

The Municipal World

PUBLISHED MONTHLY IN THE INTERESTS OF EVERY DEPARTMENT OF THE MUNICIPAL INSTITUTIONS OF ONTARIO.

Volume XIV. Number XII.

ST. THOMAS, ONTARIO, DECEMBER, 1904.

Whole Number CLXVIII

CONTENTS

	PAGE
Editorial.....	262
County concils.....	263
Taxation.....	263
Oxford Clerks and Treasurers.....	263
Nominations.....	264
Local Option By-Laws.....	265
The Local Improvement System.....	265
Meeting of Municipal Representatives in Guelph.....	265
Rights of Bell Telephone Co.....	266
Municipal Ownership and Operation.....	266
Assessors.....	266
Obituary.....	266
Resignation of Municipal Candidates.....	270
ENGINEERING DEPARTMENT—	
Placing Gravel on the Road.....	267
The Road Problem.....	267
An Incompetent Road-Builder.....	268
Lanark County Roads.....	269
Better Drainage.....	270
LEGAL DEPARTMENT—	
Legal Decisions.....	278, 279, 280
QUESTION DRAWER—	
648 Collection of Taxes on Lands Omitted from Assessment Roll.....	
649 Payment of Cost of Equalizing Union School Assessment.....	
650 Removal of Fence from Road Allowance	
651 Acceptance of Resignation of Clerk— Appointment of Successor.....	
652 Exemption from Poll Tax of Party As- sessed—Liability for Injury Caused by Drain.....	
653 By-Law to Collect Excess of Cost of Construction of Drainage Work.....	
654 Responsibility for Horse Killed—Liabi- lity of Railway Company to Construct Drainage Work and Highway Crossings	
655 Nominations to be Held on Last Monday in December.....	
656 Mode of Assessing Non-Resident Lands —Distress for Taxes of Tenant's Goods.	
657 Reconsideration of D. and W. Award...	
658 Drainage in Villages.....	
659 Qualification of License Commissioner— Limit of Corporate Borrowing Powers...	
660 Effect of Neglect to File Declaration of Qualification.....	
661 Compensation for Building Wire Fences	
662 Raising Excess Over Estimated Cost of Drainage Work—Cement Sidewalk on Township Roads.....	
663 Payment of Part of Cost by Servient Municipality Before Drainage Work is Completed.....	
664 Liability for Accident on Defective Bridge.....	
665 Responsibility for Damage to Imple- ments Used in Doing Statute Labor...	
666 Authority to Commit to County House of Industry.....	
667 Fees and Duties of Town Clerk.....	
668 Procedure for Providing for Election of Town Councillors by Wards.....	
669 Place for Deposit of Municipal Moneys— Purchasing New Site for Town Hall....	
670 Method of Selling Municipal Debentures	
671 Liability of Municipality for Building Bridge Over D. & W. Award Drain.....	
672 Council Should Not Construct Drainage Work for Private Owners.....	
673 Duties of Pathmaster and Council as to Statute Labor—By-Law to Increase Councillor's Remuneration.....	

Calendar for December, 1904.

DEC. 1	Chairman of Board of Health to report to the Council on or before this date.—Public Health Act, schedule B, section 3.
	Last day for appointment of School Auditors by Public and Separate School Trustees.—Pub. Schools Act, sec. 22, (1); Sep. Schools Act, sec. 28, (5).
	Municipal Clerk to transmit to County Inspector statement showing whether or not any county rate for public school purposes has been placed upon the collector's roll against any separate school supporter.—Public Schools Act, section 72 (1); Separate Schools Act, section 52.
	Last day for councils to hear and determine appeals where persons added to collector's roll by clerk of municipality.—Assessment Act, section 166.
5	Make returns of contagious diseases to Registrar-General.—R. S. O., 1897, chapter 44, section 11, sub-section 4.
12	County model school examinations begin. Nomination day, where fixed by by-law of county council.—Section 125, Consolidated Municipal Act, 1903.
13	Last day for public and separate school trustees to fix places for nomination of trustees.—Public Schools Act, sec. 60 (2); Sep. Schools Act, sec. 31 (5). Returning officers to be named by resolution of the public school board (before second Wednesday in December).—Public Schools Act, section 60 (2).
14	Last day for payment of taxes by voters in local municipalities passing by-laws for that purpose.—Consolidated Municipal Act, 1903, section 535. Last day for collectors to return their rolls and turn over proceeds, unless later time appointed by council.—Assessment Act, section 144. Local assessment to be paid separate school trustees.—Separate Schools Act, section 58.
15	Municipal council to pay secretary-treasurer public school boards all sums levied and collected in township.—Public Schools Act, section 71 (1), County councils to pay treasurer high school.—High Schools Act, section 33. Councils of towns, villages, townships, meet.—Con. Mun. Act, 1903, s. 304 (6). Rolls to be finally revised by judge when assessments taken between 1st July and 30th September.—Assessment Act, section 58 (1). Pass all accounts for subscriptions due THE MUNICIPAL WORLD, and order election supplies, etc. County model schools close.
20	Last day for treasurer to send clerk list of all who have not paid their taxes.—Consolidated Municipal Act, 1903, section 292. Last day for publishing notices of nomination.—Sec. 127, Con. Mun. Act, 1903.
2	Public and separate schools close.—Public Schools Act, section 96 (1); Separate Schools Act, section 81 (1). High schools close first term.—High Schools Act, section 45. Last day for notice of first meeting of trustees in new school section to be posted up by the township clerk.—Public Schools Act, section 12 (5).
24	Last day for posting up annual statement of assets and liabilities in townships, towns, and villages. Consolidated Municipal Act, 1903, section 304 (7). High school treasurer to receive all moneys collected for permanent improvements.—High Schools Act, section 39 (1).
25	CHRISTMAS DAY.
26	By-law for disestablishment of township boards takes effect.—P.S. Act, s. 31 (1). New schools and alteration of school boundaries go into operation or take effect.—Public Schools Act, section 25 (2); section 41 (3); section 42 (3); section 46 (10).—S. S. Act, section 4. Nomination Day.
28	Annual public and separate schools meeting.—Public Schools Act, section 14; section 60 (1); Separate Schools Act, section 27 (1); section 31 (1).
31	Road commissioners cease to hold office.—Assessment Act, section 120. License commissioners cease to hold office.—Liquor License Act, section 3. Protestant separate school trustees to transmit to county inspector names and attendance during last preceding six months.—Sep. Schools Act, sec. 12. Trustees' report to truant officers due.—Truancy Act, section 11. Auditors' report of cities, towns, and incorporated villages to be published by trustees.—Public Schools Act, section 65 (11). Persons liable to municipality on mortgage to state balance due thereon to head of municipality.—R.S.O., 1897, chapter 228, section 22.
JAN. 1	A HAPPY NEW YEAR TO ALL. Renew subscriptions to THE MUNICIPAL WORLD for 1905.

674	Collection of Taxes from Locatee of Crown Lands.....	676	Issue of Certificate of Registration of Death—Duties of Coroner.....
675	Issue of Debentures for Cost of Maintenance of Drain—Expenditure of Statute Labor on Townline.....	677	Pensioning Municipal Clerk—Compensation for Erection of Wire Fences.....

The Municipal World

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

K. W. MCKAY, EDITOR.

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

TERMS.—\$1.00 per annum. Single copy, 10c.; Six copies, \$5.00, payable in advance.

EXPIRATION OF SUBSCRIPTION.—This paper will be discontinued at the expiration of term paid for, of which subscribers will receive notice.

CHANGE OF ADDRESS.—Subscribers who may change their address, should give prompt notice of same, and in doing so, give both old and new address.

COMMUNICATIONS.—Contributions of interest to Municipal Officers are cordially invited.

HOW TO REMIT.—Cash should be sent by registered letter. Draft, express or money orders may be sent at our risk.

OFFICES—334 Talbot Street, St. Thomas. Phone 189.

ADDRESS all communications to THE MUNICIPAL WORLD, LIMITED,
Box 1321, St. Thomas, Ont.

ST. THOMAS, ONTARIO, DECEMBER 1, 1904.

If the number on your address label is 168, your subscription ends with this issue.

Our thanks are due to both councillors and officials for their co-operation during the year.

We will be pleased to receive renewal subscription orders from all and from those who may be retiring a recommendation to their successors.

Councillors who may be retiring from active municipal work should keep themselves informed by continuing their subscription to THE WORLD. Although not in the council, their advice on local matters will be welcomed at all times. Ability to criticise the acts of representatives in an authoritative way is one of the safeguards of our municipal system that should not be overlooked.

No clerk's office is complete without a file of THE MUNICIPAL WORLD. The annual index which accompanies this number, makes it an encyclopædia of law relating to the difficulties municipal officers meet with every day. Commence now by having one or more sets of THE WORLD bound so that future councils may have the benefit of the information contained therein.

During the year answers to 1,499 questions have been published in the Question Drawer. This is a considerable increase in the feature of the paper that makes it most valuable to subscribers.

We think THE MUNICIPAL WORLD for 1904 was better, both editorially and typographically, than former years. What do you think about it? Let us have your opinion and suggestions for improvement in any department.

THE MUNICIPAL WORLD staff will be prepared during December to promptly supply subscribers with all legal or other special information required by mail or otherwise. The month is one of the busiest for municipal officers and councillors, especially those seeking re-election. All who may desire to communicate with us by telegraph or telephone can do so at reduced rates after 6 p. m.

No other publication does as much for its subscribers as we are doing, and the question is often asked why we do not increase the price of THE WORLD. Being municipal officers ourselves, we thoroughly understand the position of municipal councillors and officers, and would say that your appreciation of our efforts can best be expressed by patronizing the supply department, which is reliable, up-to-date and complete in every particular.

Our stock of election supplies—sufficient for the whole Province—is ready for immediate delivery. A delay in the mails, a mistake on the part of an Express Company, or a big snow storm, may put you to considerable inconvenience. Avoid this by ordering election supplies at as early a date as possible.

In English municipalities the town clerk is a most important official. When making selections, councils do not confine themselves to applications from residents, but appoint the best men available. An advertisement for a clerk for the City of Winchester, recently published, concluded as follows: "Canvassing, either directly or indirectly, or by sending copies of testimonials, personally or by letter, to any member of the town council will disqualify."

We beg to call the attention of municipal councils, and such of their officials who are required to give security for the proper discharge of the duties of their respective offices, to the advertisements of The United States Fidelity and Guaranty Company and The Dominion of Canada Guarantee and Accident Insurance Company in these columns. These companies furnish municipalities with undoubted and never-failing security, and the taking out of a bond in either of them will render it unnecessary for the official appointed to place himself under an obligation to friends or neighbors, to whom he would otherwise be compelled to resort for the required security. We would suggest that an application for a bond should be made out in duplicate, and one copy filed with the clerk of the municipality to be attached to the bond when received.

When all the obstacles to the better and purer municipal government are considered, their causes discussed and remedies proposed, we must at least come back to the fundamental proposition that the only real and effective remedy lies with the people themselves, in maintaining a continued interest in city government, and electing to office none but honest and competent men to discharge the important functions of municipal government. It is difficult to make the general public realize that it is almost as criminal to elect an incompetent man to office as it is to elect a dishonest one. The incompetent official is used by others just as effectively to accomplish selfish purposes at the municipality's expense as the dishonest official, who is usually careful not to trespass too far upon the public rights for fear of being detected. It is necessary to arouse the general public to a full realization of what it means to elect incompetent men to public office.

COUNTY COUNCILS.

In two counties we believe the required number of local municipal councils favor a change in county council representation, and the question will be submitted to the electors for their decision.

The present county council system has proved to be both equitable and economical. The provincial statistics show that the amount paid for attendance at meetings of council and committees has been reduced about \$30,000 per year, and that the annual county expenditure is one million dollars less than formerly. In 1891 county assets exceeded the liabilities by \$1,560,000. In 1901 the net assets were \$2, 450,268, an increase of nearly \$900,000.

County councils, as at present constituted, are directly responsible to the people, who appreciate their services. In January, 1901, forty-two per cent. of the county councillors of the province were re-elected, and in thirty counties this percentage was increased to one-half or more. In 1903 fifty-five per cent were re-elected.

The election of county councillors for a two year term provides a continuity of municipal government. The election of members of municipal councils for a similar term would have a good effect and remove many of the so-called objections to the present county council system.

The great reduction in county council expenditure following the election for a two year term should encourage municipal representatives to urge the legislature to try a two year term for all municipal councils. It might prove to be the remedy for high taxes in many a municipality.

* * * *

In counties where the necessary resolutions declaring in favor of a change in the constitution of the county council were passed and deposited with the county clerk before the 1st October, this year, the question will be submitted to the electors in January, 1906, being a year next preceding the year for a general election of county councillors. In other counties a continuance of the present county council system is insured until the general county council elections in January, 1909.

TAXATION.

Money paid for taxes should be regarded as an investment for which full compensation is received in the form of the benefits of government and public improvements. No other form of property owning is more greatly benefited by government than the home owner. No other tax payer receives as much for the taxes he pays as the small home owner. In the one item of the education of their children at public expense, thousands of small home owners receive a direct tangible benefit of far greater value than the full amount of taxes paid by them. To teach them to seek reductions in their tax bills through direct exemption, or by finding new excuses for taxing property already taxed the same as their own property is taxed, is to promote a policy that will impair the prosperity and lower the standard of citizenship.

The true demand is: *All subjects of taxation should be taxed but once, and should be justly taxed.* Upon this proposition all honest men can unite.

To declare the truth as one sees it, and to be diligent in seeking the truth, is the sublimest work of political leadership.

In voting for councillors it is necessary to consider their official duties and the average character of the men likely to be elected. It is no more possible to get an adequate response from heaping responsibility upon an ignorant or weak man than it is "to store a pail of water in a teaspoon."

ONLY THE BEST MEN SHOULD CONTROL.

