

The Municipal World

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Chas. Dickinson

108

THE MUNICIPAL INSTITUTIONS OF ONTARIO

Vol. 9. No. II.

ST. THOMAS, ONTARIO, NOVEMBER, 1899.

Whole No. 107

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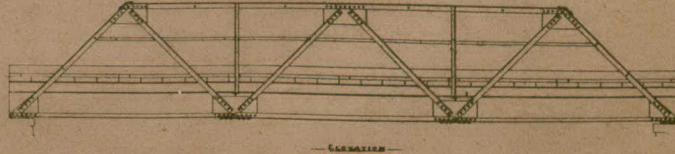
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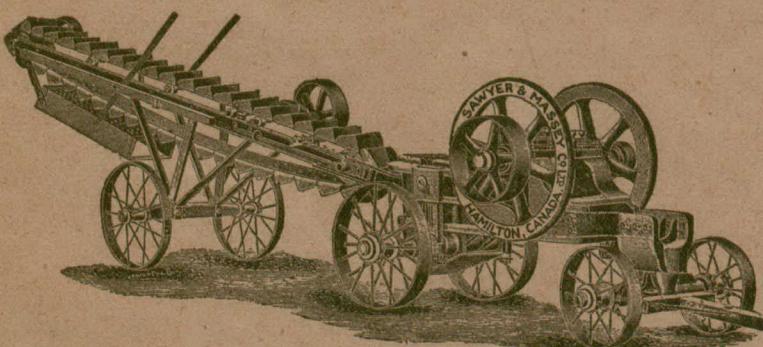
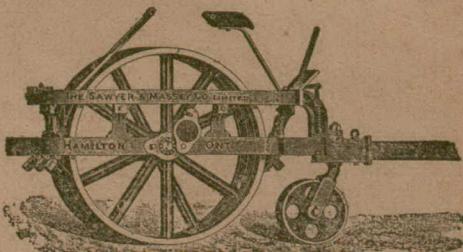
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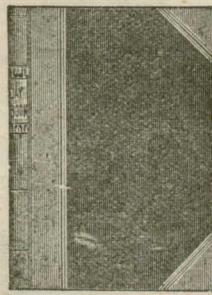
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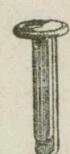
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THE MUNICIPAL WORLD

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

Vol. 9. NO. 11.

ST. THOMAS, ONTARIO, NOVEMBER, 1899.

Whole No. 107

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Calendar for November and December, 1899.

Legal, Educational, Municipal and Other Appointments.

NOVEMBER.

1. Last day for transmission by local clerks to County Treasurer of taxes on lands of non-residents.—Assessment Act, section 132.
2. Last day for transmission of Tree Inspector's Report to Provincial Treasurer.—Tree Planting Act, section 5.
3. Make return of contagious diseases to Registrar General.—R. S. O., chap. 44, section 11.
4. Last day for Collector to demand taxes on lands omitted from the Roll.—Assessment Act, section 166.
5. Report of Medical Health Officer due to Local Board of Health.—Public Health Act, schedule B, section 1.
6. Day for closing Court of Revision in cities, towns and incorporated villages when assessment taken between 1st July and 30th September.—Assessment Act, section 58.
7. On and after this date councils of townships, cities, towns or villages may enter on lands and erect snow fences.—Snow Fences Act, section 3.
8. Last day for municipality to pass by-laws withdrawing from Union Health District.—Public Health Act, section 50.
9. Chairman of Board of Health to report to the Council on or before this date.—Public Health Act, Schedule B, section 3.

DECEMBER.

1. Last day for appointment of School Auditors by Public and Separate School Trustees.—Public Schools Act, sec. 21 (1); Separate Schools Act, sec. 28 (5).
2. Municipal Clerk to transmit to County Inspector statement showing whether or not any county rate for public school purposes has been placed upon Collector's Roll against any separate school supporter.—Public School Act, section 68; Separate School Act, section 52.
3. Last day for councils to hear and determine appeals where persons added to Collector's Roll by Clerk of Municipality.—Assessment Act, section 166.
4. Last day for Public and Separate School Trustees to fix places for nomination of Trustees.—Public School Act, sec. 57 (2); Separate School Act, sec. 31 (5).
5. Returning officers to be named by resolution of the Public School Board (before second Wednesday in December).—Public School Act, sec. 57 (2).
6. Last day for payment of Taxes by voters in local municipalities passing by-laws for that purpose.—Municipal Act, section 535.
7. Last day for Collectors to return their rolls and pay over proceeds, unless later time appointed by council.—Assessment Act, section 144.
8. Local Assessment to be paid Separate School Trustees.—Separate School Act, section 58.
9. Municipal Council to pay Secretary-Treasurer Public School Boards all sums levied and collected in township.—Public School Act, section 67.
10. County Councils to pay Treasurer High School.—High School Act, sec. 31.
11. Councils of towns, villages and townships hold meeting.—Municipal Act, section 304 (6).
12. Roll to be finally revised by Judge, when assessment taken between 1st July and 30th of September.—Assessment Act, section 58 (1).



The Municipal World

PUBLISHED MONTHLY

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

K. W. MCKAY, EDITOR,

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

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THE MUNICIPAL WORLD,

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ST. THOMAS NOVEMBER 1, 1899.

The ratepayers of Woodstock have voted on a by-law to elect aldermen by general vote, or one representative for each thousand of population. In this way the ward system would be done away with. The by-law was lost by 300 majority, 194 voting for it and 494 against.

* * *

Mr. John Bremner, who has been clerk and treasurer of the township of East Flamboro, for the past 20 years, died on the 6th October, inst. He was born in Aberdeenshire, Scotland, 85 years ago.

* * *

The idea of placing the names of streets in granolithic walks at the corners of each block in metallic letters, is advanced in a letter in the Sarnia Post. During the winter season the sidewalks in most towns are invisible; it may be different in Sarnia.

* * *

Mr. James Mitchell resigned his position as clerk of the village of Point Edward, some days ago, and at a meeting of the council held on the 6th October last, the Reeve for the current year, Mr. J. F. O'Neil resigned, and was appointed to fill the vacancy.

* * *

The county council of the county of Ontario is about to erect an Industrial Home for the poor. The town of Whitby and Oshawa made strong bids to have the institution located in or near their respective towns. While the squabbling was going on between these two places Port Perry offered \$5,000 towards the erection of necessary buildings and secured the prize conditionally, on the ratepayers approving of the necessary by-law providing for issuing the requisite debentures.

Municipal Taxation.

Whatever the underlying motives that actuated the Municipal Convention, which recently sat in Hamilton, it is impossible not to see a wide discrepancy between the professions of the resolutions introduced and the practice which the delegates would like to see enforced. One resolution, which passed unanimously, asserted that the assessment law, as it affects personal property or income "is unjust, impracticable, and impossible of equalization."

Another resolution, which went with the same sort of acclaim, proposes that "the assessment of personal property should be made without regard to the debts owing on account of it." This is called equalization; but what is it that is proposed to be equalized? It is a proposal to make nothing equal to something by treating a property burthened with a debt as equal, for purposes of taxation, to another property free from debt. The process is impossible, and the pretence that it can be done is rank quackery. Instead of equalizing burdens, supposing that to be what is meant, this scheme would, if carried out, make them grossly unequal. Some people would be taxed on what they own; others on what they own and their debts beside, which latter is not a source out of which any taxes can be paid. If it be said that, under the present method, one man pays more taxes than another, when the capital employed by each is equal, the answer is that he who pays most receives profit on a larger amount, and that this equalizes the burden. The municipality gets less than it would if debts were not deducted from the amount assessable, but the man who is the creditor may reside in some other municipality, and if he does he is liable to pay taxes there; if he be a foreigner, our taxing machine is not long enough to reach him. Some of the questions before the convention were important, but the delegates did not show special aptitude for dealing with them, in a convincing way.—*Monetary Times*.

Annual Meeting of Oxford Clerks.

The eighth annual meeting of the municipal clerks in the county of Oxford was held in the county clerk's office at Woodstock on Sept. 14th. There was a full attendance. The president, A. McFarlane, presided, and Wm. Fairley, Norwich, was secretary.

A committee of county council were present to arrange with the clerks regarding taking a vote throughout the county in January on a by-law to be submitted for purchase of tollroads. A satisfactory arrangement was made so that in the event of the by-law being voted on the work will be done in a uniform manner over the county.

The old complaint of the negligence of pathmasters in the matter of returning their lists, and also of the manner and method by which clerks are often compelled to get notice of amount required from taxes on union school sections, were

discussed. No very definite conclusion was arrived at as to the remedy to be applied.

Mr. Anderson, for the committee, reported that the county council in response to the petition of the clerks, had passed a by-law requiring that only a summary of the assessment roll is to be sent to county clerk instead of the copy heretofore required.

The operation of "The Ditches and Watercourses Act" was discussed, and much information was obtained by exchange of views and methods.

It was decided by resolution to take steps to have "The Voter's Lists Act" amended so as to require only two copies each to be furnished the reeve and members of parliament for the riding, and none to defeated candidates. And to have the provisions of section 6a as contained in the 1899 "Act to amend the Voters' Lists Act" apply to town as well as to cities.

As a result of the discussion of the practical operation of "The Ditches and Watercourses Act" it was resolved to ask the legislature to amend section 6 by changing the words "seventy-five" in the third line to "one hundred and fifty," so as to make lands within the latter distance from each side and from the point of commencement of a ditch liable, if necessary.

A committee was appointed to wait on the county council and request an annual grant similar to that now given to the clerks to enable the municipal treasurers in the county to meet annually with the clerks.

The meeting then divided; the township clerks remaining in the main room to discuss matters peculiar to their work, and the town and village clerks into an adjoining room where they spent a profitable hour discussing the operation of the frontage tax for local improvements and the duties of the clerk in connection therewith. After which they rejoined their township brethren. The following were appointed to prepare papers for next annual meeting: Mr. Morrison, on "Operation of Local Improvement Act," Mr. Bell, on "Drainage Laws," Mr. Anderson, "Assessment Act;" Mr. Peers, on "Commutation of Statute Labor;" Mr. White, county clerk, on "County Councils Act."

Mr. E. L. Sutherland, of West Zora, was elected President, and Mr. Wm. Fairley, of Norwich, was re-elected secretary.

A vote of thanks was tendered to retiring President McFarlane, and the meeting adjourned.

A by-law abolishing the ward system, in the town of Sarnia, was read a third time and finally passed, at a meeting of the council held on Monday evening last.

* * *
At the last meeting of the council of Parry Sound, a resolution authorizing the clerk to revise and consolidate the town by-laws and making the remuneration for the work \$100, was passed.

Municipal Officers of Ontario.

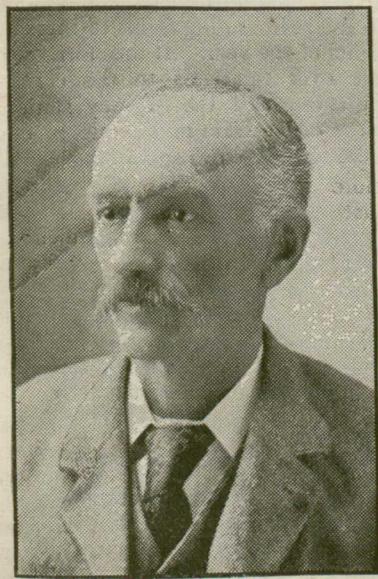
Clerk Township of Grimsby South.

Mr. Irvine was born in the Parish of Deerness, Orkney, Scotland, on the 21st day of September, 1838. He came with his parents to Canada in the autumn of



MR. EDWARD IRVINE.

