of ——.
——, of ——.

MINUTE OF THE DAY OF SERVICE TO BE WRITTEN ON THE SUMMONS.

Served this ——day of ——, 18—.

4. A copy of such summons, and of the paper attached thereto, with a notice on the back of the copy of summons, according to the foregoing form, may be served by any literate person, who shall, within twenty-four hours after such service, make a minute on the writ of the time of serving the same; and upon the return of the writ, the party or parties summoned may appear either in person or by attorney; and the manner of appearance shall be by endorsing

on the back of the relator's statement attached to the motion paper: "The within named C. D., &c., appears in person (or by attorney, as the case may be) to answer the grounds of objection to his election, which are stated within."

5. If upon the return day of the summons the party or parties, having been duly served, shall not appear, then, on proof of such service by affidavit, according to the form subjoined, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made as to such party or parties as make default, on the back of the relator's statement, thus: "The within named C. D (and E. F.), being duly summoned, hath (or have) not appeared to answer to the matters within objected;" which entry shall be dated on the day of the return, and may be made on any subsequent day, if omitted to be made on that day.

FORM OF AFFIDAVIT OF SERVICE.

When made personally, if service special under the 148th clause of the Statute 12 Vict. cap. 81, the affidavit to be modified accordingly.

(See sec. 186, of The Municipal Act.)

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen on the relation of ——, against ——.

——, of ——, in the ——, maketh oath and saith, that he did, on the —— day of ——, personally serve [the above named defendant (*or* defendants) with the annexed writ of summons, by delivering to him (*or* each of them) a true copy thereof, on which said copy was endorsed a written notice, a copy whereof is hereto annexed, and to which said copy (*or* copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and the deponent further saith, that the minute (*or* minutes) of the said service, written on the said writ of summons, was (*or* were) so written by this deponent within twenty-four hours after such service.

Sworn at ——, in the County of ——, this —— day of ——, 18—.

Before me, ——.

6. When it shall appear to the Court or Judge that the Returning Officer should be made a party, a writ of summons shall issue to him, in the following form, upon a Rule of Court to issue for that purpose, or upon the fiat of the Judge, which summons shall be served with the like papers annexed, and the service thereof proved in like manner as is provided for other writ of summons, as aforesaid: and the party served shall appear and enter his appearance within the same time after service, and in the same man-

ner; and in default thereof, he shall be liable to have judgment passed against him in his absence, as in the case of any other defendant making a like default, and be dealt with by attachment, execution or otherwise, as the circumstances of the case may require.

FORM OF WRIT OF SUMMONS TO A RETURNING OFFICER.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of ——, in the Court of Queen's Bench (*or* Common Pleas), ——, it hath been ordered that a writ of summons should issue to ——, to show by what authority he (*or* they) claims or exercises (*or* claim or exercise) the office of ——. And whereas it appears to our Justices of our Court of Queen's Bench (*or* Common Pleas), before whom the said writ hath been made returnable (*or as the case may be*), that you were the Returning Office by whom the said —— hath (*or* have) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid: These are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on ——, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

7. In case of default of appearance by any party summoned as aforesaid, the Judge recording the same may, as to such as make default, proceed *ex parte;* and as to such as shall have appeared, as is herein provided, proceed to determine the validity of the election or elections complained of, and also (if so claimed) of the election of the person or persons alleged to have been duly elected, and give judgment thereon; or he may, in his discretion, with or without any application for that purpose, and having regard to the distance of the place where the party was served, or other circumstances, appoint a further day for the appearance of the party or parties summoned, of which an entry shall be made and signed by the Judge to the following effect, at the foot of the entry of non-appearance on the back of the relator's statement: "Whereupon a further day is given to the said —— (or the said —— and ——) to appear on," &c.

On which day, or as soon after as may be convenient, if no further postponement shall be in like manner granted,

the case may be heard and disposed of in like mannner as if the same had been determined and judgment given thereon, without granting a further day for appearance.