A person who fails to make of himself the best of which he is capable cannot, with reason, be expected to be the best man to govern others in any capacity. Such men should not be placed in responsible positions in municipal government. In every relation of life the progress of humanity toward the realization of a more perfect life is seriously retarded by government by the unfit. When the best men fail to do their full duty, unfit men fill responsible positions and corruption and inefficiency is the result.

This is the cause of the failure of popular government whenever it shows imperfections. The best men do not interest themselves sufficiently. This gives unfit men opportunity to make a business of politics.

This is the cause of the disaster met with by many corporations. Stockholders do not attend meetings or take sufficient interest in the politics of corporate management. This gives unfit men opportunity to adopt and carry out unsound practices.

OXFORD CLERKS AND TREASURERS.

We are indebted to Mr. Wm. Fairley, Secretary of the Association, for the following report:

The 13th annual meeting of the municipal clerks and treasurers in Oxford County was held in the court house at Woodstock on November 11. With one exception, every clerk and treasurer was present. Mr. McFarlane, of South Norwich, was elected chairman, in the absence of Mr. Bell, the president.

Mr. M. T. Buchanan, chairman of the county council committee on purchase of toll roads, addressed the meeting at some length, explaining the provisions of the county by-law under which the toll roads in the county have been purchased, and called particular attention to the duties of clerks and councils of local municipalities under the by-law in regard to annual contributions toward the purchase of the roads, and defining roads upon which the county appropriation is to be expended and the manner of its outlay. The address was followed by general discussion and the asking and answering of many questions. The meeting thanked Mr. Buchanan for his able and interesting address.

The new Assessment Act was taken up, section by section, and the provisions which are new, and some of them are radical departures from the old Act, were carefully considered and thoroughly discussed. This took up the greater part of the afternoon session, and was both profitable and interesting to all.

The provisions of the law in regard to separate school supporters, with which some clerks have had difficulty, were discussed and a better understanding of the matter was arrived at.

Some interesting papers had been prepared for the meeting, but so much time was given to the new Assessment Act and discussing matters brought up by members who had met with difficulties in their work during the year that no time was left for reading papers. It was agreed that the meeting was one of the most interesting yet held.

For the next meeting papers were assigned as follows: "Line Fences Law," Mr. C. E. Burgess; "The School Acts," Mr. Bell; "Preparation of Collector's Roll," Mr. R. J. Henderson; "Commutation of Statute Labor," Mr. T. R. Mayberry; "Amendments of Municipal and Assessment Acts, 1905," Mr. M. F. Ainslie.

Officers elected were: President, Mr. David Lawrence, of E. Nissouri (Thamesford); vice-president, Mr. W. R. Smith, of Ingersoll; secretary, Wm. Fairley, of Norwich, for the twelfth time.

NOMINATIONS

The provisions of The Consolidated Municipal Act, 1903, divide the municipalities into nine classes for nomination purposes. The following tabular statement will show when and where nomination meetings for 1904 should be held, and the municipal officers to be nominated.

STATEMENT

MUNICIPALITY.	DATE.	MAYOR.	WHERE.	ALDERMEN.	WHERE.
I. CITIES Sections 118 and 119.	26 December	10 a.m. to 11 a.m.	At City Hall	12 noon to 1 p.m., or if by-law passed under section 120, 7.30 p.m. to 8.30 p.m.	At City Hall or place in each ward fixed by by-law.
II. CITIES Having a population of 100,000 or more	26 December, or if by-law passed by the council, before 15th of Nov. under s. 110a on 19th December.	10 a.m. to 11 a.m.	At City Hall	12 noon to 1 p.m., or if by-law passed under sec. 120, 7.30 p.m. to 8.30 p.m.	At City Hall or place in each ward fixed by by-law.
III. TOWNS Divided into wards; population over 5,000 Sections 118 and 119.	26 December	10 a.m. to 11 a.m., or if by-law passed under section 120, 7.30 p.m., to 8.30 p.m.	At Town Hall	(Councillors.) 12 noon to 1 p.m., or if by-law passed under section 120, from 7.30 to 8.30 p.m.	At Town Hall or place in each ward.
IV. TOWNS Not divided into wards; population over 5,000 Sections 118 and 119.	26 December	Same	At Town Hall	Same	At Town Hall
V. TOWNS Divided into wards; population 5,000 and under Sections 118, 119 and 71a	26 December	12 noon to 1 p.m., or if by-law passed under section 120, 7.30 p.m. to 8.30 p.m.	At Town Hall	Same	At Town Hall or place in each ward.
VI. TOWNS Not divided into wards; population 5,000 and under. Sections 118, 119 and 71a	26 December	Same	At Town Hall	Same	At Town Hall
VII. VILLAGES Sections 119 and 120.	26 December	12 noon to 1 p.m., or if by-law passed under section 120, 7.30 p.m. to 8.30 p.m.	At Town Hall or at such place as may be fixed by by-law.	Same	At Town Hall or at such place as may be fixed by by-law.
VIII. TOWNSHIPS Sections 119, 122 and 123.	On 26 December, or if by-law passed by county council under section 125 on 12 December.	12 noon to 1 p.m., or if by-law passed under section 122, 1 to 2 p.m.	At Town Hall or place fixed by by-law under section 123	12 noon to 1 p.m. or if by-law passed under section 122, 1 to 2 p.m.	At Town Hall or place fixed by by-law under section 123.
IX. COUNTIES Section 133.	19 December	(County Councillor.) 1 p.m. to 2 p.m.	At place in each dist. fixed by Nom. Off'r, s. 132, (1) (a)		

Nomination Proceedings.

NOTICE.

It is the duty of the clerk or other returning officer to give at least six days' notice of nomination meeting. For county council nomination two weeks' notice is necessary. Notice may be given by advertisement in newspapers or printed posters.

NOMINATIONS, SECTION 128.

The persons nominated to fill each office shall be proposed and seconded (*seriatim*) and every such nomination shall be in writing, and it is required to state therein the full name, place of residence, and occupation of the candidate, and shall be signed by his proposer and seconder and be filed with the returning officer or the chairman within ONE HOUR from the time of opening of the meeting.

The change in the law requiring nominations to be in writing came into force on the first of January, 1899. Nomination forms should be provided for use at the nomination meetings.

The tabular statement shows the municipal officers to be nominated at the meetings. In towns where ward elections have been abolished, either by by-law or the amendments of the Act of 1898, the number of councillors has been reduced.

RESIGNATIONS

may be handed to the returning officer at nomination meeting, or on the following day, at any time before nine o'clock p.m. Except in the case of county council nominations, when resignations may be filed at any time during the following day.

At the nomination meeting candidates proposed may resign verbally, but after the nomination meeting all resignations must be in writing, signed and attested by a witness, and delivered to the clerk or returning officer within the time mentioned. When resignations are not received in time or in proper form, a clerk has no alternative but to hold the election. Sub-section 3a of section 129 provides that in cities, towns and incorporated villages every candidate for the office of mayor, reeve, controller, alderman, councillor, water commissioner or street railway commissioner, shall on the day of the nomination or at any time before nine o'clock in the afternoon on the following day, or when such last named day is a holiday, then before twelve o'clock (noon) of the succeeding day, file in the office of the clerk of the municipality a statutory declaration in accordance with the form contained in section 311 of the Act or to the like effect that he possesses the necessary qualification for the office, and in default of his so doing such candidate shall be deemed to have resigned, and his name shall be removed from the list of candidates and shall not be printed on the ballot papers.

A nominating or returning officer should not refuse to accept a nomination paper for the reason that he has a personal knowledge of the fact that the person nominated thereby is not a legally qualified candidate; the responsibility of deciding this question should be left to the courts. The Municipal Act does not make it the duty of such officer to read each nomination paper to the assembled electors, either when handed to him or at the close of the nomination meeting. He may do this, however, as a matter of courtesy. At the close of the nomination meeting he should announce the names of the candidates placed in nomination. The nominator and seconder of a candidate should both be present at the nomination meeting, and should be electors of the municipality. It is not necessary that a person nominated should be present.

LOCAL OPTION BY-LAWS.

Indications point to the fact that an unusual number of by-laws for prohibiting the sale of liquor by retail, as authorized by section 141 of The Liquor License Act (R. S. O., 1897, chapter 245,) will be submitted to the electors of different municipalities throughout the Province at the time of holding the municipal elections in January next. Sub-section 1 of the above section enacts that by-laws of this kind before their final passing by the council, must be duly approved of by the electors of the municipality *in the manner provided by the sections in that behalf of The Municipal Act.* These sections are 338 and following sections of The Consolidated Municipal Act, 1903. Sub-section 2 of section 338 provides that the council shall, before the final passing of the proposed by-law publish a copy thereof in some public newspaper published either within the municipality or in the county town, or in a public newspaper published in an adjoining or neighboring local municipality, *as the council may designate by resolution.* It further provides that the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week for THREE successive weeks, and that the council shall put up a copy of the by-law at four or more of the most public places in the municipality. Appended to the by-law as published and posted up should be the clerk's notice mentioned in sub-section 3 of section 338. By section 341 the council is required, by the by-law, to fix a time when, and a place where, the clerk of the council which proposes to pass the by-law is to 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 respectively on behalf of the persons interested in and promoting or opposing the passing of the by-law respectively. At the time and place named the head of the municipality should attend and make the appointment of agents mentioned in section 341, whether any one else attends for the purpose of requesting him to do so, or of being appointed an agent or not. It is essential to the validity of by-laws of this kind that the preliminary proceedings prescribed by the statute should be strictly observed. The electors qualified to vote on these by-laws are those who, according to the last revised voters' list of the municipality, are entitled to record their votes at municipal elections.

THE LOCAL IMPROVEMENT SYSTEM.

If the value of a town lot is not increased by the construction of sidewalks, paved streets, sewer, and the laying of water pipes, such improvements should not be made. But if the value of the lot is increased by reason of such improvements, by what rule of justice can the owner of the lot claim the increased value as his own without paying for it in the form of a special assessment tax?

It is true such a tax may be unjust by being too high. It is also true that it may be unjust by being too low. Such inequalities result from defects in the by-law of the municipality under which the taxes are levied. A correct application of this principle necessarily assesses a larger portion of the total construction upon the abutting land owner than upon the general public. Payment for a value received cannot be confiscation.

Payment for the expense of repairs is an entirely different proposition. The cause of the need of repairs is public use, therefore the public should pay all such bills. There is no real estate owner who is not benefited by having all public improvements maintained in good condition to an amount equal to, or in excess of, his share of the expense of repairs

MEETING OF MUNICIPAL REPRESENTATIVES IN GUELPH.

A decided step in the right direction was a recent meeting of representatives of the Townships of Puslinch, Waterloo, Pilkington, Nichol, Eramosa, Nassagaweya, and Guelph in the court room in the City of Guelph. This meeting was convened at the instance of the council of the Township of Guelph for the purpose of considering municipal matters generally, and more especially the working and maintenance of roads and bridges, and also the use of stone crushers, bonusing of wire fences, the contract system of doing work on the roads, and the regulation of the running of automobiles through the county.

Mr. James Laidlaw, warden of the County of Wellington, was elected chairman, and Mr. John McCorkindale, clerk of the Township of Guelph, secretary of the meeting.

After passing a resolution recommending the abolishing of statute labor on boundary roads and the future maintenance thereof by the contract system, the meeting considered this system and the value of different materials for road making. It was considered that the contract system was altogether preferable to the statute labor. Mr. Snyder, of Waterloo, was favorable to the former system, which was generally followed in Waterloo County. For roadmaking crushed stone was found most satisfactory, though gravel was considerably cheaper. Some trouble had arisen over letting contracts to low tenderers, who postponed the work till a convenient season, much to the detriment of the township. For the construction of culverts and bridges, cement pipe was favored. Tiles take a greater volume of water than a wooden culvert does. For bridges, two three-foot tile, laid side by side, serve splendidly for bridge purposes. Reeve Whitelaw, of Guelph township, considered the day of wooden culverts gone. In Guelph township they were very much in favor. Mr. Whitelaw was also in favor of steel bridges being constructed where bridges are necessary, as they were, in his opinion, the most economical in the end.

A discussion of the question of running automobiles was opened by Mr. James Mahon, reeve of the Township of Nassagaweya. It was pointed out that automobiles had become a nuisance to the farmer, and should be placed under some restriction that would insure greater safety to travellers on the public highway. The meeting was of the opinion that organized action should be taken to at least have the present law respected. The proceedings concluded with the passing of the following resolution:

Moved by James Mahon and J. A. Cockburn, councillor of Puslinch, that, whereas good results will be derived from a meeting of representatives from adjoining municipalities, therefore it is resolved that the Reeves of the different municipalities represented at this meeting and the secretary of the meeting be a committee to arrange for a meeting to be held in the City of Guelph on some date during the month of February, 1905, to discuss municipal matters generally, and that the reeve of Guelph township be appointed chairman of the committee.

Each member of a council is responsible to his constituents for the part he takes in official proceedings; their verdict can only be expressed at the end of his term if he stands for re-election, or by the pressure of public opinion through the ordinary channels of social intercourse at other times.

Cheap water, light, and transportation have come to take almost as essential a condition of life in cities as free highways. They are of such general importance as to demand that they be supplied very nearly at cost.

RIGHTS OF THE BELL TELEPHONE CO. AS TO USE OF STREETS OF MUNICIPALITIES.

Under the above caption, on page 179 of the issue of THE MUNICIPAL WORLD for 1903, we stated the law on this subject, as settled up to that time by the Ontario Court of Appeal, allowing an appeal by the Telephone Company from the judgment of Mr. Justice Street in a case stated between the Company and the City of Toronto. Mr. Justice Street had decided that the Company had no power or authority to erect their poles or string their wires on and along the highways of a municipality unless the consent of the council had first been obtained to its so doing. The Court of Appeal reversed this decision, and the city corporation appealed from the judgment of the Court of Appeal to the judicial committee of the Privy Council in England. The last named tribunal recently delivered its judgment, dismissing the city's appeal. This result puts an end to the council's claim to municipal control of the Telephone Company's operations on the streets. All that can now be done is to apply to the Dominion Parliament for legislation, which will restore to municipalities the right to control their own streets—taken from them by previous legislation and the decision in this case.