1849, and settled in the township of Caister. In 1854, the family moved to the Township of Grimsby. He received a common school education and taught school about six years. In January 1880 he was appointed clerk of the Township of Grimsby. In 1883 the township was divided and Mr. Irvine was retained as clerk of the Township of Grimsby South which position he still holds.



MR. WM. PANTON.

Mr. Irvine was for 13 years a member of the Smithville High School Board and Secretary of the South Grimsby Cheese

and Butter Company. He has also been a Justice of the Peace and Commissioner since 1882.

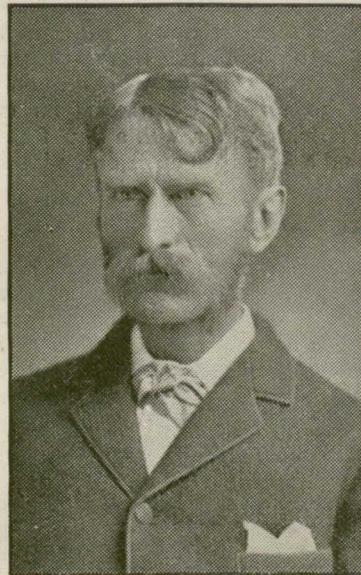
Clerk of the County of Halton.

Mr. Panton was born in the Township of Nelson in 1847, and removed with his parents to Milton in 1860. In 1865 he succeeded his father as clerk of the County of Halton.

In addition to his municipal office, Mr. Panton is Division Court Clerk and editor of the Milton "Champion," and holds the rank of Brevet Major in the 20th Lorne Rifles.

Clerk Township of Adolphustown.

Mr. Dorland was born in Adolphustown, County of Lennox, in 1852, of U. E. Loyalist parentage. He was a member



MR. R. DORLAND.

of the municipal council for a number of years and was appointed clerk in 1887.

Clerk of Mount Forest.

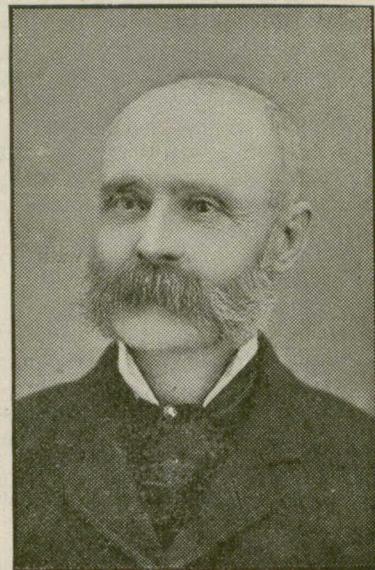
Mr. Perry was born in 1846 at Churchville, Ontario, and was for some years engaged in the mercantile business, but finally studied law, and for the past seventeen years has practised his profession in Mount Forest. Mr. Perry was appointed town clerk in 1879.

Clerk of the Township of Portland.

Captain Hunter was born in the county of Durham, in 1857, and removed to the county of Frontenac with his parents when very young. He completed his education at the Sydenham High School and has

since engaged in farming, making a specialty of thoroughbred stock.

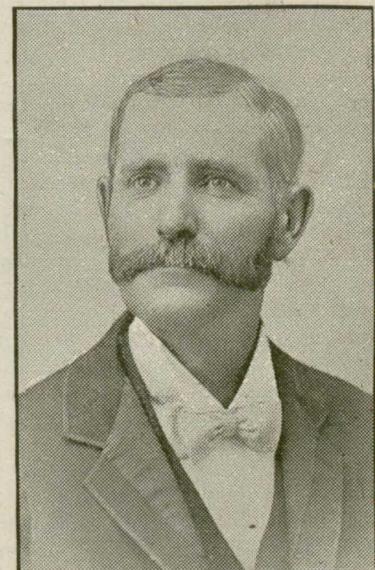
He has always taken an active interest in everything pertaining to agriculture, and is a past president to the Frontenac Farmers' Institute, and of the Addington Agricultural Society. He was also a member and director of the Good Roads Association. He was appointed clerk of the Township of Portland in 1889. Mr. Hunter is a commissioner to



W. C. PERRY,

taking affidavits, and Captain of No. 5 company of the 47th Battalion.

James Colquhoun, former city treasurer of Glasgow, and former representative of the city corporation on the University Court, who was arrested Aug. 1 on charges of embezzling funds of the city and of estates committed to his charge, in amounts aggregating nearly £160,000,



MR. ALF. HUNTER.

pleaded guilty yesterday before the High Court and was sentenced to five years penal servitude.

ENGINEERING DEPARTMENT.

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

City Streets and County Roads.

To the casual observer, the value of country roads to towns and cities may at first sight appear to be of an almost visionary nature. Many, perhaps most of the residents of a town, have been accustomed to seeing the farmer drive into town for various purposes in all sorts of weather, more particularly fine weather, and they are likely to take it for granted that existing conditions are sufficiently satisfactory for all practical purposes. It may occur to them too, that good roads in the surrounding farm country would be a means of pleasure, and to some extent of convenience, particularly for those of the city's inhabitants who might wish for a suburban home.

This not very lucid conception of the value of the country highway has fortunately, within the last few years, been to some extent dispelled, and there has grown up a feeling, whether understood or not, that the Good Roads Movement, is something of moment to cities and populous centres, as well as to the farm only.

A map of the main roads through this Province as they existed half a century ago presents a striking similarity to a map of the railroads of to-day. The construction of a railroad was, in effect, but the improvement of the former trunk lines of common highways, providing them with firm and well graded roadbeds, smooth hard tracks of steel, and discarding the less efficient horse power for mechanical traction. We are most readily impressed with the larger and newer enterprises, and so it is that we are inclined to regard the railways as the chief factor in transportation. It is not the massive root branches of the tree which abstract nourishment from the soil, but the diminutive thread like offshoots from them. It is not the steam railway which is the active agent of a nation's growth, but, like the root branches of the tree, it is secondary, subservient to the lesser avenues, to the network of which is deputed the task of first gathering the means of subsistence. In proportion to the excellence of the network of common roads will the country be occupied and productive. As the roads are good, the country occupied, and therefore productive, so will railways have employment. The activity of the railways is a certain index to the magnitude of the flow of commerce, and commerce is the lifeflow of national prosperity.

To understand the relation which exists between the various forms of highways and streets, we are aided by looking for the origin of these. The city is the product of the country; the country is not the product of the city. The first roads on the continent were country roads, not city streets. As country roads were first in

origin, so are they first in importance. There is too great a tendency, in the struggle of cities to pave their streets with a servicable material at reasonable cost, to overlook the wider application of the question of roads in general. With city paving, there certainly appears to be a greater demand for engineering skill, and the engineering difficulties appear to be farther from solution than is the case with country roads. At the same time, the simplicity of country road construction is not always so real as it appears, and the difficulties are greatly increased by the deficiency of funds with which to overcome them. The same obstacle is, it is true, met with in city paving, and the question becomes, in each case, one of obtaining the best results with a minimum or within a limited cost. In view of the strict economy demanded, the construction of our country roads, in selection of materials, location, drainage, grading, bridge and culvert building, and the various details, becomes a matter in which the greatest of skill is not wasted.

The people in the cities are very apt to argue that because their pavement cost so very much per foot frontage, that because the farmer receives the reciprocal use of the city street in return for the city man's use of the country roads, they have, therefore, discharged their obligation with regard to roads. Contrasting an eighty acre farm, however, with a fifty foot city lot, and a farm road at \$2,000, with a city road at \$10,560, we find the cost to the individual farm is \$250, and to the city property owner \$50.

Many of the streets it, may be said, cost much more than the amount named. The same is true of the country roads, but proportionate amounts have been named in each case, and if we double or half the cost in the one case we must do so in the other, so that the proportions remain about constant. Then too, a fifty foot city lot is double the frontage occupied by the majority of city houses. An eighty acre farm is not uncommon in the country, and in levying it one-eighth of a mile, there has not been included its flankage existing in every block.

It is apparent that the work of country road building is one of considerable expense, as compared with the number and wealth of those upon whom it now commonly rests. Wherever it is left solely to the farmer it will be years before the condition of the roads will be adequate to the complete development of the resources of any country.

The sum of the matter is that whether or not the cities discharge their strict duty in the construction of the streets within their limits, their prosperity is dependent upon the prosperity of the country districts, and it is but a matter of self-interest, of profitable investment, to assist the farmers in road building.

There is, first of all, the broader aspect of the question, which regards the welfare of the nation as a whole. In this aspect of the question, we are led to regard first

the relations which exist between the great metropolitan centres which have as the territory upon which they depend for support, the nation as a whole, which, whether from agricultural, mineral or forest wealth, are ultimately dependent upon the rural highways for the materials of manufacture and consumption, or export. There are, again, the towns and cities of lesser magnitude, which draw their support largely from the agriculture of the immediate vicinity. From these latter there is generally the more urgent demand for good roads, a demand which all urban communities have made of late years, for it is these lesser cities which would be more directly benefited by the improvement of roads in the immediate district. The benefits being more direct, the value of good roads becomes more apparent. The larger cities, less directly benefited, but benefited to not a less, indeed to a much greater degree, appreciate less perfectly their value, because being less direct, the benefit is less apparent. The larger cities have usually many manufacturing industries, and therefore seem more self-supporting than do the towns more directly dependent upon the agriculture of the district.

The more apparent independence is, however, deceptive. If the town is a manufacturing centre, it must have country roads over which to draw the material for manufacture; to a much greater degree, however, must it have a wealthy territory surrounding it to purchase the results of its manufacture. It is to agricultural country that good roads are most beneficial, and no agricultural country can become wealthy and to the highest degree prosperous, without good roads. From greatest to smallest, towns and cities are dependent upon good rural roads.

Many towns, it has been said, have learned that it is most important to have free and uninterrupted communication with the surrounding farm districts at all seasons of the year. If the former must come over the roads to the centres of population, and the railway station, to dispose of his farm product, it is equally necessary to the townsman that he should use the roads to draw the merchant's goods back to the farm. It merely happens as a matter of convenience, for obvious reasons, that the farmer draws his produce to the town and his purchases back to the farm, instead of the merchant hauling his merchandise to the farmer and the produce of the farm back to the town. The country roads are nearly, if not quite, as much benefit to the townsman as to the farmer.

Without the means of access, a country is valueless for productive purposes. A farm of highest fertility within fifty miles of Toronto, if there were not roads by which it might be reached, would be as valueless as if situated in the heart of Africa. Distance is not measured by miles, but by the rapidity and ease of travel, and transportation. It naturally

follows that, with the opening of the first wagon-track leading to it, the value of a farm commences, and as road improves the value of the farm advances, other conditions remaining constant. It is true that the more the country districts become filled with population, the more rapidly the improvement of roads will advance, but it is equally true that the more rapidly the roads are improved the more rapidly will population advance. The construction of the Canadian Pacific Railway has been the means of enticing a population to the Canadian Northwest. The improvement of roads will have the same influence upon the less distant territory, and there is every need for greater attention to the home field for missionary effort in this respect. As population increases productiveness will increase, and as production increases the wealth of our cities will increase, and it therefore brings us forcibly to the conclusion that one of the most patent means of improving and lengthening our city streets is to provide, at the distance end of the chain of transportation, good country roads.