8. At any time before the hearing, any party may have copies of the affidavits filed, on paying for the same.

9. At the hearing the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected, on any ground not specified in the statement on which the summons was moved; but it shall nevertheless be in the discretion of the Judge, if he shall think fit, to entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him.

10. When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case than by affidavits filed in answer; but the Judge before whom the case shall be pending may, in his discretion, require from either or any party further affidavits, or the production of any such evidence as the law allows.

11. In case of disclaimer under the statute 13 & 14 Vict. cap. 64, Schedule A, No. 23, the provisions therein contained, and in sub-proviso No. 6, are to be observed.

(See sec. 192 *et seq.* of The Municipal Act.)

12. In case a necessity shall appear for sending an issue to be tried by a jury, the writ for that purpose may be in the following form, and shall issue on the fiat of the Judge directing the same, and bear date on the day of its issuing:

WRIT OF TRIAL.

[L.S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith.

To the Judge of the County Court of the County of ——,

GREETING:

Whereas, upon the trial of the validity of an election of ——, chosen upon the —— day of ——, to be —— for the Township of —— (*or as the case may be*), in the County of ——, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c., or that C. D. &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here stating concisely the issues to be tried*); and whereas it is desired by ——, our Chief

Justice (*or* Justice) of our Court of Queen's Bench (*or* Common Pleas), before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such cases made and provided, command you, that by twelve good and lawful men of the County of ——, who are in no wise akin to the said E. F.. the relator in the said case, or to the said (*the other party or parties, naming him or them*), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or* Justice) what shall have been done by virtue of this writ, with the finding of the jury hereon endorsed.

Witness the Honourable ——, Chief Justice (*or* Justice) of our said Court, at Toronto, this —— day of ——, in the —— year of our reign.

FORM OF ENDORSEMENT OF VERDICT THEREON.

I hereby certify that on the —— day of ——, before me, L. M., Judge of the County Court of the County (*or* United Counties) of ——, came as well the within named relator as the within named—— (*the other party or parties*) by their attorneys (*or as the case may be*), and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

13. When the Judge before whom any such case shall be pending shall have determined the same, either *ex parte* in case of default, or on hearing the parties, or partly *ex parte* and partly on hearing the parties, he shall make up and annex to the statement of the relator, and to the affidavits and other papers filed in the case, a written judgement. attested by his signature, and dated on the day of the same being signed, in which it shall be sufficient to state concisely the ground and effect of the judgment, which judgment may be at any time amended by the same Judge, in regard to any matter of form. And the following may be the form of judgment when in favour of the relator:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

The Queen, on the relation of ——, against ——.

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judge's Chambers in the City of Toronto, before me, ——, Chief Justice (*or* Justice) of Her Majesty's Court of Queen's Bench (*or* Common Pleas), came as well the above named relator by ——, his attorney, as the above named —— by his (*or* their) attorney, and service of the writ of summons hereunto annexed having been duly proved upon affidavit, and upon the said day and upon other days thereafter, at his Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said —— of the office of ——, in the said writ of

summons mentioned [and (*if so*) the election of (*the party or parties named*) thereto], and the answers and proofs of the said ——; and having heard the said parties by their counsel (*or as the case may be*), and upon due consideration of all and singular the premises, now, that is to say, this —— day of ——, in the year aforesaid, I do adjudge and determine:

First—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of —— as a ——.

Second—That, &c.

Third—That, &c.