In a recent issue the *Globe* makes the following comments on the result of the contest :

"The primary issue in the suit was whether or not the company was bound by its Ontario charter. The Telephone Company was first incorporated under a charter of the Dominion Parliament. Later on, the case of *Regina v. Mohr*, in Quebec, threw doubt on the company's right to operate in the provinces without a provincial charter. The company then applied for and obtained from the Ontario Legislature a charter in which it was stated "the company shall not erect any pole higher than forty feet above the surface of the street, nor affix any wire less than twenty-two feet above the surface of the street; nor carry such poles or wires along any street without the consent of the municipal council having jurisdiction over the streets of said city, town, or incorporated village."

The Dominion charter gave no such protection to the municipalities, and the object of the city was to secure from the courts a declaration that the company, having applied for and obtained the provincial charter, were bound by it.

The mayor, speaking of the judgment, said the company had now absolute right to tear up the city's streets as it chose. Council would now have to apply to the Dominion Parliament for legislation to protect the municipality. Parliament, he said, had always held that municipal rights were protected under the Company's charter, and he thought they would be willing to grant the legislation to be asked for. The company would, he had no doubt, make a hard fight against it, and he saw a big struggle at Ottawa ahead for the municipalities of the Dominion."

Mr. James R. Thompson, cashier of the freight department of the Grand Trunk Railway, has been appointed treasurer of the City of Windsor in succession to Lt.-Col. J. C. Guillot.

* * *

Mr. Thomas Beasley, city clerk of Hamilton, will soon complete his 50th anniversary as secretary of the board of education, and he will be presented with a suitable memorial of the event.

MUNICIPAL OWNERSHIP AND OPERATION.

"In Illinois, street railways operated by a city may carry passengers, baggage, and mail, and can be used for such other purposes as the council determines. Their accounts must be kept distinct from other municipal accounts, and such charges must be made as will permit of the roads being self supporting, and will, in time, pay the debt incurred in their behalf."

This statement of the conditions of municipal ownership in Illinois directs attention to matters that are not always considered in dealing with this important question. It applies equally well to water or lighting plants. Sometimes a municipality does not make a public utility pay, and the cause is said to be owing to the specially low rates enjoyed by the users. In all cases deficits are a charge on the general funds, paid by users and non-users, but it cannot be argued that non-users should be taxed therefor. The users should be charged annually with the expenses of maintenance and operation and a fair contribution towards a sinking fund for first cost and renewals. Unless a proposition for municipal ownership includes this, it should not be considered.

A municipality is usually the largest customer of its own lighting plant or water works, but in no instance should they be charged more than they would have to pay a private company.

The failure to keep proper accounts is the cause of some so-called successful municipal activities, which, by example, encourage others to undertake similar works, and include in debenture issues sums which should have been paid by the users.

Some governmental supervision of municipalities is necessary to insure proper financial management in all cases of public ownership and operation.

ASSESSORS.

The new Assessment Act comes into force on 1st January; councils should take great care to select the best available man for the position of assessor. He should be a man who will make a careful study of the new Act and be competent to carry out its provisions. In our opinion, the assessor is the most important official councils have to appoint, and the January session will be an opportune time to insure efficiency in the future work of this department.

OBITUARY.

We are indebted to a son of the deceased for the following,

DIED—Of paralysis, at Rainham, on Sunday, November 13th, Richard Atlantic Havill, aged seventy-one years.

The subject of this sketch was born at Black Rock, N.Y., on September 8, 1833. He moved with his parents to Allenburg when but a boy, and received his education there. He learned the trade of carriage making at St. Catharines, and for twenty-five years carried on a successful business at Rainham. Disposing of the business, he bought his father's farm twenty-five years ago, and resided there until the date of his death.

Deceased was highly respected, and held several positions of public trust, having been township clerk for forty-two years. Twenty years ago he was appointed clerk of Rainham Division Court, which position he held until the court was transferred to Cayuga the present year. He was a magistrate, secretary of the Agricultural Society for a number of years, superintendent of Union S. S. at Sweet's Corners, and a member of the Methodist church.

The members of the council of the Township of Rainham, with whom he had been associated so long, showed their respect and esteem by acting as pall-bearers.

Engineering Department

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

PLACING GRAVEL ON THE ROAD.

A road should be smooth and level. Nothing is more common than to find the surface of a road, otherwise good, a succession of knolls and hollows, a wavy, undulating line. This is more especially the case with gravel roads. This condition is usually found almost immediately after the gravel has been placed on the road, and has become consolidated. The wheel tracks are smooth, the road fairly well crowned, but the wavy, undulating condition exists.

Such a road will not last at all so long as one that is level. The hollows or depressions hold water, become soft, and rapidly wear deeper. In the spring, when the ground is soft, these depressions are broken through, and the road becomes a series of pitch-holes.

It is not the smooth, even roll of a wheel over a level road that does serious damage. It is the irregular, jolting, jarring movement of wheels dropping into depressions. A wagon is commonly loaded with a couple of tons, and the effect of a narrow tire, supporting 1,000 pounds, and dropping into a depression on the road is nearly as destructive as a pick operated by a pile-driver. The same action is seen where a large stone projects above the surface of the road, wheels constantly dropping from it, cutting a hole on each side. A culvert or bridge is very apt to show, at each end, similar holes dug down by wheels as they drop from the higher and stronger floor.

These undulating roads may result from several causes. Gravel may be carelessly dropped in heaps on the road, without being spread. This was the old-time method, and there are still those who would argue that gravel should not be spread, but should be left for traffic and vehicles to work into place. Such an idea is no better than superstition. Roads should be made for traffic, not by it. Gravel should be properly spread if a good road is to be had.

Even when spread, these undulations are apt to appear. This may result from the fact that, in spreading the gravel, consideration is not given to the manner in which gravel falls from the wagon in heaps, and is more or less compact in these spots, while it is shoveled loosely into the intervening spaces. When it becomes consolidated, the effect is, naturally, a wavy surface.

The wavy surface may be caused by a difference in the quality of the gravel. If one load dropped on the road is of a firm, strong nature, and the next is principally sand, there can be but one result—the road will soon wear to a wavy, undulating surface.

To prevent the surface of a road becoming uneven and irregular, various precautions may be taken. The gravel used should be of a uniform quality. The teamsters should be watched to see that none of them make a habit of filling their wagons with the sandy or earthy material easily loaded. Loads should be of a uniform size. A load should be dropped and spread, and the next placed, in part, on top of the spread material, to be in turn shoveled forward into place. The men spreading the gravel should watch closely the way in which the gravel falls, and should spread it accordingly, with a view to equal consolidation.

Special wagons for gravel or broken stone are excellent

for this work. They have a hopper-like opening in the centre, which may be opened to any width, and the material spread uniformly as the horses walk along the road. Wherever roadmaking is being carried on in an extended way, it will pay municipalities to provide teamsters with these wagons. Larger loads will be hauled, and the metal will be spread more uniformly.

It goes without saying that, before a coating of metal is applied to the road, the surface should be properly prepared. If the road has an old gravel or stone bed, and this is uneven, it should be picked up and levelled. This is not expensive. One or two men with picks can readily keep ahead of the teams, cutting off the tops of the knolls and spreading the material as they loosen it. The new gravel or stone can then be spread to a uniform depth, and will consolidate to a level surface.

New material placed on a road should be rolled. If this cannot be done, a man should be sent over the road with a rake, from time to time to rake material into the wheel tracks and level the road wherever it is not settling uniformly. Due care to see that the material is properly put and kept in place will greatly increase the life and usefulness of a road.

THE ROAD PROBLEM.

The total length of roads in Ontario amounts to 60,000 miles. This does not include streets of towns and cities, but the country roads only, maintained by township and county councils. This suggests a public work, the extent, the immensity of which few realize. The improvement of these roads is a work which has required, and still requires an enormous expenditure of money and labor. Distributed as this work is, in a uniform manner, throughout the Province, each municipality and community attending to its own small portion, the larger character of the work as a whole is too apt to be overlooked. A realization of the true extent of this work brings before us the great drain which this work has involved in the past and the still greater expenditure which future requirements demand. It has already cost the people of the Province millions, and will still cost millions. No possible measure can undo past expenditure; no possible means can avoid future expenditure; roads are an absolute necessity; the country cannot exist without them; that is the situation and it must be faced.

All are at one in the belief that the roads of the Province should be improved. From every township and county comes the demand for better roads. The reasons for this are many, and if followed to their logical conclusion, point to the one result—that the opportunities of farm life are definitely restricted by the condition of the common country roads.

Distributed as this work is, and carried on continuously year after year, a bird's eye view presents a very complex organization. Upon the perfection of this organization the progress of the work depends. Money and labor, without perfect organization, will be wasted. With perfect organization every dollar expended will be of benefit, and a profitable investment.

Road construction in Ontario is, with minor exceptions, under either county or township councils. Township control is universal; while in certain cases, county

councils have undertaken the management of a system of the main roads within the county. The organization should, in the main features, be the same in both cases.

Statute labor has been the main feature of road improvement in Ontario for a century. While it has accomplished much, there is much that statute labor cannot do. It was suited to the spirit and requirements of pioneer days. To-day where statute labor is retained, the rule is that only a fraction of the work is performed, and the work done is not of the durable character that the traffic demands.

Statute labor is now being superceded in townships by a system of commutation; or in some cases the statute labor roll is abolished, and a special rate levied with the ordinary township rates. There are various differences in detail; but the general plan is to appoint an overseer for the township, or one for each of two, three, or four divisions of the township, under whom all work is performed, subject to the directions of the council. The work may be done either by day labor or by contract; and in the latter case, the overseer is the township's inspector. The work of the council in this way becomes legislative alone, while the overseers are the executive carrying out the work as required by the council.

The county method of management is the same in its general principles. The work of the council is devoted chiefly to legislative functions, and the actual oversight of work on the ground is deputed to road foremen or overseers, these in most cases under a commissioner exercising general oversight for the entire county. County systems are aided by the Provincial Government to the extent of one-third of the entire cost of construction, the counties which have adopted this plan being Wentworth, Simcoe, Lanark, Oxford, Wellington and Hastings, while Victoria, Lincoln and others are on the eve of doing so.

Modern methods of road construction demand, for economical and efficient work, the use of machinery. The principal of these, grading machines, are in general use, very few townships being now without one or more. The cost of grading roads and keeping them in repair has, by this means, been largely reduced. Stone crushers are employed by a number of townships where gravel is not to be had and quarry or field stone is available. Road rollers, wherever used, are regarded as one of the most essential implements for road work. Horse rollers are most commonly employed for country roads, while steam rollers are preferred by the towns. In addition to these (graders, crushers and rollers) are a number of minor implements, such as wheeled scrapers, pick-plows and gravel wagons, which materially assist in the work of road making.

More care is being taken than formerly to select the most suitable material for road purposes. The best gravel beds are selected, and care is taken to properly treat the gravel in the pit. Broken stone is being employed for roads of heaviest traffic, particularly where good gravel is not plentiful.

The hauling of gravel is now a matter of reduced cost. Special wagons holding a yard and a-half can be had; or if these are not used, the ordinary kind is equipped with a box that will hold nearly as much. The right proportion of men are kept at the pit, so that they and the teams will not be allowed to stand idle.

The placing of gravel on the roads is more carefully done. The earth sub-grade is first consolidated with the roller. On this the gravel or stone is spread to the desired width. The large stones, not removed at the pit, are raked forward so as to be under the next load and in the bottom of the road. The roadbed, as thus formed, is then consolidated and made ready for traffic.

Drainage is a matter of first importance, and every

attention is given to keeping open the surface drains, placing tile drains where under-drainage is needed, and carrying these to frequent outlets, where the water will be removed along natural water-courses.

Bridges are being built with steel superstructures, concrete abutments and concrete floors. Culverts are being made of concrete tile or concrete arches. The renewal and repair of temporary wooden structures have in the past been a serious drain upon moneys available for road purposes, but the use of permanent material, while greatest in first cost, is a measure of great economy in a term of years.

Road improvement is now progressing in long stretches, where heretofore work was done in patches. There is an effort to spend a certain sum each year on permanent work, at the same time keeping all roads in repair. This process of constructing the most heavily travelled roads first in a durable manner, gradually extending the improvement to all, will ultimately result in the completion of a system of highways fully adapted to modern requirements.

The main objects to be reached in this work are: (1) Perfect organization; (2) the most permanent work possible with the means available. Good work and good materials are always cheaper than poor workmanship and shoddy. Good roads constructed under a carefully considered and well organized system will prove a measure of present and lasting benefit to the country.

AN INCOMPETENT ROAD-BUILDER.

Offensive personalities can do little if any good, and as a rule they are productive of harm only. There are always two sides to a question, and where an individual is attacked for any particular act or acts of wrong-doing, the sympathy that goes to the weaker, is very apt to create a feeling in his favor. For this reason it has been the aim of this journal to avoid personal references of an offensive nature, and instead, wherever necessary, to expose or denounce the general principles that demand correction.

There are circumstances, however, which render this course impossible, and the more drastic method alone can be adopted.

In the present instance it has, we regret, become necessary to draw attention to the operations of a certain individual who has, for some time past, been posing before the public as an expert, or at least, a competent road-builder. He is well-known throughout the Province. He has worked in every community where road-making has been in progress.