Progress

The right of a municipality to install a system of waterworks and compel the closing of wells, taxing all citizens for the use of the water, is at times questioned by a few of the less progressive citizens. The same is true of other municipal enterprises such as sewers, pavements, the collector of garbage and sanitary inspection. Municipal councils should pay but little attention to complaints of this character. Arguments of this description come from a sluggish minority, and in the march of progress it is hopeless to expect that all will be in the first rank, or that complete harmony of step will prevail. There will always be the awkward squad straggling in the rear, but they must be drilled to the movements of the regiment—the veteran in the van must not imitate the action of the half fledged recruit.

Waterworks, sewers, garbage collection, and sanitary cleanliness are all necessary to every individual. The municipality, by installing proper systems, can carry on all this work much more cheaply to the individual, much more satisfactorily to the town as a whole, than can the individual rate-payers working separately.

Councils should advance firmly with these measures, should make a close preliminary study of all that pertains to them and should not hesitate to install what they deem the most advisable system. Mistakes may be made in some cases, but, if honestly made, are at times to be commended rather than classified under either stupidity or negligence. Perfection can be attained only after experiment, experience, study and close observation, and where these are coupled with ability and earnestness on the part of the council there should be entire satisfaction, and support from the citizens whom they represent.

Commence in Time.

In the majority of municipalities, election matters are coming to the front, after a summer's rest. The formation of next year's council, proposed local improvements, amendments to existing by-laws, the making of new municipal regulations, are becoming common topics of conversation, and may soon develop into argument.

Among the questions at issue in many municipalities that of reforming the system of road-making is one which will have a prominent place. The matter is one which deserves the attention of every citizen until a satisfactory solution is reached and even then it is one department above all others which illustrates the truism that "vigilance is the price of success."

In previous years a number of municipalities have made the mistake of placing the question of the abolition of statute labor before the ratepayers at the time of the annual elections, without having previously educated and prepared them to vote intelligently, and without a full knowledge of the plan to be substituted, and the reasons therefor. Wherever it is proposed to submit the question of statute labor reform in any of its phases, there should be a careful preparation. Meetings should be held throughout the township and no occasion for favorable discussion lost. Nor should the matter be delayed until later in the year when the time for discussion has become much too brief to fully cover the ground. It is discussion which discloses the faults of the statutory system. It is discussion which brings out the benefits to be derived from business-like methods of road management. One active man in every township can stir up public judgment in this matter, and by judicious and persevering effort, can work a revolution for his township in the matter of good roads.

A Good Example.

An enterprising paper in an Illinois city, offers to donate \$1,000 to the cause of road improvement "in order to secure hard roads for the benefit of the farmers" of the country, and for the city in which it is published. The sum of \$100 will be given on the completion of one mile of gravel road on each of ten roads, on the following terms:

"This amount of \$100 shall be due and payable to the commissioners of Highways of the township in which said one mile of road is located for the particular purpose above mentioned, when one mile has been completed from the city limits of the city on each road respectively. The one mile on each road must be built in a substantial manner, of good material, under the supervision of competent engineers, and must be completed within three years from Jan. 1, 1899, and under specifications agreed on by three practical hard road authorities."

Toronto's City Hall.

Toronto's new city hall, when completed, will have cost about three million dollars. The Parliament Buildings in Queen's Park, Toronto, cost but little more than half this amount.

Mayor Shaw in his address at the recent opening ceremonies said: "Why people will spend large sums of money on great buildings opens up a wide field of thought. It may, however, be roughly answered that great buildings symbolize a people's deeds and aspirations. It has been said that wherever a nation had a conscience and a mind, it recorded the evidence of its being, in the highest products of this greatest of all arts. Where no such monuments are to be found, the mental and moral natures of the people have not been above the faculties of the brutes.

While no one will for an instant overlook the great beauty of the new buildings, while one cannot but feel pleasure in viewing them, nor fail to recognize their value to the city in many ways, yet all this is marred by the fact that the work is by far too huge an extravagance for the city. With waterworks, sewers, and pavements urgently in need of expenditure to render them commensurate with sanitary demands, the feeling of the better class of citizens is that the work has taken precedence over other municipal improvements of vastly greater importance.

Toronto Street Railway.

The Toronto Railway Company has forwarded to the city treasurer their statement of receipts for the month of August. The gross receipts were \$125,791.50, and the city's percentage is \$12,579.15. The receipts for the corresponding month last year were \$111,690.29, and the city's percentage \$11,792.77. The railway Company's financial year closes on the 31st of August, and the city treasurer has, from the monthly statements filed with him, compiled a comparative statement of the revenue of the railway company for the years 1897-98 and 1898-99. The receipts for the year just ended were \$1,291,086.57, as compared with \$1,142,876.54 the previous year, an increase of \$148,210.03. The total amount paid the city for percentage last year was \$109,108.65, an increase of \$14,821 over the previous year. The percentage paid to the city is eight per cent up to one million dollars, and ten per cent. above that sum. The gross receipts were: 1897-98, \$1,142,876.54; 1898-99, \$1,291,086.57.

In Paris, Ont, cement concrete sidewalks are under discussion, the continued drought during the past summer having played havoc with the plank walks at present in use.

A by-law to abolish the ward system has been finally passed by the Sarnia council, and will go into effect at the coming municipal elections.

The American Society of Municipal Improvements.

The sixth annual meeting of the American Society of Municipal Improvements, which convened in Toronto on Oct. 3, 4 and 5, was largely attended by the most prominent municipal officers on the continent. The sessions were held in the new City Hall, one of the finest municipal buildings in America. Mr. N. P. Lewis, of Brooklyn, N. Y., president of the Association, in his opening address, pointed out that the importance of the subjects discussed by the society was illustrated by estimates showing that in 1898 the 112 largest cities in the United States raised \$210,000,000 for public streets, water supply, sewerage, lighting, parks, bridges, police and fire purposes alone.

The papers and reports of committees presented were of unusual interest. One of the main suggestions in the report of the committee on electric street lighting was that contracts for street lighting be based on meter measurements of current instead of so much per lamp. Companies would then be financially interested in keeping the lights up to the standard of candle power or current consumed, and in keeping down the number of lamps not burning. Statistics show that the average price per lamp hour for lamps of 1,200 candle power is 2.73 cents, and for 2,000 candle power, 2.18 cents per hour.

In a paper on frontage assessment, George T. Bouton of Jersey City, cited the experience of that city in showing that some years ago the frontage bore the whole cost of certain improvements, and petitions for such work became very few. Of late years the city bears part of the expense and much work is being done.

The discussion of electrolysis emphasized the fact that in order to insure gas-pipes, waterpipes, and other iron material underground from the decomposing effects of underground currents of electricity the only certain remedy was to insist upon the street railway companies providing a complete overhead wire circuit for the current.

In Brooklyn a guaranteeing asphalt contractor had refused to repair a defective asphalt pavement, alleging that the deterioration had been caused by leaks from the gas mains for which he could not be held responsible. The gas company in turn maintained that the leaks were due to electrolysis for which the city was responsible for not compelling the Street Railway Company to take proper care of its current.

In Newark the trolley company had paid half the expense of renewing service-pipes affected by electrolysis. In Peoria the water company of that city has now a suit in the United States Court to compel the Street Railway Company to use the double trolley.

Mr. George W. Tilson, of Brooklyn, N. Y. urged that when the yearly cost of repairing pavements exceeds a certain sum

varying with local conditions, it is more economical to repave the street. That is, if the annual cost of the proposed pavement including interest, sinking fund, and repairs, is below the actual present annual cost of repairs, a new pavement should be laid. A careful study of available information led Mr. Tilson to conclude that the life of different classes of pavement is as follows: Granite block, 25 years on concrete and 20 years on sand foundation; wood, 10 to 15 years; asphalt, 18 years; brick, well vitrified and carefully laid, 15 years.

A paper on "Damages from Non-Repairs of Highways," by James S. Fullerton, Toronto, discussed the subject from a legal standpoint. The author doubted whether better highways are secured by making cities liable for damages in civil action on account of accidents due to defective pavements and sidewalks. Such actions are not permissible in England. Numerous cases of fraud or attempted fraud in connection with such suits were cited by the author.

Mr. C. H. Rust, City Engineer of Toronto, in a paper on "Paving between Street Railway Tracks in Toronto," said that asphalt has been found unsatisfactory for paving between tracks, cracking badly along the rails. Granite, scoria block and brick are being used to replace asphalt in such positions. Thus far, \$137,000 has been expended in these changes, and soon all the asphalt between the tracks will have been replaced by other materials. The three materials now used are adapted to suit local conditions. Granite is the most durable, but wheelmen object to it. Canadian brick are used where traffic is light.

The Committee on Waterworks and Water Supply believed that municipal ownership of waterworks is now almost universally conceded to be advisable. It sounded a note of warning against the attempts being made in several quarters to corner available water supplies in the interest of private corporations. As a safeguard, present supplies should be conserved and waste prevented. The introduction of a comparatively few meters in Newark, N. J., has materially reduced the consumption. A proper allowance for use and unavoidable waste water in American cities is 50 to 60 gallons per capita.

The programme of papers and reports was a lengthy one and included, in addition to those already mentioned, others on the Disposition of Garbage, the Albany Filtration Plant, Portland Cements, Brick Paving, Creosoted Wood Pavements, Municipal Data, Taxation and Assessment and Sewer Ventilation.

It is however, to be regretted that this Association, as with many others which are expected to be composed of Mayors, Aldermen and others not familiar with the details of municipal engineering, should confine its scope so closely to subjects of a technical character which only engineers and experts can appreciate. There is every need for an Association, which will bring members of councils together for

the discussion of municipal questions such as councillors and aldermen are called upon to solve. A program comprising practical discussions of assessment problems, and the business affairs rather than the engineering details of the municipality, would result in a larger attendance, together with thoroughly practical results, at the same time elevating the ideals of municipal government.

Associations of this sort could, by their suggestions, being the fruits of varied and actual experience, dictate approved methods, forge public opinion along important lines, and suggest and bring about necessary legislation with regard to many municipal matters.

Progressive Smith's Falls.

Smith's Falls, one of the most progressive towns of the eastern part of the Province has recently voted the sum of \$150,000 for the purchase of an extension of the present waterworks system, and the construction of a system of sewerage; also \$20,000 for the purchase of roadmaking machinery and the improvement of streets. Already a steam-roller has been purchased, and several blocks of street permanently macadamized. The town is in a good position financially, and as to the wisdom of both of these expenditures there can be but one opinion.

These municipal public works are essential to the welfare of every town. There is nothing which so adds to the appearance of a town, which gives it so great an air of progress and prosperity as well designed, well-kept streets. "Nothing succeeds like success," is as true to-day as when first spoken. A town which puts on the appearance of success is certain, under ordinary conditions, to succeed.

The effect of waterworks and sewers is not so apparent to the visitor, and its benefits are to a certain extent hidden. They are, however, sanitary measures of the greatest importance, and are of exceedingly great convenience. They mean health, comfort, and convenience. Fire protection is given to all parts of the town, and insurance rates are lessened in consequence. Water closets and cess-pools are, by their aid, done away with. Wells, cisterns and pumps do not have to be made and kept in order. Water is provided in the house, winter and summer, and housework becomes immeasurably easier. A great part of the money spent on all these works gives employment for a number of years to the poorer classes of the town, and eventually finds its way back to the pockets of those who in the first instance have to pay it. Added to this is the increased value of the town property, which, of itself, will repay the additional expense to the taxpayers. The citizens of Smith's Falls have taken a forward step which should be imitated by a good many other towns of the Province.

It is expected an electric railway will shortly connect Hamilton, Galt and Guelph.

Collection of Taxes.