Fourth—That the said —— hath (*or* have) usurped, and doth (*or* do) still usurp the said office, and that he (*or* they) be removed therefrom [*or* that the election of —— to the said office was void, and that he (*or* they) be removed therefrom (*as the judgment may be*)]: And that the said relator (*or* the said [*naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office*] was (*or* were) duly elected thereto, and ought to have been returned, and is (*or* are) entitled in law to be received into, and to use, exercise and enjoy the said office: And I do adjudge and determine that the said —— do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (*naming the relator or parties whose election is affirmed*) be (*or* be respectively) admitted to the said office in his (*or* their) place or places: [And I do further order, adjudge and determine, that the said relator do recover against the said —— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said ——, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

E. F., *J.*

And the following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form:

Thereupon now at this day, that is to say, on the —— day of —— aforesaid, at the Judges' Chambers at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said —— being seen and fully understood, I do consider and adjudge that the said office of —— so claimed by him (*or* them) the said —— be allowed and adjudged to him (*or* them); that the said —— be dismissed and discharged of and from the premises above charged upon him (*or* them); and also that he (*or* they) the said —— do recover against the said relator his (*or* their) costs by him (*or* them respectively) laid out and expended in defending himself (*or* themselves) in this behalf. All which, &c., (*as in the judgment for the relator*).

When the Returning Officer is made a party, the judgment to be modified accordingly.

14. When the judgment of the Judge in Chambers shall have been returned into Court according to the statutes, and after the end of four days after such return, and if no rule shall have been granted to set aside or amend the judgment, the relator, or person (*or* persons) in whose favour the judgment shall have been given, shall be at liberty to tax his or their costs, and the following entry shall be made under or upon the record of the judgment, after which execution may issue:

Afterwards, that is to say, on the —— day of ——, in the —— year of the reign of our Lady the Queen, cometh the said ——, and prayeth that his (*or* their) said costs, so as aforesaid adjudged to him (*or* them), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said ——, in and about his (*or* their) prosecution (*or* defence) aforesaid, and [*when the Returning officer is a party* of the said ——, in and about his defence aforesaid], so as aforesaid adjudged to him (*or* them), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said —— at the sum of —— [and the costs of the said —— (*when Returning Officer entitled thereto*), at the sum of ——), and the said ——, in mercy, &c.

15. The writs of certiorari and mandamus which it may become necessary to issue in any such case will be in the common form of such writs, the command therein contained being suited to the circumstances of each case, and, when applicacable, the following form may be used:

FORM OF A WRIT OF MANDAMUS.

To remove the person (or persons, being less than the whole number of members of any Municipal Corporation) whose election is adjudged invalid, and to admit the person or persons adjudged lawfully elected.

VICTORIA, &c.

To the Municipal Corporation of —— (*the Town, Township or City.*)

Whereas on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before ——, Chief Justice (*or* one of the Justices) of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada, it was by the said Chief Justice (*or* Justice) adjudged and determined that ——, of ——, had usurped, and did then usurp, the office of —— [and that —— was (*or* were) duly elected thereto, and ought to have been returned, and was (*or* were) entitled in law to be received into, and to use, exercise and enjoy the said office], all which has by the said Chief Justice (*or* Justice) been duly certified into our Court of Queen's Bench (*or* Common Pleas), pursuant to the statute in that behalf. Now, we, being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged

removed and excluded from further using or exercising the same, under pretence of his (*or* their) election thereto. * [And we do further command that the said (*the person or persons, naming him or them, who has or had been adjudged lawfully elected*) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you, and every of you, to obey, observe and do all and every act, matter and thing that may be necessary on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of ——, how this writ shall have been executed.

Witness, &c.

FORM OF A WRIT OF MANDAMUS.

When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has (or have) been returned, nor the person or persons claimed to be returned is (or are) held valid, and for a new election.

VICTORIA, &c.

To the Municipal Corporation of ——, and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held.

Whereas (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows:*) And we do further command that you the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or* persons) in the place or stead of the said ——, who has (*or* have) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or* persons) who shall be so elected the oath (*or* oaths), if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or* persons) so elected into the said office, and that you, the said Municipal Corporation, do show how this writ shall have been executed to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of ——.

Witness, &c.

FORM OF A WRIT OF MANDAMUS.