No one, not even the most violent opponent of the good roads movement, has done the cause of road improvement more harm than this man. His methods have been of that underhand and traitorous kind which, wearing the garb of friendship, have in reality been of the most bitter enmity. In his actual work on the roads his true character and intention has been most apparent. Where better drainage has been needed he has piled on more gravel or stone. Indeed almost his sole idea has been "more gravel or stone." "Give me the money," he has said, "and I can build your roads." So much has this been his cry that had some of the roads of the Province been built of money instead of stone, they could scarcely have cost more. Gravel and stone he has piled on the roads, little or no attention being given to preparing the road to receive the metal. He does not know that every road should have proper drainage, and that every drain should have an outlet. His idea of a drain is that it is merely a trench or elongated pond by the roadside; and that it should carry away the water has not entered into his thoughts. His

drains are flat, stopped up, and he does not consider whether the water will run up hill or down. His gravel is chiefly sand or clay. So long as the teams are busy hauling it, he has a hope that on the road it will turn to gravel or stone. From beginning to end his road construction has been marked by stupidity and waste.

The name of the gentleman whose work we have been discussing is, as has been said, well-known, and will be recognized by all. It is "Anybody," and he is frequently assisted by a near relative—"Everybody." The latter gentleman does not do very much work himself, for what is Everybody's business very quickly becomes "Nobody's" business. These three have been making roads in Ontario for too long a period.

"Anybody" still has his admirers, who proclaim, as though it needed no argument, that "Anybody can build a road." Perhaps anybody can build a road, but many communities are finding to their regret that he is a very expensive and unsatisfactory contractor. His work and materials are inferior, and a competent man can do better work for one dollar than "Anybody" can do for two.

Road-making is a matter which requires thought and attention. It is a great and important public work upon which a large expenditure is every year being made. It has become necessary that, in order to achieve success, skill, good practical judgment and economy must be carefully combined. The man who thinks that Anybody can build a road does not know how much there is to learn about road-making; he has not taken time to study the question, but is content to plod along in the mud, learning nothing from his own experience nor from the experience of others. Neither "Anybody" nor the man who thinks that Anybody can build a road, is a proper person to be in charge of this important work.

LANARK COUNTY ROADS.

The work of improving and constructing the Lanark system of County Roads has made fair progress during the past season. This system was assumed about the close of last year under the Act to Aid in the Improvement of Highways, whereby one-third of the cost of the work is contributed by the Ontario Government. The system comprises, in all, 98 miles of road, including about twenty miles of toll road, purchased by the County and freed from tolls at a cost of \$19,346.60.

The roads purchased from the toll road companies were, for the most part, in good condition, having been well macadamized and kept in fair repair. Of the other roads designated as part of the county system, about thirteen miles has been gravelled or macadamized during the past season, so that one-third of the system is now constructed in a durable and efficient manner.

The principal stretch of road treated is one running westerly from Carleton Place to Innesville, where a distance of seven miles has been graded, drained, and metalled with gravel or broken stone. The general plan has been to first plow up the sides of the road, then to round or crown the roadway with a grading machine to an average width of twenty-four feet, from water-table to water-table. In doing this work the curve of the roadway falls regularly to the bottom of the side drain, so that the necessity of excavating a drain by hand is overcome, and the entire earthwork is done by machinery. On the centre of the grade thus formed the gravel or stone is evenly spread to a width of eight feet and a depth of six inches. A roller is not used in this work, but as a partial equivalent, care will be taken to draw the metal back, and to level the roadway when wheel tracks have formed.

While this is the general plan, it has been interrupted to a certain extent by the outcropping of bed

rock on the surface of the roadway, and the numerous large rocks and boulders on the road allowance. It was regarded as of prime importance to provide free and constant surface drainage, and in opening the side drains a large amount of rock had to be blasted and removed. The amount of rockwork necessary has, therefore, tended to increase the cost of road construction. Numerous hills and knolls have been cut down, and where these have been of rock the cost has also been greater than for ordinary work. The amount of rock piled at the roadside is, in many cases, forcible testimony of the amount of work done. The rock removed is of variable quality, some being the hardest of granite, and in other places, a tough, blue limestone.

Where gravel of a suitable quality could be had within a convenient distance it was used on the roads, but where it could not be had within about two miles crushed stone has been employed. The gravel is, as a rule, somewhat fine for best wear, but is inclined to be gritty rather than earthy.

Broken stone has been used on only one section, near Carleton Place. The stone is a hard, blue limestone of a good quality, breaking well into cubical, rather than flat, fragments. The stone is broken in a crusher belonging to the County, and was purchased last spring.

The crushing outfit consists of a 17-horse-power engine, a wagon equipped with a water-tank, a crusher which will turn out from ten to twelve cords per day, a rotary screen attachment, and bins and chutes to receive the stone and carry it to the wagons. The county uses two special dump wagons for hauling stone.

Where to haul from the crusher to the road does not exceed 80 rods, and apart from the cost of quarrying, the daily cost of crushing is approximately as follows:

Foreman.....	\$ 2 50
Engineer.....	2 50
Two teams hauling away.....	6 00
Team hauling water, etc.....	3 00
Feeding—two men.....	3 00
Wheeling to platform—four men....	6 00
One man at bin.....	1 50
Man spreading on road.....	1 50
	\$26 00

In addition to this, are expenses for fuel, repairs, and incidentals.

Additional road-making machinery owned by the county consists of a grader, wheeled and common scrapers, pick-plow, and minor implements.

The entire roadwork on the county system is under one overseer, and foremen are employed by him on works which he cannot personally superintend. In addition to the main work near Carleton Place are scattered stretches of from one to two miles each in other parts of the county. A camp outfit was employed by the superintendent on his own work, in order to keep the men close to the work. The camp comprises half-a-dozen tents for horses and men, and this was moved to convenient points along the work from time to time. The usual wages were \$1.25 a day with board for labor, and \$2.50 a day for man and team—the teamsters supplying oats, but not hay, for their horses.

In several cases the road allowance has been straightened or changed to a more suitable location, while throughout there has been an effort to bring the travelled roadway to the centre of the road allowance. The roads assumed by the county were among the most heavily travelled thoroughfares, but at the same time, among the most neglected within the county. In many instances they are trespass roads, narrow as is usual in such cases,

but following the high land, avoiding serious grades, and in other respects being in the most favorable location.

Near Carleton Place a considerable amount of stone has been quarried from rock out-croppings in the road allowance, thereby reducing a difficult grade, and supplying stone with a minimum haul. The cost of constructing these roads ranges from \$400 a mile for gravel roads where there was little rock excavation to \$800 a mile for broken stone roads, or at points where there was a considerable amount of rock to be removed in the construction of gravel roads.

BETTER DRAINAGE.

There are comparatively few roads upon which, somewhere along the line, there are not places which it seems almost impossible to drain without going outside the line of the road, sometimes quite a distance, to find a satisfactory outlet for the accumulated water. Almost invariably where a spot has been particularly expensive to maintain is pointed out to an expert roadmaker, his unaided eye will tell him that accumulated surface water keeps the foundation of the road, at that particular place, wet, almost to the point of saturation, for quite a length or time after every rainfall. If anyone interested in this matter will take a two-inch cube of soil, dry it thoroughly, and then place it in a receptacle containing water, maintained at a constant depth of one-quarter of an inch, he will find that in a few days the cube has settled considerably, and, in the course of time, it loses its shape entirely, and becomes a mass of mud. Mud on the surface of a road is, to say the least, unpleasant, but mud under the surface is positively ruinous, and will cause the breaking up and destruction of any material thus far found practicable for road-building.

The effect of water upon the surface of a road, while at times a serious problem, can be overcome by various methods of surface construction, but the effect of water upon the foundation can only be overcome by so designing the road that it will be impossible for it to become wet to the point of saturation. Even quicksand, so called, becomes comparatively firm when deprived of its moisture and black muck meadows will sustain a respectable load if kept dry. All soils are more or less like sponges and have power to absorb or soak up water, due to the amount of their capillary attraction. By this means they became saturated to a certain height above the surface of the surrounding water. The height of this saturation above the water-level depends upon the porosity and other physical characteristics of the soil in question. Keeping these facts before us, it is very easy to realize how a small amount of water, standing along or near to a road, may cause a needlessly large expenditure of money in the maintenance of an apparently well-graded and well-constructed road.

The roadmaker is in constant conflict with certain laws of nature, and is just as constantly making use of certain other laws to offset the effect of the former, and upon his ability to make use of these laws, and of the education, training, and experience he has had along certain lines, depends the measure of his efficiency. In thus using these immutable laws of nature, various methods are, of course, employed. Sometimes they may seem expensive, and may be so when first cost alone is considered; at other times they may appear to be comparatively inexpensive, but the expense ultimately incurred is measured by the efficiency of the method employed, and not by its comparative first cost. First cost is important, but the immediate expense of construction comes to an end sooner or later, while the cost of maintenance goes on forever. Therefore, the true measure of expense or economy can only be passed upon intelligently by the

general public after time has proven the efficiency or inefficiency of the methods adopted by the roadmaker.

The engineer's level, when properly handled, is practically infallible, and the deductions drawn, after proper use of the instrument, will, if intelligently applied, enable a roadmaker to design a road that, when finished, will be as nearly perfect, in regard to drainage, as it is possible to build an earthwork structure of this class, and these deductions will also enable him to so construct any necessarily imperfectly drained portion of the line in such a way that the effects of water upon the sub-foundation may be reduced to a minimum, if not entirely neutralized by one or another of the methods at the command of an efficient roadmaker.

RESIGNATIONS OF MUNICIPAL CANDIDATES

We clip the following from a recent issue of the *Colborne Express*:

"MISLEADING.—Local papers persist in tangling the amendment to the Municipal Act in reference to the procedure at the nomination meetings—this time declaring that resignations ARE DONE AWAY WITH and that failure to deposit a certificate of qualification by nine in the FORENOON next day disqualifies a candidate. If THE MUNICIPAL WORLD—so largely circulated and relied upon—would state in a few words what the new procedure is, a large circle interested would be relieved of much anxiety. We some time since put the matter plainly through *The Express*, but our exchanges persist in their blundering."

This, we believe, is the article complained of, which we noticed in the columns of a number of our exchanges:—

"An amendment was made to The Municipal Act at the last session of the Legislature, one clause of which will prevent considerable trouble. Candidates for the offices of mayor, reeve, controller, councillor, water commissioner, etc., in cities, towns, and incorporated villages are required to file with the clerk a declaration of qualification by noon on the day of nomination. This change in the law will do away with the indiscriminate nominations so often made at nomination meetings."

On page 202 of THE MUNICIPAL WORLD for September 1904 we have the following to say in reference to the above article:

"This statement of the law on the subject is erroneous and misleading. Sub-section 3a of section 129 of The Consolidated Municipal Act, 1903, as amended by section 4 of the Municipal Amendment Act, 1904, now reads as follows:

"In cities, towns, and incorporated villages, every candidate for the office of Mayor, reeve, controller, alderman, councillor, water commissioner, or street railway commissioner shall, on the day of the nomination, or at any time before nine o'clock in the afternoon of the following day, or when such last named day is a holiday, then before twelve o'clock (noon) of the succeeding day, file in the office of the clerk of the municipality a statutory declaration in accordance with the form contained in section 311 of this Act, or to the like effect, that he possesses the necessary qualification for the office, and in default of his so doing, such candidate shall be deemed to have resigned, and his name shall be removed from the list of candidates, and shall not be printed on the ballot papers."

The man who attends to his private business when there is a public duty he should perform is guilty of conduct as detrimental to the public welfare as that of a man in public office who neglects public business or who depletes the public treasury by wastefulness or outright robbery.

* * *

When taxpayers make it as much as part of their business to know why so much of their earnings or profits are taken from them by taxation, in one way or another, as they do to know how to keep themselves employed or to make their business profitable, municipal reform will not be difficult nor long delayed.

* * *

Mr. Leander F. Culver has been appointed clerk of the township of Rainham to succeed Mr. R. A. Havill, deceased.

QUESTION DRAWER

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

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

Communications requiring immediate attention will be answered free by post, on receipt of a stamped-addressed envelope. All Questions will be published unless One Dollar is enclosed with request for private reply.

Collection of Taxes on Lands Omitted from Assessment Roll.

648—A. A. Y.—Can we enter in collector's roll and collect taxes on property found to have been omitted from the assessment roll at this late date?

Section 166 of The Assessment Act provides that if, at the yearly settlement to be made on the 1st 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. The latter part of this section gives directions as to the mode of assessment and conducting appeals.

Payment of Cost of Equalizing Union School Assessment.

649—S. B.—If a municipality pays the assessors for equalizing a union school section, can the council legally assess their respective parts of union S. S. for costs of equalizing the same? That is, has a union section to bear the expenses alone, or does it come off the whole municipality?

Section 4 of chapter 32 of The Ontario Statutes, 1903, provides that the cost of proceedings under section 54 of The Public Schools Act, 1901, including the fees of assessors and arbitrators, shall be borne and be paid by the municipalities out of portions of which the union school section is formed in the same proportion as the equalized assessments of the municipalities bear to each other.

Removal of Fence from Road Allowance.

650—J. P.—The Government built a road which is not on the road allowance, through not knowing just where the stakes were, and it is about 70 feet out of the proper place, and no hills or other obstacles in the way. On this road A has built his fence right in the wheel track. Can he legally do so? If not, what steps should be taken to have the fence removed?

This work appears to have been a Government undertaking, and we presume the intention was to construct the road on the original road allowance. If a mistake was made in locating the line of the road, as seems to have been the case, the matter should be brought to the attention of the proper department of the Government, when the error, if any, has been made, will probably be rectified. In the meantime it will be best for the council to take no action in the matter.

Acceptance of Resignation of Clerk—Appointment of Successor.

651—W. W. S.—1. Will it be necessary to prepare a by-law for reception of resignation sent in by clerk of township that was appointed to office by by-law, or is a motion to receive it sufficient?