It is the duty of the collectors of taxes upon receiving their collection rolls to collect the taxes therein mentioned. Section 133 of the Assessment Act.

PROCEEDINGS BEFORE SEIZURE CAN BE MADE—DEMAND.

Before a seizure can be made by a collector upon a man's chattels, for taxes, a demand must be made for them, or notice served in the manner provided by section 134. In cities and towns he may adopt either of two courses : (a) He shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of business, if within the local municipality, and for which such collector has been appointed, and shall demand payment of the taxes payable by such person ; (b) or he shall leave or cause to be left with the person taxed, or at his residence or domicile or place of business, or upon the premises in respect of which the taxes are payable, a written or printed notice, specifying the amount of such taxes. Sub-sec. 1 of Sec. 134.

The written or printed notice above mentioned shall have written or printed thereon, for the information of the ratepayer, a schedule specifying the different rates and amounts on the dollar to be levied for each rate, making up the aggregate of the taxes referred to in such notice. Subsection 2 of section 134.

In other municipalities he shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of business, if within the local municipality in and for which such collector has been appointed, and shall demand payment of the taxes payable by such person. Subsection 3 of section 124. In these municipalities the collector cannot make use of and leave a printed notice as in the case of cities and towns, unless there is a by-law authorizing him to do so, but the municipality may empower the collector by by-law to leave with the person taxed, or at his residence, or domicile, or place of business, a written or printed notice specifying the amount of taxes.

ENTRY UPON ROLL.

It is the duty of the collector immediately after having made a demand or given the notice above mentioned, to enter the date thereof on his roll, opposite the name of the person taxed. This is important because the statute makes such entry *prima facie* evidence of such demand or notice.

WHEN DISTRESS CAN BE MADE.

A distress cannot, except in the case provided for by section 4 of section 135, be made legally until the expiry of fourteen days after the demand or notice, or, where the council has, under section 60, passed a by-law appointing a day for payment of the taxes at any time after the expiration of fourteen days from the giving of such notice or making of such demand, or after the day appointed for the payment by such by-law, whichever

last happens. If a demand is made, say on the first day of October, a distress cannot be made until the sixteenth day of October, because the day upon which the demand is made is excluded and the taxpayer has the whole of the 15th within which to pay his taxes. Section 60 and subsection 1 of section 135.

Under subsection 4 of section 135, if after demand made or notice served and before the expiry of fourteen days, the collector has good reason to believe that any person in whose hands goods and chattels are subject to distress, is about to remove such goods and chattels out of the municipality before such time has expired, and makes an affidavit to that effect before the mayor or reeve or a justice of the peace, such mayor, reeve or justice shall issue a warrant to the collector authorizing him to levy for the taxes and costs.

A COLLECTOR MAY LEVY BY DISTRESS.

1. Upon the goods and chattels, wherever found, within the county in which the local municipality lies, belonging to or in the possession of the person who is actually assessed for the premises and whose name appears upon the collector's roll for the year as liable therefor (and who is hereinafter called the "person assessed.") Under this subsection the collector may seize the goods belonging to the person actually assessed for the premises and whose name appears upon the roll for the year as liable therefor or he may seize any goods and chattels in his possession in any part of the county. In such a case the collector need not concern himself about the ownership of the goods. If they are in the possession of the person assessed he may seize and sell them. Subsection 1, section 135.

2. Upon the interest of the person assessed in any goods on the premises, including his interest in any goods to the possession of which he is entitled under a contract for purchase or a contract by which he may or is to become the owner thereof upon performance of any condition. This subsection applies to cases where the person assessed has only an interest in the goods. Farmers often buy farming implements under special contracts by which the seller retains title in himself and gives the farmer the right to retain possession of and use the goods until he pays the price according to the terms of the contract. It will be observed that in a case within subsection 1, a seizure may be made anywhere in the county, but the right to seize under subsection 2 is confined to the premises. If, however, such goods as these are found in the possession of the person assessed within the meaning of subsection 1, why cannot the collector seize and sell the goods without regard to who is the owner of them ?

We think he can, because subsection 1 authorizes the collector to seize the goods and chattels in the possession of the person assessed anywhere within the county. If the collector finds such goods

off the assessed premises and not in the possession of the person assessed, he cannot touch them at all. If he finds them on the assessed premises in the possession of the person assessed he may seize and sell them without regard to who owns them. If they are on the assessed premises, but they are not in the possession of the person assessed he can only seize and sell the interest of the person assessed on them. Subsection 2, s. 135.

3. Upon the goods and chattels of the owner of the premises found thereon, whether such owner is assessed in respect of premises or not.

Under this section the goods of the owner though not assessed may be distrained on the premises, but such goods cannot be distrained off the premises.

4. Upon any goods and chattels on the premises where title to the same is claimed in any of the ways following :

(a) By virtue of an execution against the owner or person assessed ; or

(b) By purchase, gift, transfer or assignment from the owner or person assessed, whether absolute or in trust, or by way of mortgage or otherwise ; or

(c) By the wife, husband, daughter, son, daughter-in-law or son-in-law of the owner or person assessed, or by any relative of his, in case such relative lives on the premises as a member of the family ; or

(d) Where the goods liable for the taxes have been exchanged between two persons by the one borrowing or hiring from the other for the purpose of defeating the claim of, or the right of distress for the non-payment of taxes ; and subject to the provisions of the preceding clause numbered 4, where the owner or person assessed is not in possession, the goods and chattels on the premises, not belonging to the owner or person assessed, shall not be subject to seizure ; and the possession by the tenant of said goods and chattels on the premises shall be sufficient *prima facie* evidence that they belong to him. 55, V. c. 48, s. 124 (1); c. 49, 19, (1); 59, V. c. 58, s. 6, s. 7, (1); 60, V. c. 3, s. 3; c. 15, sched. C. (133).

In cases under this sub-section the distress can only be made on the premises, and, except in the cases referred to in clauses a, b, c, and d, the goods and chattels on the premises not belonging to the owner or person assessed cannot be distrained where the owner or person assessed is not in possession.

PROVISIONS AS TO GOODS IN HANDS OF ASSIGNEE OR LIQUIDATOR.

Provided nevertheless, that no goods which are in the possession of the person liable to pay such taxes for the purpose only of storing or warehousing the same, or of selling the same upon commission or as agent, shall be levied upon or sold for such taxes; and provided further that goods in the hands of an assignee for the benefit of creditors, or in the hands of a liquidator under a winding up order shall be liable only for the taxes of the assignor or of the company which is being

wound up, and for the taxes upon the premises in which the said goods were at the time of the assignment or winding-up order, and thereafter while the assignee or liquidator occupies the premises or while the goods remain thereon. 58 V. c. 47, s. 7.

This proviso excepts and exempts goods in the possession of a warehouseman and those of an assignee for creditors or a liquidator and collectors must be governed by its provisions.

By section 10 of the Assessment Amendment Act, 1899, it is enacted that in cities and towns, and any other local municipalities having power to sell lands for the non-payment of taxes, no distress for the taxes upon each parcel of vacant property shall be made upon the goods or chattels of the owner in any part of the county other than upon such property, and this provision shall be retroactive, so as to apply to the returns for arrears of taxes for the years 1896 and 1897.

(2) The goods and chattels exempt by law from seizure under execution shall not be liable to seizure by distress unless they are the property of the person who is actually assessed for the premises, and whose name also appears upon the collector's roll for the year as liable therefor. R. S. O., cap. 224, s. 135, s. s. 2.

For a list of the goods exempted from execution, see cap. 77, R. S. O., 1897. It will be observed that the person who is actually assessed for the premises, and whose name also appears upon the collector's roll for the year as liable therefor is not entitled to any exemption.

(3) The person claiming such exemption shall select and point out the goods and chattels as to which he claims exemption. R. S. O., 1897, cap. 224, s. 135, s.s.3.

Section 11, subsection 1, 62 Vic. c. 27, adds section 135a to the Assessment Act. The added section makes provision for distress by the collector for taxes charged against and payable in respect of *personal property*, and is as follows:

135a.—(1) Subject to the provisions of section 60 of this Act, in case a person assessed in respect of personal estate or personal property neglects to pay the taxes for fourteen days, after demand or after notice served pursuant to a by-law aforesaid, or in the case of cities or towns after demand and notice as aforesaid, the collector may by himself or his agent (subject to the exemptions provided for in subsection 2 of this section) levy the same with costs by distress.

1. Upon the goods and chattels of the persons assessed wherever found within the county in which the local municipality lies for judicial purposes;

2. Upon the interest of the person assessed in any goods to the possession of which he is entitled under a contract for purchase, or a contract by which he may or is to become the owner thereof upon performance of any condition;

3. Upon any goods and chattels in the possession of the person assessed where title to the same is claimed in any of the

ways defined by sub-clauses a, b, c and d of section 135, and in applying said sub-clauses they shall be read with the words "owner of" and the words "on the premises" omitted therefrom.

(2) Subsections 2 to 8 of the said section 135 shall apply to goods and chattels liable to distress under this section and to proceedings taken under this section.

Collectors should be diligent in the collection of taxes and should, if possible, make them out of the chattels. If the person who ought to pay them neglects to do so, it is a frequent objection to the sale of lands for taxes, that they might and ought to have been made out of the goods and that it is unlawful to sell the lands to satisfy them. Municipal councils ought also, as far as possible, to avoid extending time for the collection of taxes or special arrangements in regard to the collection of any person's taxes. They should insist upon the taxes being collected and the roll returned within the time fixed by statute, to enable the clerk and the county treasurer to perform their duties in regard to those taxes which cannot be collected.

Incandescent Street Light.

Municipalities putting in electric street lighting these days almost universally adopt the incandescent instead of the arc system, the contention being that the light is much more evenly distributed, and that there is a direct saving in current. Orillia has found the incandescent lights on Mississauga street to give good satisfaction, and may go more extensively into the system when the power scheme is in operation.—*Times*.

The right of the city of Montreal, under its new charter, to tax machinery, etc., as real property, is likely to be contested by some of the large companies doing business there. The Street Railway Company, in reply to a request from the assessors for an estimate, has sent in a valuation of its plant, putting "junk" values upon the different articles, in accordance with a recent judgment delivered in Ontario respecting the taxation of poles, wires, etc. This, the assessors refuse to accept, making an independent valuation, based on the actual value of the plant. Recently the company gave notice of appeal from this valuation and the matter will be put through the law courts.

The Grand Trunk have written, stating that the information asked for would take a lot of preparing, and as it had never been asked for before, the Company would like to find out why it was wanted.

The Bell Telephone Company have notified the assessors that they do not consider that the tax can be legally imposed.

Residence Streets.

It may be well to name, in a general way, the various features of residence streets, calling especial attention to those in which most improvement can be made. The constructed parts, the roadway and the sidewalks, should be made for use. They should be smooth, hard, durable, shaped so that storm water will readily run off, and should receive constant care so that they will be kept clean and neat. The ornamental part, that is the parkways, and the boundary planting on each street, should be treated in such a way as to take advantage of our wonderfully varied forms of plant life. A gentleman owning the land on both sides of a street in northern Illinois, has removed the fences and planted in their places quantities of barberry bushes, Japan quince, buckthorne, prickly ash, and sweet briars. The parkways retain some of the native trees, there has been additional planting. Elms, lindens, maples, oaks and other trees have been used, and also red branched dogwoods, syringas, and viburnums. The groups planted are as irregular as the native growth. Recently a man from another city, after having ridden through this street, was surprised to find that it was a public thoroughfare, his impression having been that it was a gentleman's private drive. If other people had the same idea with regard to the streets upon which they live, this parklike planting might extend indefinitely, and add greatly to the attractiveness of the residence portion of our cities. Not only would the streets themselves be greatly improved in appearance, but I believe the influence of such treatment would extend to the home grounds.