Directed to the Sheriff, where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——,

GREETING:

Whereas (*the same as in the first precedent of a mandamus, to the end of the words "adjudged and determined," then say;*) that the election (*or* elections) of all the members of the Municipal Corporation

of ——, returned as elected at the election (*or* elections) of members of the said Corporation held *describing the time or times and place or places of such election* [*or elections*] was (*or* were) invalid or void in law, and that (*naming them all*) had usurped (*proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows:*) And we do hereby further command you the said Sheriff, that you do, pursuant to the statute in that behalf, admit and return and swear into, or cause the said —— (*naming the person adjudged to have been duly elected*) to be forthwith admitted or returned, and sworn into the said office, to use, exercise and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises. And we hereby command and strictly enjoin all and every person and persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent, and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of —— next, and have then there this writ.

Witness, &c.

FORM OF A MANDAMUS.

To the Sheriff, when the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.

VICTORIA, &c.

To the Sheriff, &c. (*as in the last precedent to the asterisk, omitting the part between brackets, and adopting the plural form, then concluding as follows:*) And that you do every act necessary to be done by you in order to the due election and admission of members of the said Corporation, in the place and stead of the persons whose elections have been so declared invalid; and we hereby command and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end*).

Witness, &c.

The form of writs of execution for costs in any such case may be as follows:

FI. FA. AGAINST DEFENDANT FOR RELATOR'S COSTS.

UPPER CANADA.

VICTORIA, &c.

To the Sheriff of the County of ——,

GREETING:

We command you, that you levy, or cause to be levied, of the goods and chattels of C. D., late of —— [*add the description of the Returning Officer, where the execution is against him*], the sum of ——, which hath been lately adjudged to A. B., of ——, in our Court of Queen's Bench (*or* Common Pleas) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of sum-

mons in the nature of a *quo warranto*, issued out of our said Court against ——, at the relation of the said A. B., for usurping the office of ——, in our ——, of ——, in your County [*add, when the Returning Officer is a party*, to which proceeding the said —— was made a party], and whereof the said C. D. [&c.] is convicted, as in our said Court appears of record, and that you have that money before our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of —— Term, to satisfy the said A. B. for his costs aforesaid, and have you then there this writ.

Witness, &c.

FI. FA. AGAINST THE RELATOR FOR THE DEFENDANTS COSTS.

UPPER CANADA.

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——.

GREETING:

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of ——, the sum of ——, which hath lately been adjudged to C. D., of ——, in our Court of Queen's Bench (*or* Common Pleas) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of —— in our —— of ——, in your County (*or* Counties); [*if the Returning Officer has been made a party, add here*, to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office, was made a party,] whereof the said A.B. is convicted, as in our Court appears of record; and that you have that money before our said Court at Toronto, on the —— day of —— Term, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.

N.B.—When the Returning Officer has been made a party, and is entitled to costs, the fieri facias *must be framed accordingly.*

16. Contempts in disobeying writs of summons, certiorari, mandamus or other process, rule or order of either Court, or of any Judge thereof acting in the execution of the powers conferred by the statutes 12 Vict. cap. 81, and 13 and 14 Vict. cap. 64, are to be certified into the Court from which the writ of summons issued, to be dealt with like other contempts of such Court in other cases.

17. If any of the forms given in the foregoing rules shall not be found adapted to a case which may arise in reference to proceedings connected with or resulting from the trial of the validity of Municipal elections, changes are to be made

therein when necessary, at the discretion of the Judge who shall try and determine the case, to adapt the same to such particular case.

18. None of the proceedings which shall be had in any case for trying the validity of any election, or which shall follow the determination thereof, shall be set aside or held void on account of any irregularity or defect which shall not, in the opinion of the Court or Judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits.

19. *Costs.*—The same table as authorized by the fifteenth rule of Hilary Term last, and any disbursements necessarily made, and not allowed for in the said table, may be taxed according to the table of fees generally established in the Court in which the proceedings shall be conducted.