2. Is it necessary to pass a by-law to appoint a clerk for the remainder of the year?

3. Can it be done by resolution of the council?

1. A resolution duly passed by the council and entered in its minutes will answer for this purpose.

2. Yes, it is necessary that the council should have a clerk, and his appointment should be made by by-law.

3. No.

Exemption from Poll Tax of Party Assessed—Liability for Injury Caused by Drain.

652—CLERK—1. Is a man exempt from poll tax whose name is entered on the assessment roll as tenant and M. F., but not actually assessed for the property. Some claim that the fact of the party being tenant of property that the owner is taxed for exempts him from the poll tax?

2. During the month of June last a freshet occasioned an overflow of a drain running under the corner of a general store belonging to A, a ratepayer, the water passing through the shop to a depth of about 18 inches, and causing him damage to stock, etc., to the extent of \$300.

The drain is an open one and has been generally used for some years. In order to prevent his land washing away, A, some four years ago, built a box for the drain's exit of wood, four feet square and about fifty feet long. Since then, local councils have opened other waterways into the drain with the result that more water now passes, and it was from this and the drain being clogged and choked with refuse, barrels, logs, etc., that the overflow and consequent damage occurred, the storm and rise of water being sudden.

A has been to the present council and has met with no opposition to his requests, though a lesser amount has been spoken of, but nothing has actually been done.

He now wants to ascertain what, if any, right he has against the municipality, and to what extent he should be recompensed for his loss.

1. We understand that this man is entered on the assessment roll of the town as tenant of a certain property therein. If this is the case, we do not see how it can be said that he is not actually assessed for the premises. Since he is assessed upon the assessment roll of the town, if the taxes payable in respect of the premises amount to more than \$2.00, the tenant cannot be compelled to perform the statute labor mentioned in section 97 of The Assessment Act.

2. If the council of the town has, by the construction of drainage works, conducted water along and from the highway to A's premises, and has thereby occasioned him injury, the municipal corporation is liable to A for the amount of the damage he has sustained. As to what this amount should be we are unable to say, not being sufficiently cognizant of all the circumstances surrounding the case.

By-Law to Collect Excess of Cost of Construction of Drainage Work.

653—Y. R. H.—Drainage by-law passed 1902. Work completed 1904. By-law did not provide for sufficient funds and required issue of debentures payable in 1903-4-5. New by-law passed for funds and providing for debentures in other years. Court of revision held on this by-law and two appeals, one taken to Judge.

Where are we at?

Section 66 (1) of The Drainage Act empowers a council to amend a by-law for the purpose of raising additional funds where the amount raised in the first instance was insufficient to cover the cost of the work.

Responsibility for Horse Killed—Liability of Railway Company to Construct Drainage Work and Highway Crossings.

654—J. B. W.—In our township there was a horse killed. It was drowned, but died after it was out of the creek. On Sunday at noon the bridge was all right; at 5 p.m. a boy discovered the bridge in a bad condition, and the father looked at it and saw the way it was and left it that way. One stringer was off the abutment and off two centre pieces that were across the stringers; that is, the first stringer and the stringer that one end was off, and the other end not off. The end that was off was away out from the bridge, about 12 feet. We cannot see how it got there, without it got there by hand. There was some plank off, too. This man saw two rigs going that way and told the occupants, and they went out and put plank down and got across on the two stringers that were all right. Another man came along after night and went over with a horse and girls.

The Government built this bridge three years ago, and the plank was not nailed down. In our township the railway has put in a concrete bridge $3\frac{1}{2}$ feet above the bed of a creek, and has dammed the water back. We have notified them about some crossings, but they pay no attention.

1. Have we to pay for this horse, or will the Government have to?

2. Can we make the railway fix the bridge?

3. Can we make them fix the crossings?

1. We have not sufficient particulars to enable us to give an opinion as to the responsibility for the loss of this horse. We should know whether the road on which the bridge was built is a Government road or not, the circumstances under which the bridge was originally built, and whose duty it is to maintain it.

2 and 3. If this is a railway under the jurisdiction of the Dominion Parliament (which is probably the case) the matter should be brought to the attention of the Board of Railway Commissioners for Canada, who are authorized by sections 187 and 194 and 195 of The Dominion Railway Act, 1903, to grant such redress as they may deem necessary under the circumstances.

Nominations to be held on last Monday in December.

655—G. K.—There is a jangle as to holding nominations on Monday, as it will be generally observed as Christmas. Please state the legal aspect of the matter.

The last Monday in December this year (26th) is not Christmas Day, therefore section 124 of The Consolidated Municipal Act, 1903, has no application. The municipal nominations (except for county councillor) should be held on the 26th day of December instant.

Mode of Assessing Non-Resident Lands—Distress for Taxes, of Tenants' Goods.

656—W. N.—1. Can an assessor assess non-resident lands twenty-five per cent. higher than resident lands?

2. A's name appears on the collector's roll as owner of land. B lives on land and owns the stock and crop. Can a collector distress B's crop for taxes, his name not being on the roll?

1. The assessor should assess ALL lands in the municipality (except mineral lands) at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor. (See section 28 of The Assessment Act.) He has no right to discriminate against the lands of non-residents. As to the assessment of mineral lands, see sub-section 2 of the above section.

2. No. B is not the "person assessed," whose name appears on the collector's roll for the year as liable for these taxes within the meaning of clause 1 of sub-section 1 of section 135 of The Assessment Act. (See also the latter part of clause 4 of this sub-section.)

Reconsideration of D. and W. Award.

657—J. McL.—In 1896 an award was made by an engineer under the Ditches and Watercourses Act. The natural run of the water was directly across the road between two municipalities. But the engineer, instead of putting the water straight across the road, turned the course about 250 feet down the side of the road, thence across the road about 300 feet to a good outlet, causing the town-

ships to keep up an unnecessary culvert, and the open ditch does not work good, nor is it satisfactory.

Can this award be broken, and if so, what length of time must expire before we can do so?

Any owner, party to this award, whose lands are affected by the ditch, since two years have expired since the completion of the construction thereof, may take proceedings for the reconsideration of the award, pursuant to the provisions of section 36 of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285). The word "owner," when used in the above Act, means and includes "a municipal corporation as regards any highways or other lands under its jurisdiction." (See clause 3 of sub-section 3 of the Act).

Drainage in Villages.

658—D. G.—1. In this village we have no sewerage system or leading sewer to enable owners of property to drain their cellars into same. What is the proper course to pursue to procure drainage of cellars in such cases?

2. Can the council prohibit persons draining cellars onto surface of streets?

1. The council should pass a by-law for the construction of the necessary sewerage or drainage works, pursuant to the provisions of the Local Improvement clauses of The Consolidated Municipal Act, 1903. (Section 664 and following sections of the Act).

2. Yes. Sub-section 1 of section 551 of the above Act authorizes the councils of villages to pass by-laws for compelling and regulating the manner of DRAINING, cleaning, clearing, and disposing of the contents of cellars, etc.

Qualification of License Commissioner—Limit of Corporate Borrowing Powers.

659—A. H.—1. Can a ratepayer who is a member of license board for the county be a member of the municipal council?

2. Are the members of the license commission appointed by the county, or by the government? Is there any stated term of office?

3. Is there any stated sum of money a municipal council can expend, other than the ordinary expenses of the township, that is, how much can they expend before they will have to submit a by-law to the ratepayers?

1. Sub-section 1 of section 80 of The Consolidated Municipal Act, 1903, provides amongst other things that "no license commissioner shall be qualified to be a member of the council of any municipal corporation."

2. By the Provincial Government, for one year.

3. Sub-section 1 of section 389 of The Consolidated Municipal Act, 1903, provides that "subject to the last two preceding sections every by-law (except for drainage, as provided for under The Municipal Drainage Act; or for a work payable entirely by local assessment; or under section 9 of The Act for the Improvement of Public Highways passed in the first year of the reign of His Majesty King Edward VII.) for raising upon the credit of the municipality, any money not required for the ordinary expenditure, and not payable within the same municipal year, shall, before the final passing thereof, be submitted to the electors of the municipality in the manner provided for in section 338 and following sections of the Act."

Effect of Neglect to File Declaration of Qualification

660—CLERK—In the June number of THE WORLD, page 152, I find, under the head of "Municipal Legislation," section 4 requiring candidates to file a declaration of qualification with the clerk on the day of nomination, or not later than 9 o'clock in the afternoon of the next day.

If the qualification is not so filed, must the clerk leave the names of candidates off the ballots, or put them on, as has been done heretofore, and allow the candidates to go the poll?

This municipality being an incorporated village, sub-section 3a of section 129 of The Consolidated Municipal Act, 1903, as amended by section 4 of chapter 22 of The

Ontario Statutes, 1904, is applicable. The latter part of this sub-section provides that "if a candidate nominated makes default in filing the declaration of property qualification within the time mentioned in the sub-section, he shall be deemed to have resigned, and his name shall be removed from the list of candidates, and shall not be printed on the ballot papers."

Compensation for Building Wire Fences.

661—N. J. D.—The council of the township of M. some 25 years ago gave a bonus of 25 cents per rod for the erection of wire fences in certain places, barbed wire being entirely used. For a number of years no bonus was given. About five years ago they again gave 25 cents, and are now giving 30 cents. No by-law was ever passed about the matter at all, simply resolution stating so much per rod on each occasion.

A and B some 23 years ago built a wire fence and got the bonus at the time. This year they built another wire fence in the same place, the old one being done, or worn out. They apply to the council for bonus, but the council refuse to give it, saying that since A and B got the original grant, they are compelled to erect and maintain a wire fence for all time to come. A and B say that unless they get bonus they will build a rail fence in place of wire fence, which will cause the snow to obstruct the road.

1. Can A and B take down a wire fence, having taken the bonus, and erect a rail fence?
2. Or are they compelled, for all time to come, to maintain a wire fence?
3. Should a by-law have been introduced instead of resolution?
4. Would a by-law cover the difficulty now?

1. Unless a by-law has been passed by the council in accordance with the provisions of sub-section 2 of section 545 of The Consolidated Municipal Act, 1903, settling the height and description of lawful fences in this locality, or of sub-section 5, and The Act Respecting Snow Fences (R. S. O., 1897, chapter 240), (which by-law is now in force), there is nothing to prevent A and B erecting a rail or any kind of a fence other than wire, in the place of the existing fence. The fact that they were paid compensation for erecting the wire fence twenty-five years ago, does not affect the matter now.

2. No, in view of the fact that no by-law was passed under the above or similar authority at the time the compensation was paid.

3. Yes.

4. Yes. So far as the erection of fences in the future is concerned.

Raising Excess Over Estimated Cost of Drainage Work—Cement Sidewalk on Township Roads.

662—G. M.—A drain was constructed under the Municipal Drainage Act in our township and our council passed debentures to pay cost of drain a year before said drain was dug. The council then had the drain dug by day work, hiring a foreman to oversee the work, and the cost exceeded the amount of the debentures by about three hundred dollars.

1. The debentures were to be paid in ten yearly instalments. Would it be legal for the council to borrow the \$300 from the township, and after the debentures are paid, assess it to the lands benefited? If the cost of a drain exceeds the engineer's award, what is the proper thing to do?

2. In your November issue you say township councils may pass by-laws for constructing cement sidewalks in unincorporated villages but the whole cost must be levied against the properties benefited. Would the same apply to cement sidewalks on township roads, or could the township assume part of the cost?

1. The course suggested is not authorized by statute. The proceedings to be followed when the cost of drainage works exceeds the amount of the engineer's estimate will be found in sub-section 1 of section 66 of The Municipal Drainage Act. (R. S. O., 1897, chapter 226).

2. Yes. Section 678 of The Consolidated Municipal Act, 1903, does not apply to work of this kind undertaken by the councils of TOWNSHIPS.

Payment of Part of Cost by Servient Municipality Before Drainage Work is Completed.

663—J. C.—The township of D passed a by-law improving a ditch under the Drainage Act in their township. The work has not been started on said drain, yet the Township of B has passed a by-law and been assessed for outlet.

1. Can the Township of D collect the amount assessed to B by the engineer in the present year, when no work has been started on the ditch?

2. When should the Township of B pay the amount over to the Township of D?

3. Can the Township of B pay over the amount without issuing debentures?

1 and 2. We assume that there was no appeal to the drainage referee in this case by the servient municipality (B) from the report of the engineer, etc., served on its head by the council of the initiating municipality (D) as provided by section 61 of The Municipal Drainage Act. If this is so, the council of the servient municipality (B) is required by section 62 of the Act to pass a by-law or by-laws to raise and shall raise and pay over to the treasurer of the initiating municipality within FOUR MONTHS from such service, the sum that may be named in the report as its proportion of the cost of the drainage work. The fact that the drainage work has not been begun by the initiating municipality (D) within the four months, does not absolve the servient municipality from paying over its share of the cost of construction within that time.

3. The township of B should not pay over this amount until the council has passed a by-law to raise the amount by assessment against the lands of the several owners to be benefited by the construction of the drain. This by-law may provide for the levy of the whole amount in one year, or may provide for the issue of debentures to be paid by the levy of an equal annual sum in each of the years during which the debentures have to run. If the assessments would be so large, if the whole amount were levied in one year, as to prove burdensome to the owners, it would be advisable to pursue the latter course.

Liability for Accident on Defective Bridge.

664—J. B. D.—1. Would the township be liable for any damage that might occur on a bridge that had been condemned by a road and bridge committee as unsafe, they having posted a written notice on said bridge?

2. Or should the bridge and road be closed for a reasonable time to repair said bridge?

The council is pursuing a dangerous course in allowing this bridge to remain out of repair, and unsafe for public travel. Notwithstanding the posting up of the notices, the municipality will be responsible for any injury sustained by any person by reason of the unsafe condition of this bridge, without any negligence or fault on his part. The council should close the road for such a reasonable length of time as will enable it to complete the necessary repairs to the bridge.