It is desirable that the appreciation of beautiful streets might become so great that people would be as shocked to see the enormous signs now extending along some of our principal streets, as the gentleman first referred to would be to find a great sign in front of his home. Think of a beautiful drive or walk through one of our large city parks, and imagine the effect of a great sign staring at you from among its trees and shrubs, with the announcement that someone has soap or shoes to sell. Of course, such an intrusion would not be tolerated. It ought to seem just as bad to have it next to our houses. If public sentiment is not strong enough to bring about a reform, the matter ought to be remedied by city ordinances.

With a little more study, and a little more observation, but without any greater expenditure than is put upon many streets at the present time, I believe that one's pleasure in walking and driving might be fully doubled. A man's daily journey, going to his office, and returning to his home, might be among surroundings that an artist would like to paint.—*Park and Cemetery*.

LEGAL DECISIONS.

In Re Townships of Rochester and Mersea.

Drainage—Branch Drains—Separate Assessment—Amendment of Engineer's Report.

When it is essential for the purpose of draining the area in question a drainage work may include such branch drains as may be necessary, and the main drain and branches may be repaired and enlarged in case of necessity under one joint scheme and joint assessment, a separate scheme and assessment for the main drain and for each branch not being necessary. Under s. s. 3 of s. 89 of The Municipal Drainage Act, R. S. O., c. 226, the drainage referee has jurisdiction, with the consent of the engineer and upon evidence given to amend the engineer's report by changing against the townships in question for "injuring liability" assessment erroneously charged against them by the engineer for "outlet liability". Judgment of the drainage referee reversed.

In Re Young and Township of Binbrook.

Municipal Corporations—By-Laws—Voters' Lists—Omission of Classes of Voters—Irregularity—Saving Clause.

A by-law prohibiting the sale of intoxicating liquor in the township, under the provisions of s. 141 of R. S. O., c. 245, was submitted to the vote required by that section, and a majority of 98 votes appeared in its favor. Upon motion to quash the by-law, it was objected that the names of some 80 persons entitled to vote, were omitted from the lists furnished to the deputy-returning officers, and that these persons had no opportunity of voting. The clerk who prepared the lists was under the impression that only those persons were entitled to vote who would be entitled to vote upon money by-laws, and he therefore left out all farmers' sons and income voters. The number of persons entitled to vote at municipal elections was , of whom 78 were farmers' sons and 2 income voters, the remainder being owners and tenants. Only 409 names appeared on the lists given to the deputies; 272 persons actually voted, 185 for the by-law and 87 against it.

Held, following *In re Croft and Township of Peterborough*, 17 A. R. 21, and *In re Bounder and Village of Winchester*, 19 A. R. 684, that the names of the farmers' sons and income voters were improperly omitted from the lists.

Held, however, that the omission was not so serious and irregular as to require that the court should quash the by-law.

Under s. 204 of the Municipal Act, the by-law must stand if it should appear to the court "that the election was conducted in accordance with the principles laid down in the act," and that the irregularity did not effect the result.

An election should be held to have been conducted in accordance with the

principles laid down in the Act, when the directions of the act have not been intentionally violated, and when there is no ground for believing that the unintentional violation has affected the results, and that was the state of things presented in this case.

The court was bound to assume that all the persons left off the list would have voted against the by-law, but it was not bound to assume that the error had any effect upon the minds of the persons upon the list who voted or abstained from voting, in the absence of any evidence to show that such was the case; and, adding in the 80 votes to the 87, there was still a majority in favor of the by-law. *Woodward vs. Sarsons*, L. R. 10 C. P. 733, followed.

Thompkins vs Brockville Rink Co.

Where a statute provides for the performance of a particular duty, and one of a class of persons for whose benefit and protection the duty is imposed, is injured by the failure of the person required so to perform it, an action, *prima facie*, and if there is nothing to the contrary, is maintainable by such person, but not where the non-performance is, in the general interest, punishable by penalty. Where, therefore, under authority conferred by sec. 496, sub-sec. 10, of the Municipal Act, a by-law was passed by the council of a city, setting apart certain areas as fire limits where no wooden buildings could be erected, and that buildings erected in contravention thereof might be pulled down and removed by the corporation at the cost of the owner, and a penalty of \$50 imposed, the erection of a wooden building within such limits, does not give a right of action to the owner of contiguous property whose property is injuriously affected thereby, and an action, therefore, brought by such owner for the recovery of damages, and claiming the removal of such building and for an injunction, was dismissed with costs.

McLean v. City of Ottawa.

Judgment in action tried at Ottawa, brought to recover damages for injuries sustained by plaintiff, who when walking north on the east side of Banks street, Ottawa, slipped upon a small ridge of ice 3 or 4 inches above the level of the pavement and fell. Held, that defendants are not shown to have ever exercised any control or made any claim to the strip of land to the east of the street line upon which the ice had accumulated; but having regard to the decision in *Badams vs. City of Toronto*, 24 A. R. 14, that defendants' liability was the same as if the ice had been upon the pavement within their jurisdiction; but, in view of all the circumstances of the case and climatic condition, the defendants could not be said to have been guilty of gross negligence within the terms of R. S. O., c. 223, sec. 606, sub-sec. 2. Action dismissed with costs.

Ashdowne vs. Township of Artemesia.

Judgment in action tried before Falconbridge, J., without a jury at Owen Sound. Action by Frobella Ashdowne, a married woman, against the township corporation for damages for bodily injuries sustained by reason of an accident while driving on a public road, owing to the road being out of repair, as alleged. Held, that the notice of action required by the Municipal Act, R. S. O., c. 223, sec. 606, sub-sec. 3, was mailed within thirty days after the happening of the accident, and was sufficient under the statute. The road in question was at the time of the accident in an unsafe and dangerous condition by reason of the absence of a railing or fence at or near the edge of the embankment. Owing to the exceptional nature of the season at which the accident happened (last winter) the travelled path had gone nearer to the edge than it did in some other winters, but the absence of a railing is a standing source of damage both in summer and winter. There was no other road or path between the one plaintiff used and the foot of the hill, which the plaintiff was bound to use or ought to have used. The accident was not caused by the misbehavior of the horse or the negligence of the driver or any defect in the harness. If, however, any of these grounds of defence had foundation in fact, yet the accident would not have happened to plaintiff if the road had been properly guarded and fenced. The defendants had ample notice of the dangerous condition of the road. Judgment for plaintiff for \$200, damages with full costs.

Re Pattullo and Town of Orangeville.

Judgment on motion by Pattullo to vary the finding as to costs upon an award by arbitrators respecting damages sustained by Pattullo from the construction of a granolithic sidewalk on Broadway in front of his property at a higher level than the floor of the building on the land. Held, that sec. 460 of the Municipal Act, under which costs were awarded, gave the arbitrators a legal discretion, and the section should receive the same construction as rule 1130. Award varied by directing corporation to pay all the costs of the arbitration, including the reference back, to be taxed on county court scale, and the arbitrators' fees, costs of award and stenographer's fees. Costs of motion also to be paid by the corporation.

Thompson vs. City of Toronto.

In this case it was decided that to obtain an order under R. S. O., c. 223, as amended by section 41 of 62 Vic. (2), c. 26 (O), for the repair of a pavement on a street which had been laid down as a local improvement, the applicant must be a ratepayer of property abutting on the street, and who has been assessed for the work in question.

A Novel and Important Decision.

RECONSIDERATION AWARDS D. & W. ACT.
NO RIGHT OF APPEAL.

A short time ago His Honor Judge Merrill, of the County Court of the County of Prince Edward, handed down a decision on two appeals to him against a certain award made pursuant to the provisions of the Ditches and Water-Courses Act. This decision embodies an exhaustive discussion, of a point raised by the counsel for the respondents, which had not theretofore been judicially considered. The circumstances of the case were as follows:

In June 1894, proceedings were taken under the Ditches and Watercourses Act, on the requisition of Albert G. Roblin and Theodore B. Roblin, owners in severalty of lands making up lot number 73, in the 1st concession of the township of Ameliasburg, in the County of Prince Edward, for the purpose of having a ditch made to convey water from that and other lands.

Thereupon an award was made by Daniel A. Howe, the township engineer for that township, and filed with the Town-hip Clerk on the 20th of June, 1894. On the 22nd of June the clerk sent notices to the various parties interested.

The appellants, J. B. and A. E. Phillips, on the 6th day of July served upon the clerk a notice of appeal, but being as it was thought by the clerk, one day too late, no further proceedings in appeal were then taken. During that year the ditch or most of it was put through as directed by the award, except that the appellants, having refused to perform that portion of the work allotted to them, others were engaged to do it, under the direction of Mr. Hermon, who was appointed engineer on the 15th of October, 1894, upon the resignation of Mr. Howe.

In August, 1898, proceedings were taken by the appellants, under section 36 of this act, for the reconsideration of the award. This resulted in an award by Mr. Hermon on the 20th of September, 1898. On the 3rd of October notices of appeal against this award, as well as against that of Mr. Howe, were served on the township clerk.

The following is the full text of His Honor's judgment:

I appointed the 29th of October, at the town hall, Ameliasburg, to hear the appeals. At the time and place appointed I was attended by the parties interested and their respective counsels.

The appeals were taken together, the evidence in the one case to be available for the other, so far as applicable.

The 29th of October, and the 2nd, 3rd, 4th, 5th, 8th and 28th days of November were occupied in taking evidence, and the latter also in inspecting the premises. And at my chambers in Picton on the 26th of January the taking of evidence was concluded, and final argument heard.

At the opening of the matter on the 29th of October some preliminary objections were taken by Mr. Morden, to the hearing of the appeals. After argument as to these I decided to proceed with the investigation and to hear the evidence, reserving the points raised. Among the objections urged by Mr. Morden, it seems necessary now to consider the following:

(1) There can be no appeal now from Mr. Howe's award of June, 1894.

(2) There is no appeal, in any case, from the results of a reconsideration.

On the final argument these objections, with others, were again raised and discussed. No authority directly in point was cited by the counsel on either side. I have found one case dealing with the question of appeal under the former act respecting line fences and water courses: In Re McDonald et al, v. Cattanach

et al, 5 P. R. 288. But this is, I think, easily distinguishable from the present case. It was there held that the right of appeal against an award of fence viewers, given by section 7 of 32 Vict. ch. 46, was not restricted to an award under section 6, sub-section 2, but extended to an award by three fence viewers under C. S., U. C., ch. 57, of which it was made a part. Section 7 reads as follows: "It shall be competent for any party affected by any decision of such fenceviewers to appeal, &c."

There is a material difference between the wording "any decision" and the language of section 22 of the present act. "Any owner dissatisfied with the award of the engineer," &c. Here the particular award from which appeal may be taken is pointed out. Even in that case (Re McDonald and Cattanach) Gwyne J., in giving judgment (at p. 289 says): "After much doubt and hesitation, I have arrived at the conclusion that the appeal does lie" &c. The learned judge further says (p. 291): "I think the 7th section, which contains the right of appeal, must be read as applying to all the preceding parts of the two acts, reading them as one." Here it is sought to make section 22 applicable to succeeding as well as to preceding parts of the act, notwithstanding its reference only to the latter.

Under section 22 the person dissatisfied, &c., "may within fifteen clear days from the filing thereof appeal therefrom," &c.