(Signed) JNO. B. ROBINSON, C.J.
J. B. MACAULAY, C.J., *C.P.*
A. MCLEAN, J.
WM. H. DRAPER, J.
R. B. SULLIVAN, J.
ROBERT BURNS, J.

The costs taxable under Rule M.T. 1871, 35 Vict., are as follows:—(See 32 U. C. Q. B. 211.)

CLERK IN CHAMBERS.

	$ c.
For each fiat granted by a Judge for a writ of Quo Warranto or for a Rule of Court	0 50
For every summons	0 25
For every order	0 50
For filing each paper	0 07
Taking affidavit	0 20
For making up each final judgment of the Judge and returning the same into Court	1 00
Copies of papers, per folio of 100 words	0 10
Every search, if not more than two terms	0 10
" " if exceeding two terms and not more than four	0 20
" " if exceeding four terms or a general search	0 50

ATTORNEY.

Instructions—To apply for a writ of summons or defend against	2 00
Statement—Of grounds of complaint, including fair copy	2 00
Affidavits—Whether special or common, per folio of 100 words	0 20
Recognizance—Drawing	1 00
Attendances, Special—At Chambers, for writ of summons, to serve writ, upon the argument, or to hear judgment	1 00
Attendances, Common—All other attendances not mentioned as special, each	0 50
Writs—Preparing writ of summons, writ of certiorari, mandamus, trial or writ of execution, each	1 00
Fee on each writ	1 00
Notices—Endorsement on writ of summons, every other endorsement upon writ, when required to be made, and all common notices, each	0 50
Copies—Of statement or other papers and documents, when required to be made or served, half the amount allowed for the original, and where no specific sum is allowed, then copies of papers required, or which may be directed to be made, furnished or served, to be allowed per folio of 100 words	0 10
Issues—When directed to be tried, preparing same	1 00
Disbursements—Postages actually paid; mileage when it is necessary to employ parties to serve writs, papers, &c., the actual number of miles travelled to perform the service, per mile	0 10
(The affidavit must state the number of miles actually travelled, and also that the charge has been paid.)	
N.B. No instructions to be allowed nor attendances to swear affidavits.	
Instructions for briefs as in ordinary cases.	
Briefs, per folio of original matter, when necessary	0 20
Briefs, per folio of copy, when necessary	0 10

COUNSEL.

	$ c.
Fee—For argument upon the return of the writ of summons, if argued by counsel	10 00
To be increased at the discretion of the Judge, according to the importance of the case, to not exceeding	20 00

CLERKS OF THE CROWN AND PLEAS AND THEIR DEPUTIES.

(*As per Statute 27 & 28 Vict., cap. 5.*)

For taking recognizance	0 50
For signing and sealing each writ	0 30
For each order or Rule of Court	0 50
For filing each paper	0 10
Copies of papers, per folio of 100 words	0 10

COMMISSIONER.

For taking recognizance	0 50
Swearing each affidavit	0 20

(Signed) WM. B. RICHARDS, C. J.
JOHN H. HAGARTY, C.J., *C.P.*
JOS. C. MORRISON, J.
ADAM WILSON, J.
JOHN W. GWYNNE, J.
THOMAS GALT, J.

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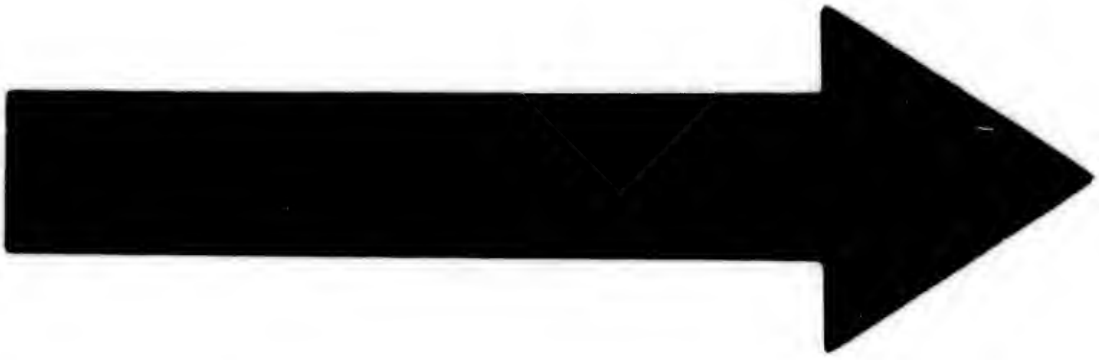