Responsibility for Damage to Implements used in doing Statute Labor.

665—C. B.—In your May number of THE MUNICIPAL WORLD, question 296, you answered a question to P. C. in which you hold that the township council is not liable for damage done to implements clearing away snow. Will you now answer a question from a pathmaster's point of view?

Supposing the road gets blocked with snow and is so high that people are able to get along with a single sleigh, but impossible for a team, and that a man living out in the third or fourth road division is preparing to build a new barn or house and has to have his teaming done in winter. He therefore notifies the pathmasters on road divisions one and two to have the road opened fit for a load in a specified time. Pathmasters on road divisions one and two turn out and call out men to open the road, but the men all refuse to come out, as they are not willing to run the risk of having their ploughs or disc harrows broken and have to bear the expense of repair, and as the statute labor for the previous summer has all been performed

and the pathmaster cannot compel them to come out, as they do not owe the township any labor, will you kindly tell us, in these circumstances, what is the pathmaster to do?

The case suggested does not alter our opinion previously expressed on this question. Persons performing statute labor are working chiefly for their own benefit, convenience and advantage, and must assume the risk of damage to such implements as they may require to do the work. If the council desires to have the roads in the municipality kept open during the winter, it should pass a by-law under the authority of sub-section 3 of section 537 of The Consolidated Municipal Act, 1903, which empowers councils of townships to pass by-laws "for appointing overseers of highways or pathmasters to perform the duty of making and keeping open township roads during the season of sleighing in each year. Such overseers and pathmasters shall have full power to call out persons liable to perform statute labor within their respective municipalities, to assist in keeping open such roads, and they may give to persons so employed certificates of having performed statute labor to the amount of the day's work done; and such persons shall be allowed for such work in their *next season's statute labor*."

Authority to Commit to County House of Industry.

666—S. D.—We have just started a poor house in this county (Grey County). Who has the authority to send indigents to that house; is it the reeve and council of the towns, villages, and townships, or is it the members of the county council who are county commissioners? The county makes each municipality pay \$1.50 a week for the keeping of each indigent sent.

Sub-section 1 of section 526 of The Consolidated Municipal Act, 1903, provides that *any person authorized for that purpose by by-law of the county council* may, by writing under his hand and seal, commit to a house of industry or refuge to be employed and governed according to the rules, regulations and orders of the house, the classes of persons in this sub-section mentioned.

Fees and Duties of Town Clerk.

667—R. J. C.—1. Can a clerk of a town charge for his service for attending nomination, and for preparing voters' list for each Deputy Returning Officer?

2. Is it not the duty of a clerk appointed by the council to do all the work in connection with the council and the municipality when there has been no agreement made by the clerk and the council as to extra work?

3. Is it right and proper for a clerk to act as solicitor for an assignee when his town has an interest in the same?

1 and 2. As to whether the clerk of a municipality is entitled to receive extra pay for any particular duty performed by him, depends on the provisions of the by-law under which he was appointed. If this by-law does not provide for the allowance of any extra fees for the performance of any particular duties the clerk should perform all the duties pertaining to his office for the salary he has agreed to accept, and the work you mention in question number one forms part of these duties. If any statute imposes the performance of any duty thereunder on the clerk of the municipality, and allows him certain fees therefor, he is entitled to be paid these fees in addition to his salary, unless the by-law appointing him otherwise specifies. For instance, "The Act Respecting the Registration of Births, Deaths and Marriages," and "The Ontario Voters' Lists Act."

3. We cannot definitely answer this question without more complete information in the matter. If there is a *bona fide* dispute between the town for which the clerk has been appointed solicitor, and another party, the clerk cannot properly act as solicitor for the town and its opponent at the same time.

Procedure for Providing for Election of Town Councillors by Wards.

668—SUBSCRIBER—What is the present municipal law regarding a town of 2500 being in wards? If not in wards, how do the electors proceed to have it in wards?

This matter is regulated by section 71a of The Consolidated Municipal Act, 1903. Sub-section 1 of this section provides that "the council of every town having a population of not more than 5,000 shall consist of a mayor, who shall be the head thereof, and of six councillors who shall be elected by a general vote." Sub-section 2 provides that "at any time after two annual elections have been held under the provisions of sub-section 1 of this section, the council of the town may by by-law provide for the division of the town into wards and at the annual municipal election held next after the passing of such by-law, and thereafter at each annual election, so long as the said by-law shall remain in force, one councillor shall be elected by the electors of each ward, and the remaining councillors to complete the full number of six shall be elected by general vote."

Place for Deposit of Municipal Moneys—Purchasing New Site for Town Hall.

669—J. G.—1. Is a bank which is open for business three days of the week a lawful bank?

2. In the event of its doing business in their municipality, would a council be justified in placing the account of municipality with them?

3. In submitting a by-law to the ratepayers for the purpose of raising debentures to build a town hall, would it be proper to include the site, the former not being in the centre of the township?

1 and 2. We do not know what is meant by the expression "lawful bank" used in question number one. If this banking institution, whether private or operating under a charter from the Government, is one that the council approves of as a place of deposit for the moneys of the municipality, the treasurer is justified in depositing such moneys therein. (See sub-section 5 of section 291 of The Consolidated Municipal Act, 1903). The fact that the banking office is open but three days in the week does not affect the matter in any way.

3. It is not necessary that the council should obtain the assent of the electors of the municipality to the purchase of a site for a town hall. The council may make this purchase of its own motion under the authority of sub-section 3 of section 534 of the above Act. The council may include the purchase money for the site, as well as the cost of the erection of the town hall in the amount mentioned in the by-law submitted to the electors, providing for the issue of debentures to raise the sum required.

Method of Selling Municipal Debentures.

670—C. W. S.—1. Can debentures under a by-law (a copy of which I send you) to raise \$12,500.00 be legally sold for less than their face value?

2. Can the council pass a motion over the mayor, selling same as they wish, or has the mayor the right to sell same?

3. Would the mayor be justified in concluding the sale himself, regardless of the council, at the best figure obtainable?

1. The mayor and his council should use every possible means by public advertisement and otherwise to dispose of these debentures at the highest possible figure. If, after they have exhausted all efforts in this direction, the best offer obtained for the debentures is below their face value, no legal objection can be successfully taken to their sale at that figure.

2. The first and fourth clauses of the by-law submitted specifically empower the mayor to borrow the amount mentioned in the by-law and issue the debentures of the corporation signed as mentioned in clause four thereof, but we think it advisable that he consult with his

council as to the most effective and advantageous method of advertising and selling the debentures. A motion of the council cannot override the positive provisions of the by-law.

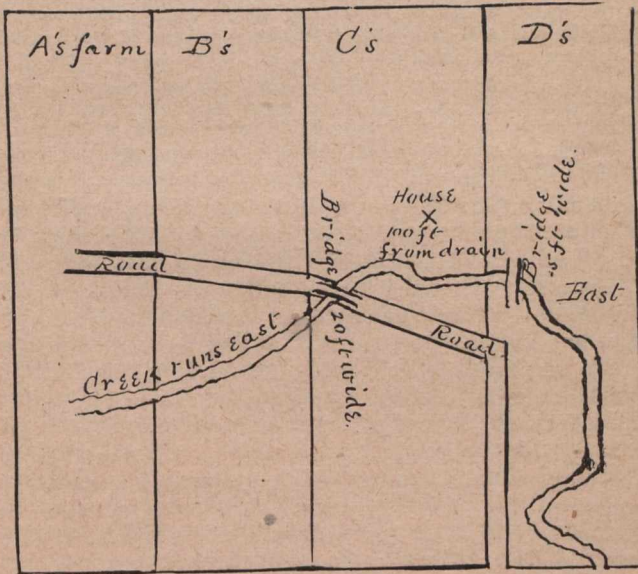
3. Yes, but as we have stated above, we think it advisable to prevent possible friction and unpleasantness in the future, if the mayor took his council into his confidence and consulted its members as to the best method of transacting this business.

Liability of Municipality for Building Bridge Over D. & W. Award Drain.

671—T. B.—Referring to question of 7th of October the award was made 1890. C has to make the portion crossing his farm and pay a portion of engineer's charges for doing the work. I enclose a diagram of the proceedings.

The creek was awarded 5 feet on top, 3 feet in bottom, and this bridge on road to be at least 5 feet wide and 3 feet from the bottom of the creek. The council built the same, and the council gave the contract to B, and he built the bridge 20 feet wide and 3 feet from the bottom. Now C threatens the council for damages for allowing the bridge to be built so wide as to let the water through farther than outlet or creek will carry it off, as the bridge on a farm is only 5 feet wide. The award said that the bridge on D's lane to be at least 5 feet wide, and D will not make it any wider under the previous award, and the water backs into C's cellar the council was repairing bridge on road this season. C notified them not to build it so large, but the council claim that the award stating to be at least 5 feet, they had power to build or repair bridge 20 feet and did so.

1. Has the council the privilege to build bridge that size because the award said to be at least 5 feet wide, it being a creek.
2. Has C a claim on the council when he did not appeal within 15 days?



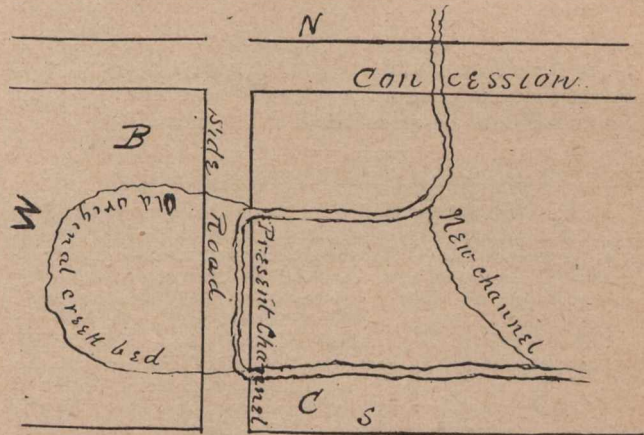
1. Yes.
2. No.

Council Should Not Construct Drainage Work for Private Owners.

672—J. M.—I enclose you a diagram of a creek in our township which some of the ratepayers want changed. Some years ago a ditch was made on the sideroad to bank up the road. The water got into this channel in the spring freshet and washed it out till all the water runs down side of the road, except in high water, when all the land between the proposed new channel and the enclosed diagram is flooded. The road is all flooded except the narrow driveway. A railing had to be built along the east side of the road next the creek for the safety of the travelling public. Now the water is washing out the side of the road, and will have to have retaining walls built or divert the watercourse where it formerly ran or dig a new channel as proposed in the diagram, which would shorten the creek very much and give a better fall. A is willing to have the new channel dug through his property, but is not willing to be at any of the expense, although his land would be greatly benefited. B is willing to have the creek closed up where it enters the road allowance to go south, and let the water go where it liked,

which would send it round its old original course, which would have to be dug out considerable, as it is very much filled up, but is not willing to have the water privilege taken away at C, where a great many cattle get water and some people draw water from there for threshing purposes, etc.

1. Is the township bound to keep the watering privilege at C open for the convenience of the public?
2. If the council shuts off the water from coming down the sideroad are they compelled to open up the new channel, which will cost about \$400, at their own expense, or should A and B be at part of the expense, as we think it would dry their land and make it more valuable?



1 and 2. The drain along the sideroad should never have been dug, nor should the doing of the work have been permitted by the council. Unless the water has been allowed to flow in the present channel for such a length of time as to give adjoining owners vested rights to have it continue to run that way (and as to this we cannot say, not having sufficient particulars,) the council should fill up the drain along the highway, and allow the water to run in its natural course. The council has no authority to construct a drain in the new channel. It should remain passive, and leave the owners interested to take the proceedings provided by The Municipal Drainage Act (R. S. O., 1897, chapter 226,) for the construction of such drainage works in this locality as they may deem necessary.

Duties of Pathmaster and Council as to Statute Labor—By-Law to Increase Councillor's Remuneration.

673—SUBSCRIBER.—A is pathmaster in a certain road division, and B, one of his party, is on bad terms with him. In 1903 B sent out his man and team to draw gravel and told the man not to overload the team. A told him he would either have to take his share with the other teams or go home; he refused to draw more and was ordered home, A giving him credit for the time he worked and returned the balance of his labor unperformed, and it was entered on the collector's roll. This year A warned out B to do his labor, and told him to bring team and wagon to draw gravel. B came out at the appointed time, but had a small box on his wagon (8 feet 8 inches long, 2 feet 10 inches wide, 10 inches deep), which he got made on purpose for the road work. A asked him if he was going to draw with that box. B replied he was. A told him he would either have to draw as much as the other teams or go home and ordered B to go home, which he refused to do. A then forbid his men to help B load his wagon. B loaded his own wagon and made the same number of trips as the other teams, but did not draw as much gravel.

The draw is long and teams can only make four trips per day, which makes it necessary to draw good loads. A quarter of a cord is considered a standard load in the municipality.

A returned B's labor unperformed to the clerk. B came to the council and stated he had performed his labor in full and asked that it be accepted.

The council passed a resolution accepting B's statement and giving him credit for his labor in full.

1. Was the council justified in ignoring the pathmaster and taking B's word for same?
2. Had the council taken no action in the matter and the amount been placed on the collector's roll, whom would B have to look to for redress, the pathmaster or the council?

3. Would the council have left themselves liable in any respect had they taken no action in the matter when they were aware that B performed labor, but not under the direction of the pathmaster?

4. Will it be legal for a council to pass a by-law at their last meeting raising their salary to \$2.00 per day, or must it be done at the first meeting in the year?

1, 2 and 3. We are of the opinion that a pathmaster, in calling out men to perform statute labor and making his return to the clerk in cases of default, is not the mere servant of the council, but is a statutory officer performing statutory duties, and the council should not interfere at all.

4. Yes, under the authority of sub-section 1 of section 538 of The Consolidated Municipal Act, 1903, subject to the provisions of section 328 of the above Act, but such by-law cannot be retroactive in its operation.