Under section 24, if no appeal be taken within the time limited therefor the award becomes "valid and binding to all intents and purposes, notwithstanding any defect in form or substance, either in the award or in any of the proceedings relating to the work to be done thereunder, taken under the 'provisions of this act.'" It seems certain, then, that in this case (not only 15 days, but 4 years having been allowed to elapse) there can be no appeal from Mr. Howe's award.

But the appeal from Mr. Hermon's award on the reconsideration, remains to be considered. Under cover of this appeal, can the former award be attacked? Unless this can be done, and thus the award be set aside or amended, there would not seem to be any object in the appeal, and if permissible then the provision of section 24, making the former award "valid and binding to all intents and purposes," would be rendered nugatory. A construction of the statute favoring such a result should not, it is confidently submitted, be adopted, unless the intention of the legislature to so provide is clear, either by "express enactment or necessary intendment." It is not suggested that the act contains any such express provision. But the wording of the latter clause of section 36: "And in every such case he shall take the same proceedings, and in the same form and manner as are hereinbefore provided in the construction of a ditch," is relied on as implying a right of appeal. The argument is that because the person desiring a reconsideration of the award is directed to take the same proceedings, &c., to obtain it, as he would have had to take for the construction of a ditch, therefore he must also be entitled to the same right of appeal.

This seems, clearly, a *non-sequitur*. The section merely provides the procedure by which he is to obtain the reconsideration, nothing further. This will, perhaps, be more apparent, when we consider that a re-consideration may be of an agreement (under S. S. 8 and 9), as well as of an award. And "this agreement is in effect an award," (see Mr. Henderson's work on this Act, pg. 12). Now, there is no appeal from the agreement. If then, following the appellant's line of argument, it is correct to say that because there is an appeal from the original award, therefore there is an appeal from the re-consideration, it must as legitimately follow, that because there is no appeal from the agreement, there can be none from the re-consideration. Upon what ground should I adopt the former, in preference to the latter deduction?

Perhaps it will be suggested that, although no appeal will lie from a re-consideration of an

agreement, it will form a re-consideration of an award. But section 36 makes no distinction. The same proceedings are to be taken whether the re-consideration is from an agreement or from an award.

It seems, therefore, clear that the argument in favor of an appeal by implication is untenable.

On the other hand indications are not wholly wanting in other portions of the Act, that it was not intended to provide for an appeal from a re-consideration. I will refer to one instance only. By sub. s. 10, of s. 22, it is provided that "the award as so altered or affirmed, shall be certified, etc., and the time for the performance of its requirements shall be computed from the date of such judgment in appeal." As to this sub. s. Mr. Henderson in his work before referred to (at p. 36) says: "This is not very clear. It may be contended that under this provision the time for performance fixed by the award must necessarily be extended by so much time as may have been taken up by the appeal proceedings." However, this may be, it is evident that no appeal after the work of construction has been completed, was contemplated. It was suggested by counsel for the respondents that in analogy to s. 72, of R. S. O., ch. 226, (the Municipal Drainage Act), a re-consideration should be restricted to questions of future maintenance, etc.

(It may not be inappropriate to notice that in that act, it was apparently thought necessary to provide specifically for appeals. See subsections 3 and 4.)

See also as to maintenance, the case of Logan vs. McKillop, (25 Ap. R.) At p. 512, MacLennan, J. A. says:—"S. 36 is for the reconsideration of the agreement or award, but says nothing about new work. It deals with a completed work and all that would be left for reconsideration after two years from completion would be its maintenance, as to which, upon re-consideration, a new agreement or a new award might then be made."

But, having come to the conclusion that no appeal lies from the result of a re-consideration, which, in itself, is in the nature of an appeal, I need not further attempt to determine what matters do legitimately come within the scope of re-consideration proceedings.

And I dismiss the appeals.

McKinnon vs. East Hawkesbury.

Dr. McKinnon, of Vankleek Hill, has brought an action against the Township of East Hawkesbury, for the recovery of a sum of \$430, for professional services rendered during the small-pox sickness in that township last winter. The township has already paid Dr. McKinnon a sum of \$429, and thinks that they have paid the doctor most liberally, while the latter is of the opinion that he was only half paid. The case will be tried at the fall assizes, and will prove most interesting. On the result of this trial depends a similar case between the doctor and the town of Vankleek Hill.

York Township is considering a proposal to grant a perpetual street railway franchise. Every municipality should be protected from such dangers. There is no warrant for councillors elected for a year giving away the public streets forever. If the council for a year gives away the streets for a generation, it is certainly exercising sufficient authority.—*The Toronto Globe*.

The city of Hamilton has purchased Dundurn, the beautiful park site in the heart of the city, for \$50,000, the expenditure being strongly endorsed by a vote of the people.

QUESTION DRAWER.

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

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

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

Local Improvements—By-Law, etc.

421.—F. J. C.—We are laying down certain granolithic sidewalks as local improvements under the local improvements section of the Municipal Act. We have no general by-law under sec. 667 of said Act, but pass a special by-law in each case. Now if a sidewalk be properly petitioned for under section 668, is it necessary to advertise the intention of the council to do the work as provided for in subsection 4 of section 671 of said Act, or does the advertising apply only when the council takes initiative under section 669 of the said Municipal Act.

Subsection 4 of section 671 does not apply where the work is to be done pursuant to a petition under section 668. It applies only to a case within subsection 3 of section 671.

Expenses of Vaccination.

422—M. H. S.—Must the municipality pay for all the vaccine points or vaccine used by physicians, the physicians only collecting for the operation, or do they only pay where parties vaccinated are unable to do so?

If the party responsible is able to pay he should pay, both for the vaccine points and the operation of vaccination. See section 4 of chapter 249, R. S. O., 1897.

County Clerk May Auction Tolls—Damages Gaol Wall.

423.—J. W. E.—1. Is it necessary for the county clerk to take out an Auctioneer's License in order to legally sell by public auction the tolls on a road owned by the County.

2. A portion of gaol wall fell and damaged an adjoining building. The wall has been inspected from time to time by the Inspector of Prisons, and has never been condemned by him. Is the county liable for the damages done, and if so, can the county recover from the Government?

1. No.

2. Whether the county is liable for damages depends upon whether it was negligent in not having foreseen that the gaol wall was likely to fall. The law in such a case as this has been laid down in a certain decided case, as follows: "Where an action is brought to recover damages on account of injury done by the accidental falling of a structure, proof that there was no fault or negligence imputable to the defendant, and that there was no original imperfection in the structure, is sufficient to avoid liability on his part." The county cannot claim over against the Government for any damages it may have to pay.

Clerk's Election Expenses.

424.—J. S.—When a township clerk gets a salary, can he charge extras for distributing the ballot-boxes. Our clerk has been accustomed to take \$35 for election expenses.

1. Can he charge for delivering ballot-boxes, and if so, how much per mile?

2. Are there any other extras he can charge for in elections?

3. How much should our election expenses be. There are four polling booths, they cost nothing. We have no constables appointed. It is 35 miles around to deliver the boxes?

1 and 2. Section 320 of the Municipal Act makes provision for the remuneration of the clerk and other officers of a municipality by by-law of its council. The amount of work to be done by the clerk in the several municipalities differs, and, as a consequence, the clerks' remuneration is subject to considerable variation. The council should pay its clerk a fair remuneration for the work he does, and should specify as to whether it is intended to cover all the work he will be called upon to do, or, if not, what portion, and what will be considered extras? If the by-law simply fixes his salary as clerk he is not entitled to anything extra except when there is some Act which entitles him to extra remuneration, such, for example, as the Ditches and Watercourses Act. Sec. 206 provides that "the reasonable exp. nses incurred by the county clerk, the clerk of the local municipality and the other officers and clerks for printing, providing ballot-boxes, ballot-papers, material for marking ballot-papers, etc., and all fees and allowances for services rendered under this act shall be paid to the county clerk or the clerk of the local municipality by the treasurer of the county or local municipality (as the case may be), and shall be distributed by him to the persons entitled thereto." It is customary, we believe, to allow the clerk a reasonable amount over and above his salary for his services in connection with the holding of elections, but it is doubtful whether the section goes beyond entitling him to enough to cover his disbursements.

3. The Municipal Act does not fix the amount. Under section 206 the fees and allowances must be reasonable, and that is a question in the first instance for the treasurer, and if he does not allow what is considered sufficient the matter can only be settled by an action.

Road Culverts and Outlets.

425.—S. M.—I am a member of the council and have been appointed commissioner to spend twenty-five dollars on our side road. About one-half of the concession is swamp, and is very wet. The road was ditched on both sides and stoned and two culverts built twenty years ago. The culverts are broken and filled in and the road is out of repair. I spoke to H about repairing the road. He said he would not allow me to build up the road to dam the water on him unless we would put in a culvert to let the water across. Now on the other side of the road says he won't allow me to put in a culvert to let the water on him unless we make an outlet through his place for the water. Now the question is,

1. Can H stop me from repairing the road unless we build the culvert?

2. Can N stop me from building the culvert unless we make the outlets?

1. No. In the case of Darby vs Crowland, 38 U. C. Q. B., 338, a culvert which has been in existence for years, was closed up by the pathmaster, and it was held that there was no right of action.

2. It is a principle of law that no person has the right by drainage works to collect a large body of water and discharge it upon a man's lands to his injury, but if your township has not brought water to the culvert by means of drains, it can have no right of action because a culvert has been put in to let surface water off the road.

Maintenance of Indigents.

426.—W. D.—1. Is a township municipality, in a district with county organization, responsible for the maintenance of an indigent person who is placed in a Home or Provincial Institution, who was formerly a resident of that township?

2. If not responsible, can the person be removed to the Home for Incurables by the reeve's order without incurring the expense of removal.

1. Section 588 of the Municipal Act (subsection 1) gives the councils of townships power to pass by-laws for aiding in maintaining any indigent person belonging to or found in the municipality at any workhouse, hospital or institution for the insane, deaf and dumb or blind, or other public institution of a like character. Sub-section 2 provides that townships may pass by-laws "for granting aid to any charitable institution or out-of-door relief to the resident poor." It is optional with the council of the municipality as to whether it passes by-laws in accordance with either of these sections or not.

2. The reeve has no authority to give such an order, and if he gives an order the municipality will not be liable for any of the expenses incurred by reason thereof.

Drainage Deficiency Rates

427.—J. J.—1. When a drainage contract is let for more than the Engineer's estimate, how is the difference between the estimate and the actual cost of the work to be raised?

2. How is the by-law to be amended.

3. Would it be legal for the council to pass a resolution to add 5 per cent. to all assessments to provide for the insufficient funds?

1. By passing an amending by-law providing for the raising of the additional sum required, and further debentures may be issued under the amending by-law in order to fully carry out the intention of the original by-law. See section 66 of the Drainage Act, subsection 1.

2. The additional sum to be raised by the amending by law, should be assessed against the lands mentioned and described in the original by-law pro rata, according to the amounts assessed and charged against them respectively in such original by-law.

3. No. The distribution of the amount required must be pro rata among the lands described in the original by-law, according to the respective amounts of the original assessments, and must be by by-law.

Traction Engine Owners to Strengthen Bridges.

428.—T. C.—Does section 10 sub section 1 and 2, chapter 242, R. S. O., 1897, include trac-

tion engines commonly in use with threshing outfits?

Yes.

Defaulting Collector.