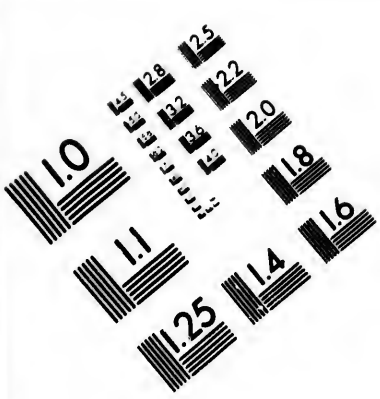

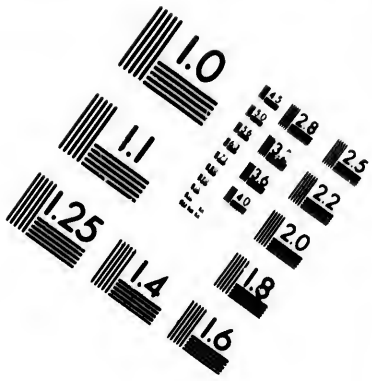

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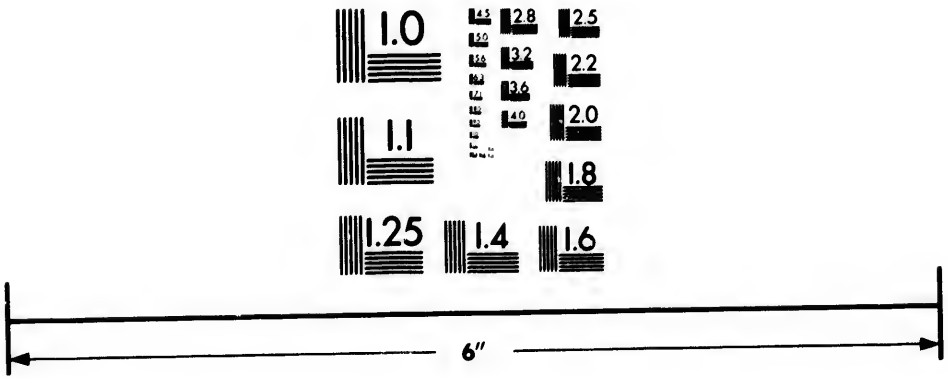

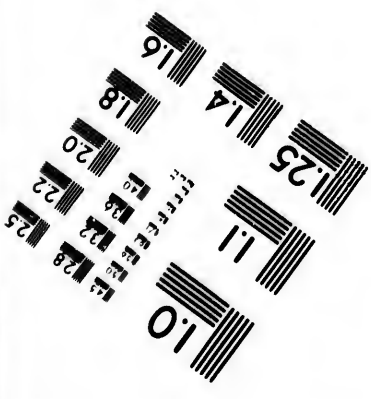

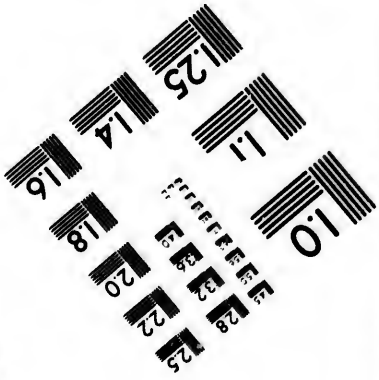

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