Collection of Taxes from Locatee of Crown Lands.

674—J. P.—A made application for a certain lot under The Free Grants Act, and did not receive any location papers, either through neglect of the Crown Land Agent or the Crown Land Department, but he had possession of and held the lot for over a year, doing some improvements, but did not pay taxes levied on said lot while in his possession. Finally he sold his claim to B, who paid the required price. Then B went to the local Crown Land Agent to see if there was any taxes against said lot instead of going to the treasurer of the municipality. The Crown Land Agent told him there was nothing registered against the lot in his office. Now B is three years in arrears for taxes. Is he liable for those taxes levied while in A's possession? If so, what steps are necessary for the collection of said taxes?

The interest of A in this lot was properly chargeable with, and liable to be sold for arrears of, taxes. (See section 188 of The Assessment Act). This interest became vested in B, on the sale by A to him, and is properly chargeable with these arrears in his hands. Since B is also three years in arrears for taxes on this land, it should be sold by the municipality to realize this amount, and also the arrears that accrued while the land was in A's possession. B should have taken the precaution to have searched in the treasurer's office before paying over his purchase money.

Issue of Debentures for Cost of Maintenance of Drain—Expenditure of Statute Labor on Townline by Adjoining Municipalities.

675—J. W.—The township of A. has a drain that was constructed under The Ontario Drainage Act, 1894. A petition or complaint was presented to the council asking that said drain be cleaned out, as it was out of repair. The council appointed one of their number commissioner to have it cleaned out, which was done, and now the parties assessed for said cleaning out of drain want the council to issue debentures to extend the time to a term of three years.

1. Has a council power under section 83 to issue debentures for cleaning out a drain for say three years for maintenance of said drain?

2. Has a Court of Revision to be held prior to the issue of debentures, or what use is it, as it is to be charged pro rata to the original assessment as made by the engineer?

3. What do you consider the proper course to follow to extend the time for a period of years in regard to issuing debentures for the same?

4. In settling townline expenditure between two municipalities can one municipality collect from the other statute labor at computed value where the other refuses to put on statute labor on the said townline, and only meets the money expended by the other township, minus the statute labor on said townline?

5. If the commissioners of the township that does not put on statute labor on said townline verbally agree to form a road division on said townline and fail to do so, would not the other municipality be justified in claiming the half of the value of the statute labor performed by their township council?

1. Yes.

2. There is no provision for the holding of a Court of Revision on a by-law of this kind.

3. If the cost of the maintenance of this drainage work is so large that the council deems it inexpedient to

levy the cost thereof in one year, it should pass a by-law to borrow the amount required upon the debentures of the municipality, and shall assess and levy upon the lands and roads liable therefor a special rate sufficient for the payment of the debentures. If this is a case of ordinary maintenance and repair, the debentures should be made repayable within seven years; but, if it is a case of repair, such as change of course, new outlet, improvement, extension or covering, pursuant to the provisions of section 75 of the Act, the debentures should be made payable within twenty years from this date. (See section 3 of chapter 38 of The Ontario Statutes, 1900).

4 and 5. If the councils of the adjoining townships cannot agree upon the proportion of statute labor to be performed by each on the townline, the council of neither township can take the law into its own hands as suggested. Section 648 and following sections of The Consolidated Municipal Act, 1903, provides a remedy under these circumstances. Section 651 provides (after the preliminary proceedings provided by prior sections have been taken) that "the county council may determine the amount which each township council interested shall be required to apply for the opening or repairing of such lines of road, or may direct the expenditure of a certain portion of the statute labor, or both, as may seem necessary to make the said lines of road equal to other roads."

Issue of Certificate of Registration of a Death—Duties of Coroner.

676—T. S.—1. Who is the proper party to look to for a death certificate of a child who has died, no doctor being in attendance while the child was sick? Is the clerk of our municipality right in refusing to issue a burial permit unless he receives a doctor's certificate of the cause of death?

2. If a doctor refuses to visit the body and will not give a certificate of the cause of death, to whom may the parents of the child look for the necessary authority to bury the body?

3. The coroner of our town claims he has no authority to hold an inquest unless someone lays complaint that he suspects foul play.

1 and 2. The filing of a death certificate under section 23 of chapter 44 (R. S. O., 1897,) with the clerk by a physician who attended this child in its last illness, is not necessary in order to authorize its burial. If the occupier of the house or tenement in which the death took place, has supplied to the Division Registrar all the particulars required to be registered touching the death, in accordance with section 22 of the Act, he is entitled to receive from the Division Registrar a certificate of registration. On the production of this certificate that the particulars of the death are duly registered, the caretaker or owner of the cemetery or burying ground in which the interment is to take place should allow the body to be therein buried. (See section 25 of the Act.)

3. A coroner should not hold an inquest on the body of any deceased person (except in cases mentioned in sections 3 and 4 of chapter 97, R. S. O., 1897,) "until it has been made to appear to him that there is reason to believe that the deceased died from violence or unfair means, or by culpable and negligent conduct of others, under such circumstances as require investigation, and not through mere accident or mischance. (See section 2 of chapter 97.)

Pensioning Municipal Clerks—Compensation for Erection of Wire Fences.

677—H. S.—1. If a clerk has served a municipality for twenty years, can he claim a pension according to law? If thirty, how much can he claim?

2. The council of our township pays ten cents per rod to some for building wire fences along the road side; others receive nothing who are just as much entitled as those who receive pay. Should all be used alike—pay all or none? Is the council justified in paying for fences it has not ordered built?

1. A clerk has no legal CLAIM to a pension or retiring allowance, no matter how long he has served a municipality in that capacity. Section 322 of The Consolidated Municipal Act, 1903, provides that "any municipal council, other than a provisional council, MAY grant to any officer who has been in the service of the municipality for at least twenty years, and who, while in such service, has become incapable, through old age, of efficiently discharging the duties of his office, a sum not exceeding his aggregate salary, or other remuneration, for the last three years of his service, as a gratuity upon his removal or resignation."

2. It is not stated under what authority the council is paying this sum for the erection of wire fences along the highway. If it is acting in pursuance of a by-law passed pursuant to the provisions of sub-section 2 of section 545 of the above Act, all owners who erect the kind of fence the by-law requires should be paid the sum allowed by the council for erecting that particular kind of fence, and all who erect it should be treated alike. If the agreement to pay compensation is made pursuant to section 1 of chapter 240 (R.S.O. 1897),—an Act respecting snow fences—the council is justified in paying it out to such owners as are required to construct a more expensive kind of fence than was formerly erected in order to prevent the accumulation of snow on the highway.

Correction of Errors in Assessment Roll.

678—C. H.—The assessor, by error, omits to place on the assessment roll for 1904 a non-resident property. The owner comes to pay his taxes for 1904. The property has been assessed the same amount for some years. Has the collector or council power to receive them?

Section 166 of The Assessment Act makes provision for a case of this kind. It provides that under the circumstances mentioned the clerk shall, under the direction of the council, enter the land which has been omitted from the assessment roll on the collector's roll next prepared by him thereafter, or on the roll of non-residents, as the case may be, as well of the arrears omitted of the year preceding only, if any, as for the tax of the current year. The latter part of the section makes provision for the valuation of this land and appeal to the council. If the owner of this land, however, and the council can agree as to the amount of taxes the owner should pay on the land omitted from the assessment roll this year, we see no reason why the council cannot accept this sum and give the owner a receipt in full for the taxes of the present year.

EXPERIENCE IN OFFICE.

We quote from a communication, by the well known writer on economics, Richard T. Ely, that appeared in a recent issue of *The Citizens' Bulletin*, of Cincinnati, and which was also the subject of an editorial that appeared in *The Boston Herald*.

Says Dr. Ely: "At present I hold a humble office. I am one of the supervisors of the Town of Madison, Dane county, State of Wisconsin, and it seems to me, after having held the office some six months, that a man ought to hold it for several years to acquire the knowledge and experience needed to make a good supervisor. I have been hammering away at economic problems for twenty years at least; but in the discharge of my duties as supervisor I feel oppressed by my ignorance, and I presume what I especially lack is sufficient general engineering knowledge; but I see clearly that the engineer requires economics for such an office as truly as the economist requires engineering knowledge."

The article in which the above quoted language appears related to city administration as a profession, but we can read much more between the lines in this honest

and candid admission of one who has spent years in the study of economic problems. It is a further illustration of what we have heard many contend, that administrative duties are becoming more and more a profession, and that this is true in minor offices, as in greater ones.

Dr. Ely emphasizes the fact that to become a good supervisor one ought to hold the position several years. We look upon the office of supervisor as a small administrative office. Yet, if we but consider the duties of that office, we must admit that, even in such a position, the duties demand a broad and general knowledge. It stands to reason that one who has held such an office for years ought to be better equipped and better enabled to discharge the duties for which he is elected than the average man who has had but little or no such experience. When you find a man to be a good supervisor, retain him, for it is to your interest to do so.

Do not listen to those who say that Mr. A. has been supervisor for several years and now it is time that the office was turned over to someone else. We so often forget that experience counts, and that this is true as to other town and county offices as well, and even to state and federal offices. Forget that the candidate is of the opposite political faith. Reward merit and conscientious service. Give justice to them to whom justice is due.—*Wisconsin Municipality*.

PERQUISITES OF OFFICIALS.

It is a time-honored custom for city officials of all grades to accept favors, and so-called courtesies, from the corporations and individuals with whom they deal. This custom is vicious, both in principle and practice. For a city official to accept so much as a cigar from any person or corporation wishing to obtain some privilege from the city is in the nature of a bribe. If, for example, an alderman accepts—as a great many do—free transportation on the trolley lines within the city, it places him in a position where he cannot pass unbiased judgment upon any matter affecting the rights of the transportation company. If a matter were to come up in council affecting the franchise of such a company, and if it were to the interests of the citizens that a certain request of the company should be denied, the alderman who was bribed would think more than twice before he would vote in the negative against any request which the company might bring forward. Whenever a city official accepts this, or any other kind of a courtesy, whether it be great or small, from a public service corporation, or from an individual, he ceases to become the representative of the people, and in reality, is the special agent of the corporation or individual concerned. It is true that there are men large enough to accept such courtesies, and at the same time stand for the rights of the city when such rights are imperilled by an Act or a request from some individual or corporation, but such men are rare; they are the exception which proves the rule. Every city would be better governed if it were made impossible for any of its employees, from the mayor down, to accept the courtesies above referred to. There are many city officials who refuse to be thus bribed, even though there is nothing restricting their acceptance of such favors. Their number should be multiplied.

There is, perhaps, no department of municipal government in which there is more variation of practice than in the levying of special assessments under the local improvement system.

The "council system" may be regarded, the whole world considered, as the standard of municipal organization under popular government, and all other systems as modifications of it.

Legal Department

J. M. GLENN, K. C., LL. B.

Of Osgoode Hall, Barrister-at-Law

SCOTT v. TOWNSHIP OF ELLICE.

Correction of Errors and Omissions in School Rates—By-Law Establishing Protestant Separate School—Legality of.

Judgment in action tried at Stratford for a declaration that it is and was the duty of the defendant corporation to correct alleged errors or omissions made in the collection of the rate imposed for public school purposes for the year 1902, and for a mandatory order commanding defendant corporation to take all necessary steps to correct such errors or omissions and to do all things necessary to be done to the end that no property liable shall escape from its proper proportion of the rate, and for a declaration that the by-law passed by defendant corporation to establish a "Protestant separate school" is illegal and invalid, and that no such school has become established thereunder. The court finds that plaintiff has failed to prove the allegations of fraud and bad faith set up in the statement of claim, and also finds that the petition on which the by-law was based was sufficiently signed. Held, that if by-law 425 is not a valid by-law, it has been amended by by-law 447, which is good for the purpose of striking out the lots in section No. 2. Also held, that under the circumstances of this case the plaintiff has no *locus standi* to ask for the various other declarations of right which he seeks in this action, and that for these reasons the action must be dismissed with costs. Thirty days' stay.

CITY OF TORONTO v. MALLON.

Lease of Stall in Market—Specific Performance of Agreement—Right to Recover for Use and Occupation.

Judgment in action tried without a jury at Toronto. Action for specific performance of an agreement to lease from the City of Toronto stall No. 2 in the new St. Lawrence market for one year from 1st October, 1902, at a monthly rent of \$94, and to execute lease according to printed "conditions of leasing," and to lease stall 72 for \$45 a month and stall 74 for \$16 a month. Held, that specific performance would not be decreed, as the agreements for leases were each only for a year, and there was only five months for each of the terms to run when the action was brought, and the time had actually expired when the case came on for trial. But the plaintiffs have a right where the demise is not by deed, under 11 Geo. II., chapter 19, section 14, to recover for use and occupation, and may use any agreement (not being by deed) whenever a certain rent is reserved as evidence upon the question of damages. Judgment for plaintiffs for \$227 with costs.

Re SCHOOL SECTION No. 5, SYDENHAM.

Award of Arbitrators Forming New School Section—Arbitrators Can Allow or Disallow Only What Petitioners Asked for—By-Laws Distributing New Territory Amongst Existing School Sections—Setting Aside Award.