429—**SUBSCRIBER.**—Last year we appointed a collector and took as sureties himself and two others, expecting everything was all right. He collected all the available taxes, but it was a hard matter to get him to return the roll and he did not return it until the treasurer threatened a warrant. According to the general audit in February a considerable sum was shown to be in the collector's hands. We could not get him to return the roll until the 16th June. One of his sureties sold out and moved away to the northwest before the roll was returned. Before our August meeting we had a special audit to see how matters stood and we found that the collector was \$126.60 in arrears. The auditors notified him to produce his vouchers but neither he nor his vouchers appeared. Then we called a special meeting of the council and had to send a messenger after him to bring him and his vouchers to the meeting. The vouchers he brought agreed with the audit leaving him \$126.60 in arrears. He declared to us that he had paid all the money he collected to the treasurer and that he had lost the receipts for part of the money amounting to the amount of arrears. When he told us such a plausible story we let him go for the time, thinking that all would be right yet. I neg ected to state that we had found out in the meantime that neither he nor his other surety were worth anything. The treasurer positively denied having received any money beside what he produced vouchers for.

I called the council together again, a second special meeting and notified the collector also to attend. He gave us a written document acknowledging himself a defaulter to the municipality for \$126.60 and agreed to pay in a month from that date. Now what I would like to know is, can we make it a criminal act, or have we to run chances of getting it, or what steps would you advise us to take?

The collector is liable to a criminal prosecution for the fraudulent conversion to his own use of the moneys of the municipality, unless the written document he gave the council is in effect a promissory note, or new security given by the collector and accepted by the council for the payment of the amount in default.

Expenses Destitute, Insane.

430.—**C. S. R.**—In case a destitute insane person is sent to the public Insane Asylum, under section 7 and 8, etc., cap. 317, R. S. O., can the authorities of the asylum before admitting the patient, compel the township or municipality to guarantee \$3 per month for maintenance?

No.

Drainage.

431.—**ENQUIRER.**—We have a certain drainage scheme in our township, which consists of the deepening of the upper part of a creek or stream which branches off in several directions which were feeders to said stream, but are now ditches, having been made under the Ontario Drainage Act. We have now to face the necessity of cleaning said ditches as they are becoming choked up with weeds and alluvial soil. One small branch has been cleaned out this season and the proper mode of levying for the amount of said cleaning is now a matter of dispute, some claiming that said branch cleaned out i. e. the lots benefited only should bear the cost pro rata as specified in The Ontario Drainage Act, while others claim the cost should be levied on the other branches and that the whole scheme must bear pro rata any repairs on any one part thereof. What is the meaning of the Act in such a case?

We assume that each branch of the creek is now an independent drain, constructed under the provisions of the Municipal Drainage Act, or some prior drainage act whose provisions are embodied therein, that each and all these drains have a sufficient outlet in the creek, and that the construction of the drains did and does not necessitate the cleaning out, enlarging or improving of the creek. If the facts are as above, only the parties benefited by the construction, cleaning out, improvement, etc., of each particular drain should be proportionately assessed for the cost of the drainage work. It would be different, however, if the creek and all its branches (the drains) formed one complete drainage system.

Mayor's Property Qualifications.

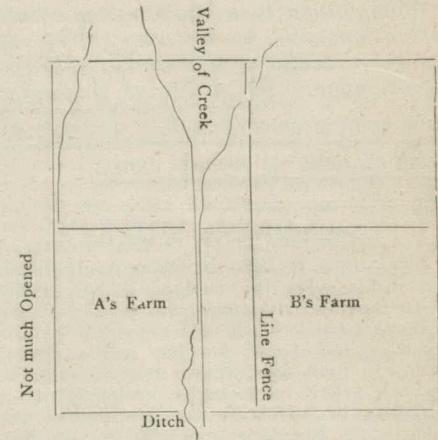
432.—**T. I. T.**—If candidate for mayoralty is elected and his property qualifications are all right, is he legally qualified, or must the Assessment Roll be considered?

Section 76, subsection 1, of the Municipal Act, provides that no person shall be qualified to be elected a mayor of any municipality unless, *at the time of the election* (amongst the other qualifications mentioned in the subsection) he has, or his wife has, as owner or tenant, a legal or equitable freehold or leasehold, or an estate partly freehold and partly leasehold or partly legal and partly equitable, which is rated in his own name, or in the name of his wife, *on the last revised assessment roll of the municipality*, to at least the value following, over and above all charges, liens and incumbrances affecting the same: Freehold to \$1,000; leasehold to \$2,000. If the person seeks to qualify under the last clause of this subsection he must also be actually rated on such assessment roll for the amount necessary to enable him to qualify thereunder. If the person was elected mayor, took his seat as such, and the necessary oaths, and no proceedings were taken to unseat him within the time mentioned in the Municipal Act, he is legally qualified to retain his seat and act in his official capacity as such mayor. From the foregoing it will be seen that only property which has been assessed can be taken into account.

Drainage.

433.—**E. W.**—A certain creek, or rather a valley emptied its drainage over what was once a swamp. This swamp has been drained for probably fifty years, and this water was carried through it by a straight ditch, which ditch some say started by the water running down a cow path, but has since been dug out in places by those along it. Now this creek runs through the upper part of B's farm, but the straight ditch is on A's side of the line fence, but just over the line and that is all. During the spring freshets the lower part of the ditch is not sufficient to carry off the water (which comes at least for two miles above) and the flood runs over on B's farm, as it is the lower and wears its way down his furrows, causing great damage. B has often dug out parts of the ditch for his own benefit, but still a large piece remains closed. The unopened part would be over half a mile long. A has put up a wire fence to keep snow from banking up in the open part.

1. Can those above A and B, whose farms drain into this be made to help open it?
2. Can A be made to help?
3. If B is willing to open the ditch himself can he throw all the dirt on his own side, thus forming a bank, and can B go to work without permission or authority?
4. In case others have to help open it would the work which B has formerly done be considered?
5. Can A collect damages, and from whom?



This appears to be a case in which B or any other owner of land desiring drainage must proceed under the Ditches and Watercourses Act, chapter 285, R. S. O., 1897. The engineer will, under this act, apportion the cost of the work among the lands affected and the owners thereof, according to his estimate of their respective interests in the ditch, and if A shall be found to be interested in the ditch it will be the duty of the engineer to allot a part of the work to him. See subsection 2 of section 16 of the Act. Except under the authority of an award made under this Act B has no right to go upon A's lands to do any work. We cannot find any provision in this Act authorizing the engineer to make any allowance for work already done, as is the case under subsection 4 of section 9 of the Ontario Drainage Act. The law is that no person has the right by means of drainage to collect surface waters to a point and discharge them upon the lands of another person so as to occasion damage, and if B is doing that A may bring an action to restrain him and to recover damages, if he has sustained any. We are not furnished with sufficient information to enable us to express an opinion as to whether B has rendered himself liable to such an action or not.

Civic Holidays.

434.—**SUBSCRIBER.**—1. The mayor of a town at the request of some citizens proclaims a civic holiday. Is it binding on the citizens to observe the same?

2. What is the proper form of proclamation?

1. No. Subsection 16 of section 8 of chapter 1, R. S. O., 1897, contains a list of the statutory holidays in Ontario.

2. To all whom it may concern:

Pursuant to the prayer of the petition of and other citizens of the of, I do hereby

proclaim..... day, the..... day of, A. D. 1...., a public holiday in the said..... of

Dated at..... this day of, A. D. 1.....

Mayor of the.....
of.....

Impounding Cattle.

435.—A. B. A.—Can cattle legally be impounded on the Sabbath?

Yes.

Taxes—Mineral Lands—Leased.

436.—A. J. M.—The greater portion of the land in this municipality is held as mineral land, some of it being patented, and some of it merely being leased.

The taxes, in most cases, have not been paid on these lands, since the municipality was formed, which is about four years ago, and now stands against the land as arrears. These properties being undeveloped, there are no chattels, etc., that could be distrained.

1. What steps if any, can be taken to secure the taxes against these lands?

2. Who is the proper person to sell these lands if they can be sold?

1. Subsection 1 of section 7 of the Assessment Act provides that all property vested in or held by Her Majesty shall be exempt from taxation. The fee in the lands you mention *leased* seems to be still in the Crown. Subsection 2 provides that "where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable." Section 188 provides that, "If the treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee, etc." The lands that have been patented and the interest of the lessees, in the lands leased, can be sold to realize the amount of the arrears of taxes payable in respect of the same.

2. Section 53 of chapter 225, R. S. O., 1897, provides that "subject to the provisions of sections 56 to 59 (which apply to Muskoka and Parry Sound only) arrears of taxes due to any municipality in any of the said districts, shall be collected and managed in the same way as like arrears due to municipalities in counties; and the treasurer and reeve of such municipality shall perform the like duties in the collection and management of arrears of taxes as in counties are performed by the treasurers and wardens thereof; and the various provisions of law relating to sales of land for arrears of taxes and to deeds given therefor, shall, unless otherwise provided by this Act, apply to the said municipalities and to sales of land therein for arrears of taxes due thereon and to deeds given therefor."

Unopened Streets in Survey.

437.—CLERK.—In the survey of a town a street was laid out but never was opened; all the cross streets leading to this one were never opened further than the street immediately to the east of the above mentioned street. Now a party owning lots partly on opened streets and on the unopened street, wants the council to

open up this unused street although he has access to his lots from the streets already open.

1. Can he compel the council to open this unused street, and if so what steps are necessary to be taken? The unused street has been enclosed by those holding lots adjacent thereto

2. Will the council have to assume the responsibility in opening up said street.

3. Can they forcibly remove the fences, etc.?

1. No.

2. No.

3. If the street in question is a public highway the council has the right to remove the fences if they are in the street

Collector and Auctioneer—Fences and Roads.

438.—J. M.—1. Can a tax-collector legally act as auctioneer at a sale of goods seized to recover taxes, or will he have to employ a licensed auctioneer?

2. In our township the road allowance is 40 feet by law. Can the owners of land along a road given in lieu of the concession be made to remove their fences so as to allow of 40 feet clear of the fence? The owners of the land hold possession of the concession allowance.

3. If I can have the fences removed, what is the legal process to have them removed?

1. Yes. He is not required to employ a licensed auctioneer for the purpose or take out an auctioneer's license. The latter part of section 138 of the Assessment Act provides "that the collector or his agents shall sell at public auction, etc."

2. Yes. Assuming that the land given in lieu of the concession road was legally transferred to and assumed by the municipality, and dedicated to the public as a highway.

3. Notify all parties having fences on the road allowance to remove the same within a reasonable time, and in the event of their non-compliance with the notice an action may be brought to compel the removal. If the fences in question are worm fences and if only one half of the width thereof is upon the highway it will be necessary for you to comply with subsection 5 of section 557 of the Municipal Act.

Appointment and Dismissal of Committees and Municipal Officers.

439.—A.B.C.—1. At the first council meeting in the year, the committees are appointed with a chairman for each. If the chairman fails to carry out the wishes of the majority, can he be dismissed? If so, how?

2. The street inspector is also appointed at a yearly salary. If he fails to give satisfaction to the majority of the council, can he be dismissed before the year has expired, by paying him up to time of dismissal?

3. What steps are necessary to take in such a case?

1. Yes. If a chairman of a committee has been appointed by by law his removal from the chairmanship should be by by-law, repealing the one by which he was appointed, or if he was appointed by resolution, then by the rescission of the resolution.

2 and 3. Assuming that the inspector was hired for a year, we do not think the council can dismiss him in the absence of sufficient cause without rendering the municipality liable for damages.

In *Broughton vs. Brantford*, 19 U. C. C. P., p. 434, a municipal officer was held entitled to damages for wrongful dismissal. He was dismissed in the month of September. Hagarty J. at p. 437 said "Assuming then that plaintiff, in 1867, continued an officer of the corporation appointed under their seal, and that his office was such as was usually the subject of a yearly hiring, could he be dismissed during the year at the defendants' pleasure?"