Judgment on application by the Board of Trustees of school section No. 5 of the Township of Sydenham to set aside an award of arbitrators appointed by by-law No. 638 of the county council of Grey. On December 10th, 1902, the county council, by their by-law No. 623, reciting their reasons therefor and the consent of the corporation of the Town of Owen Sound, detached a large tract of land from the Town of Owen Sound and attached it to

the Township of Sydenham. The whole area of Sydenham theretofore existing had been divided into certain school sections. On May 5, 1903, the township council refused a petition of a large number of ratepayers for the erection of a new school section, to be composed of certain of the lots then lately attached to Sydenham, along with certain other lots in that township, which had hitherto belonged to the existing school sections, Nos. 1, 5 and 12. On 18th May, 1903, the petitioners appealed to the county council, reciting the refusal of the township council to grant the prayer of their petition, and asking the county council to pass a by-law appointing arbitrators "to consider and adjudicate upon the whole question of the altering of the existing boundary lines of the aforesaid school sections Nos. 1, 5 and 12, and also of the allotting of the territory detached from the Town of Owen Sound aforesaid to the proposed new public school section, and the residue of said territory to any of the existing school sections, as said arbitrators may in their wisdom adjudge." On June 19th, 1903, the county council passed their by-law No. 638, reciting the words of the appeal. The by-law then proceeded to appoint arbitrators "to consider and determine all matters in connection with the re-arrangement and alteration of the boundaries of the said above referred to school sections, or the erection of a new school section, if deemed advisable to do so, and to do all other acts necessary in such case as may be deemed requisite and in accordance with the provisions of The Public Schools Act, and to make their award in this matter." The arbitrators on August 15th, 1903, made their award "that there be formed in and for the said township a new school section, to be named and numbered school section number 16, the same to be composed of"—Here followed a list of lots, which included certain lots not mentioned or referred to in the petition to the township council, and omitted certain lots mentioned in that petition. One of the lots mentioned in the award formed part of school section 13, and another formed part of school section 2. Held, that the county council had no power to authorize the arbitrators to do more than to sit in appeal from the refusal of the township council to grant the prayer of the petition, and either to allow or disallow what the petitioners asked for, and the arbitrators had no power to do more than that. The award is not the determination of an appeal from the township council, but the promulgation of the views of the arbitrators as to the proper boundaries of a new section which they had no authority to create. Re Southwold School Sections, 3 O. L. R. 81, followed. Semble, that the power of a township council to deal with portions of the township which have never been attached to any school section is conferred by section 12 of the Act; the power to readjust existing boundaries is dealt with by section 41. The Sydenham council passed a by-law, No. 10, on May 26, 1903, pending the appeal to the county council, distributing their new territory amongst certain existing school sections. There is doubt as to the validity of this by-law, but it is not necessary to pronounce upon the question. The by-law is defective in not fully describing certain "parts" of lots mentioned in it, leaving an uncertainty as to what "parts" are intended. Order made setting aside the award, with costs to be paid by the petitioners represented by counsel opposing motion.

Re PRICE AND CITY OF HAMILTON.

Telephone Company's Exclusive Right to Use Streets—Quashing By-Law.

John J. Price, a ratepayer, moved to quash by-law number 297 of the City of Hamilton granting to the Bell Telephone Company the exclusive right within the city for five years to use streets and public lands in the city for the purpose of placing in, on or over the same, poles, ducts and wires, for the purpose of carrying on a telephone business, and agreeing that it would not give to any other company or person for such period any license or permission to use such streets or lands for any such purpose. The applicant contended that the by-law was illegal, *ultra vires* of the corporation, and created a monopoly in restraint of trade and commerce. Motion dismissed with costs.

WILLIAMSON v. TOWNSHIP OF ELIZABETHTOWN.

Municipal Audit—Action for Auditor's Account.

Judgment in action tried without a jury at Toronto. Action to recover \$399.14 for services rendered by plaintiff as an auditor. The plaintiff claimed, under section 16 of the Act to make better provision for keeping and auditing municipal and school accounts. The plaintiff was appointed by the provincial municipal auditor to audit the books of defendants. Judgment for plaintiff as prayed with costs.

DOYLE v. DRUMMOND SCHOOL TRUSTEES.

Award Forming New School Section—Setting Aside Without Costs.

Judgment in action tried without a jury at Ottawa. Action by a ratepayer of public school section No. 8, of the Township of Drummond, County of Lanark, to set aside the award of arbitrators appointed by the county council of Lanark, forming a new school section (No. 5) out of territory comprised in sections 8, 9, and 13 of that township. The defendants are the school boards of the three sections and the individuals who were elected trustees of the proposed new section. At the trial the award was held invalid, and the question of costs only reserved. Held, that none of the defendants is blameable for any of the errors which made the award invalid, and none of them endeavored to support it, either in their statements of defence or at the trial, but submitted themselves to the judgment and protection of the court. There is, therefore, nothing upon which to exercise a judicial discretion in favor of plaintiff against any of the defendants. Judgment setting aside award without costs. Re Southwold school sections, 3 O.L.R. 81, referred to.

DICKSON v. TOWNSHIP OF HALDIMAND.

Action for Damages—Misfeasance in Condition of Highway—Time Within Which Action Should be Brought.

Defendants appealed from judgment of Boyd, C., who tried the action without a jury at Cobourg, in favor of plaintiff for \$350 damages. Action for misfeasance in the condition of a highway. There was an open ditch by the side of the road, and a stone wall to protect the road; the plaintiff fell against the wall and into the ditch and was injured. Defendants contend that the negligence proved, if any, was nonfeasance (the want of a guard), and the action was not brought in time under the Municipal Act, and also contended that there was contributory negligence, the plaintiff having frequently passed the place where he fell, and knowing the condition. The court held that the finding of the Chancellor that there was no contributory negligence was well supported by the evidence; that it was not the duty of plaintiff to look for danger at every place, even if he knew the highway was dangerous;

that all he was bound to do was to use care proportionate to the danger. The Chancellor found that the cause of the injury was the stone wall, and there was evidence to support that finding. That was clearly misfeasance. The defendants had built a wall which was dangerous and caused the injury. They might have put up a guard, but their not doing so did not make the cause of the injury nonfeasance. The cases of *Rowe v. Corporation of Leeds and Grenville*, 13 C.P. 515, and *Bull v. Mayor of Shore-ditch*, 19 Times L.R. 64, governed the case. *Pearson v. County of York*, 41 U.C.R. 378, is not a satisfactory decision, and the others should be preferred. At the present it must be held that an act of misfeasance is not one to which the statutory limit applies, though that is a question which may have to be considered by a higher court. Appeal dismissed with costs.

COOK v. TOWN OF COLLINGWOOD.

Alleged Defective Highway—Action for Damages—Should be Brought Within Three Months.

Judgment in action for damages by reason of alleged defective highway, tried at Barrie without a jury. The plaintiff, George Cook, on the evening of 2nd December, 1902, between six and seven o'clock, was going to his own house in Collingwood, and in crossing a temporary bridge over a ditch on Hurontario street, he stepped off the bridge and fell into a trench made by workmen for the defendants for the purpose of supplying water to a house recently erected on that street, and was injured. Plaintiff alleged that the trench was negligently made and that defendants were guilty of negligence in leaving it unguarded. Held, upon the evidence, that plaintiff had not succeeded in showing that this accident was, in any way, caused by the negligence of defendants. Even if they were negligent by reason of not guarding the trench, the action would be barred, not having been commenced within three months from 2nd December, 1902. See *Pearson v. County of York*, 41 U.C.R. 378.

CANADA CO. v. TOWN OF MITCHELL.

Petition for Construction of Cement Walk—Reference to Clerk—Notice—Preparation of Clerk's Report to Council

Judgment on appeal by plaintiffs from judgment of Falconbridge, C.J., (2 O.W.R., 732), after trial at Stratford, without a jury, dismissing the action without costs. A petition had been presented to the council of the defendant corporation for the construction of a cement sidewalk on Ontario street in the town. A resolution was passed granting the prayer of the petitioners, and instructing the clerk to ascertain and determine whether the petition was sufficiently signed. The clerk reported that it was so, and the board of works was instructed to proceed with the work. The plaintiffs, whose property fronted on Ontario street, contended that they had received no notice of the work proposed, and that the method of the clerk in preparing his report as to the amount for which they should be assessed was an erroneous one, and that the assessment, amounting to \$300, was therefore unauthorized. Held, that the conclusion was right. Appeal dismissed with costs. Cross-appeal on question of costs dismissed without costs.

EMERSON v. MELANCTHON SCHOOL TRUSTEES.

Neglect of Trustees to Heat School Room—Illness of Teacher—Action for Damages.

Plaintiff appealed from judgment of Street, J., (3 O. W. R. 12) in action tried at Orangeville. The action was by Emma Emerson, a public school teacher employed by the defendants for the year beginning January 6th, 1902,

to recover \$2,500 damages for injuries caused to her by the alleged neglect of the defendants to appoint a person to attend to the heating of the school room. Plaintiff became seriously ill and charged that the illness was caused by the cold and dampness of the schoolroom. Street, J., held that the plaintiff had not established that her illness was caused as alleged, and dismissed the action with costs. Appeal dismissed with costs.

Re ARTHUR AND MINTO SCHOOL SECTION No. 17.

Formation of Union School Section—Award of Arbitrators—Disposition of Surplus School Moneys—Refund of Debenture Payments—Reference Back to Arbitrators.

Judgment on application by trustees of public school sections Nos. 12 and 13, in the Township of Minto, to set aside an award made on the 25th May, 1903, by David Clapp and George Cushing, providing for the formation, under section 46 of The Public Schools Act (1 Edw. VII, chapter 39), of a new union school section to be called union school section No. 17, in the Townships of Arthur and Minto, and to consist of certain named lots in the two townships. In dealing with the matters provided for by sub-section 8, the arbitrators awarded that certain named percentages of any named surplus moneys on hand on the 31st December next shall be paid by the trustees of sections 7 and 11 of Arthur, and by the trustees of sections 12 and 13 of Minto, to the trustees of the union section, and that the owners of certain lots in Arthur shall have refunded to them, by section 7 of Arthur, any sum which they have paid within the last five years, or should afterwards be required to pay, for the debenture indebtedness for the erection of a schoolhouse in that section. Held, that the award in these respects is uncertain, and therefore invalid, but the case is not one in which the award should be set aside. The matters should be referred back to the arbitrators, in order that what is wrong may be set right. No costs to either party of the motion, or of the reference back.

Re TOWNSHIP OF ADJALA AND COUNTY OF SIMCOE.

Motion to Vary Award—Erroneous Laying out of Road by Arbitrators.

Motion by township to vary award, on ground that roads laid out by the arbitrators were not laid out in a proper manner. Order made in terms of coustent minutes substituting other side roads to be treated as county roads for those set down in award. Each party to pay their own costs.

FORBES v. GRIMSBY PUBLIC SCHOOL BOARD.

Purchase of new School Site and Erection of New Schoolhouse—Motion to Restrain Proceeding with Contract and Payment Over of Money.

Judgment on motion by plaintiff to continue injunction granted by the local judge at St. Catharines restraining defendants, the corporation of the Village of Grimsby, from paying over to the defendant school board \$12,500 for the purchase of a school site and the erection of a school building thereon, and restraining defendant school board from proceeding with the purchase of a site known as the Kerr property, and restraining defendant Lysit from proceeding with any work in connection with his contract with the board for the erection of a school building, and restraining defendant Vandyke, as chairman of the building committee of the board, from authorizing any further work in connection with the contract. Held, that the injunction should not be continued. Smith v. Fort William, 24 O. R. 372, decides that school trustees

should not undertake to build in excess of funds provided by the council, and that is a salutary rule which need not be invaded in this case. The school board are not restricted to the debentures voted to the council under section 76 of The Public School Act, 1901, but may also turn in the other moneys they have under control in the shape of rent and the proceeds of the old school house and site. By the figures submitted there is a considerable margin between the contemplated outlay, as tendered for, and the funds available under the contract or in the hands of defendants. It is not necessary to exceed what is thus provided, and defendants swear they will keep the work within what they have means to pay for. The court should not lightly disturb the united action of the council and the school board in proceeding to establish a new school suitable for the needs of the municipality. The objection that there is not a good title to the new site should not prevail. There is power to expropriate, and, apart from that, the agreement for sale and possession has been made with the tenant for life, and that is one that controls the remainder-man under the provisions of The School Act, section 39; Young v. Midland R. W. Co., 22 S.C.R., 190. Injunction dissolved and costs reserved till the hearing on further order.

WASON v. DOUGLAS.

Land on Either Side of Creek—Boundary, Centre Line of Channel.

Judgment on appeal by plaintiff from judgment of a divisional court (Falconbridge, C. J., and Britton, J.) 2 O.W.R. 688, reversing judgment of Lount, J., (1 O.W.R. 552), and dismissing action with costs. The action was for trespass to land, an island in Blind Creek. The action was first tried by a jury, who found in favor of plaintiff. A divisional court (21 C.L.T., Occ. N. 521) directed a new trial for the purpose of ascertaining the true boundary between plaintiff's and defendant's land, holding that the description in the conveyance to defendant entitled him to the medium filum aqua as his boundary, and the position of the centre line of the stream was the matter to be determined; that the centre line of whichever channel was the main channel in 1883 could be the centre line of the stream, and the jury should be asked to find, if there were two channels, which was the main channel in 1883. The case was then tried without a jury, but the trial judge did not make a finding upon the point indicated by the court. Upon appeal, the divisional court found that the northern channel was originally, and at the time of the conveyance to defendant, the main channel of Blind Creek, and that the boundary line between plaintiff and defendant is the centre line of this northerly channel. The court held that the evidence sustained the finding of the divisional court. Appeal dismissed with costs.

Re MEDLER AND CITY OF TORONTO.

Compensation for Injury to Land by Laying of Tracks—Award of Arbitrators—Appeal From.

Judgment on appeal by Medler & Arnot, claimants, from order of MacMahon, J., 1 O.W.R. 545, dismissing their appeal from an award of arbitrators, and allowing the cross-appeal of the city corporation. The claim was for lands on Berkely street, Toronto, injured by the laying of tracks for shunting purposes and by the closing of Berkely street, pursuant to an agreement between the city corporation and the Grand Trunk and Canadian Pacific Railway Companies, ratified by 55 Vic., chapter 90, section 2. The court held that the city corporation was not liable to make compensation, and that there was no ground for interfering. Appeal dismissed with costs.