My impression is, that unless he held the appointment at the yearly salary under the corporation seal, he could be so dismissed, and that his claims would be limited to compensation for services actually rendered. As I consider that plaintiff remained up to the date of his dismissal the defendant's officer, under their corporate seal, I think he is entitled to compensation for a wrong dismissal, in like manner as if employed by an individual.

Again in the case of *Davis vs. Montreal*, 27 S. C. R., p. 539, it was held, under a statute substantially the same as the above provision, that when the engagement has been made indefinitely as to duration, the council has power to dismiss summarily and without previous notice, upon payment only of the amount of salary accrued to such officer up to the date of such dismissal. The language used indicates that such power does not exist in the case of a definite engagement, and we think that a contract with a collector is a definite engagement.

Floating Debt Consolidation—Tax Seizure—Debenture Interest—Transient Trader—Dog-Tax—Collection of Taxes.

440.—SUBSCRIBER.—When do we pass by-law for act to consolidate floating debt? Is it not voted on?

2. John Jones did not pay his tax in 1898, can we seize for it in October, 1899?

3. What is the highest rate of interest which can be put in a debenture?

4. John Jones comes here after tax-roll is out and rents a place to start a store. He pays no tax. Can we charge him a license fee as transient trader? If he remains to pay tax in 1900, must we remit it?

5. A by-law says dog-tax \$1, but after a certain date if not paid is \$2. Is this by-law legal? Can \$2 be collected? Is it better to collect it before a J. P., or in Division Court? Should they pay this dog-tax into treasurer or to collector and without demand made or notice given by either officer?

6. There seems to be a doubt as to how taxes should be collected, both in municipalities and law courts. Please give the simple, clear way for all officers to proceed. Collector starts out October first. He cannot get in all tax collectable in this year, some he gets in early part of next year. He does not like to seize on all as they will pay. In February 1900 he finally returns the roll, but still there are some he does not seize, that he could. We appoint a special collector to collect, then when we make new roll we put all these old taxes on it for the new collector, and so it goes from year to year. No seizure, but at the end of three years we put up the lands for sale. Is all this legal? What is proper way? We are not in county formation. We try to collect all we can each year in money as each collector goes out. Is land sale legal when no seizure made or attempted?

7. Can a collector break open a door to seize for taxes?

8. Is it advisable to get a lecture by the Good Roads Inspector?

1. If it is the council's intention to pay off the whole floating debt in some one year, the amount required should be taken into consideration when striking the general rate of taxation for that year. The council cannot, however, levy a rate in excess of 2 cents on the dollar in any one year. See section 402 of the Municipal Act. If it is going to be oppressive to pay the amount in one year your council must apply to the legislature for authority to issue debentures upon which to borrow money to pay the debt. It is not necessary that the electors should vote on the matter in either case.

2. No, unless the roll for 1898 has not yet been returned.

3. The rate of interest inserted in a debenture should be regulated by the current rate in the money markets for the time being. No fixed rule can be laid down. At present the rate usually inserted is from 4 to 5 per cent, unless the debentures are issued under the Act respecting Tile, Stone and Timber Drainage.

4. Unless Jones is really a transient trader, the provisions relating to transient traders do not apply to him and he is not obliged to pay a license fee as a transient trader. If he is merely a transient trader he can be compelled to pay a license fee, and if he remains in the municipality a sufficient time for taxes to become due and be payable by him, he will be entitled to credit upon such taxes under subsection 33 of section 583 of the Municipal Act.

5. We can find no authority for a by-law of this kind. The dog-tax should first be distrained for by the collector, and if no distress or insufficient distress be found the proceedings set forth in section 6 of chapter 271, R. S. O., 1897, should be resorted to. The remedy by action cannot be invoked until all other means of enforcing payment have been exhausted. See section 142 of the Assessment Act. The tax should be paid to the person appointed by the council by by-law to collect the same after a proper demand therefor.

6. The collector should receive his roll from the clerk of the municipality on or before the first day of October in each year. It is his duty immediately to proceed to collect the taxes thereon and return the roll by the 14th December of the same year. The council may, by resolution, extend the collector's time for the return of the roll to a period not later than the 1st day of February in the following year. In case the collector fails to get in all the taxes by the 1st of February, section 145 of the Assessment Act empowers the council, by resolution, to authorize the collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes. The collector should at all times use the utmost diligence in collecting the taxes, and should never return taxes as unpaid against property in respect of which sufficient or partial distress can be found. If no distress or insufficient distress can be

found on the premises, the taxes should be returned to the treasurer as unpaid. When the taxes have been in arrear for three years prior to the 1st day of January in any year, the taxes should be returned to the clerk by the treasurer, to be placed on the collector's roll by the former, against the lands liable therefor, if occupied, unless sooner paid. Thereafter the lands chargeable are liable to be sold to realize the amount of the taxes. See section 152 and following sections of the Assessment Act. If your municipality is rural the reeve and treasurer are required to perform the duties of the warden and treasurer in a county relating to sales of land for taxes. If a town or city, the mayor and treasurer. In a recently decided case, Caston vs. Toronto, 30 O. R., p. 16, it was held that where there is sufficient property available for distress on land assessed, during all the time the collector has the roll, the taxes thereon cannot be legally returned to the treasurer and cannot be legally placed on the collector's roll for a subsequent year. Another important point to which we must draw your attention also is this: The council has no authority to appoint either the collector or any other person to continue the collection of unpaid taxes after the collector has returned his roll. See note k at the foot of page 16 of the second edition of the Collector's Guide just issued by this paper, prepared by James M. Glenn, Q. C., Ll. B.

7. Unless the collector can enter the house in the usual way, as by turning the key, lifting the latch, or drawing the bolt, he cannot legally distrain the goods. If he can gain a lawful entrance in this way, he may break open an inside door, or if he can, through any opening, seize any article liable to distress, he may then break open any door to complete the distress.

8. If the roads and streets in the municipality in your vicinity are in need of improvement, and the councils interested contemplate going on with the work, a visit and lecture from Mr. Campbell would prove both interesting and profitable.

Fenceviewer's Cost—Appeal Against Award

441.—M. R.—A and B own adjoining farms, fence division made, and post set. A had road along B's part of fence. A alleges B had moved his fence in his road and threw it down. B employed surveyor and erected on surveyor's line. A again threw it down, B entered action and had A served therewith; then A called out fenceviewers who made an award (copy enclosed). A then appealed against award, and employed another surveyor who made a different line giving A more land; date of hearing appeal "was adjourned" at the final hearing Judge ordered "award set aside" verbal order "each party to pay own costs."

As some of the fenceviewers attended at the date set aside for the hearing.

1. Where will they look for their costs?

2. How will they proceed to obtain them?

1. and 2. You do not say whether the fenceviewers were required to attend the "hearing" or "adjourned hearing" of the appeal by subpoena duly issued and served upon them. If they were not

subpoenaed they need not have attended, and if they did, are entitled to no fees for so doing. If they were subpoenaed, they should look to the party subpoenaing them for their witness fees. If the party thus liable neglects or refuses to pay, the fence-viewers should sue for the amount coming to them in the ordinary way.

Selecting Jurors.

442.—C. H. S.—In the last issue of your valuable paper I noticed an article on "Selecting Jurors," which stated, "that the selectors shall not select from the names any persons that were written down and selected from and returned the preceding year." In our municipality last year the selectors started at the letter D and ended with the letter R, consequently this year we started with the letter S and ended with the letter K. Now you will see in our case it overlaps about six letters each year. Is it left with the discretion of the selectors, or do the statutes state plainly, and if so what chapter and section, whether or not the name of some of those which were returned last year should not be sent in this year? Kindly favor me with a reply as I fail to see anything in the statutes that prohibits the sending in of a name two years in succession.

Section 22 sub-section 4 of the Juror's Act answers your question in the following words: "but shall not select from the names of any persons that were written down and selected from and returned the preceding year."

Double Town Line.

443.—J.E.C.—1. What is the proper course of procedure for the councils of two adjoining townships in the same county to pursue in regard to opening the town line between them for public travel? It does not seem right that the owners of the adjoining farms under the Surveyor's Act should be asked to pay the cost of the said survey.

2. When there is a double allowance for road 132 feet between two townships and one is quite sufficient, how could the other half be disposed of advantageously to the municipalities concerned?

1. The only remedy provided is that contained in section 549 and following sections of the Municipal Act.

2. There does not appear to be any provision in the Municipal Act for doing what is desired to be done in this case.

Indigent Insane—Admission to Asylum.

444.—J. C. Mc.—1. Are imbecile or incurable insane children as young as fifteen years of age admitted to the London Asylum for the insane?

2. If so, how will we proceed to have one committed whose parents are unable to bear the expense of maintenance in that institution?

3. If patients of this kind are not admitted to that institution are there any Institutions in the Province where they are admitted?

4. If so, where are they, and how will we proceed to commit a patient whose parents are unable to bear the expense of maintenance?

1. Yes. The Statutes do not fix any age limit.

2. You will find full information as to this in section 11 of chapter 317, R. S. O., 1897. Which is as follows:

11. (1) In any municipality within the Province of Ontario where an insane person is in destitute circumstances, and is a fit subject for asylum treatment,

application may be made to the head of the municipality for an examination to be made and certificates given, in accordance with sections 7, 8 and 9, of this act, and the head of the municipality, if satisfied that the insane person is in destitute circumstances, shall, immediately after receiving the application notify two medical practitioners to make the required examination.

(2) The council of the municipality shall pay the medical practitioners for the examination and certificate a sum not exceeding \$5 each, and twenty cents for each mile necessarily travelled, and shall also pay the necessary expenses incurred in conveying such insane person or persons to one of the provincial lunatic asylums; said sum to be reimbursed to the municipality by the county where the municipality is a part of the county. R. S. O., 1897, c. 317, s. 11.

3 and 4. The answers to questions 1 and 2 render it unnecessary to reply to these questions. We might add, however, that section 589 of the Municipal Act empowers the council of a county to make provision for the whole or partial support of destitute insane persons, as provided in the section.

Solicitor's Account.

445.—J. M.—There was an action brought against our township for damages for injuries received on account of road not being in proper shape. We engaged a lawyer to prepare a defence for us. The case went on until it was all prepared for court, then we agreed to a settlement, our lawyer assisting in the settlement. Since, we have received his account itemized, and charging us for consultation and every time we called on him and had a talk with him about the case. What I want to learn is, can he legally collect pay for consultation when he had undertaken defense of suit? I was of opinion that he could not.

He is entitled to charge a reasonable fee for each consultation which was necessary to the successful conduct of the suit. If you think that his bill is excessive your course is to have it taxed by the proper officer.

Payment of Councillors.

446.—J. W. Q.—1. Can a municipal council pass legally a by-law granting themselves a salary, the same to be retroactive from the 1st day of January, 1899?

2. If not, would a by-law submitted to the people at the next election if carried, make such action legal for 1900.

1. Your municipality being a town, the councillors or aldermen are not entitled to any remuneration for their services as such, but the mayor may be paid such annual sum or other remuneration as the council of the municipality may determine. See section 280 of the Municipal Act. In the case of a city of over 100,000 inhabitants, a county or a township, by-laws may be passed by the council for the remuneration of its members under sec. 238 of the act.

2. No. There is no provision made for the submission of a by-law of this kind to the vote of the electors. If

submitted to, and passed by them, it would be a nullity.

Water Rates—Vacant Houses—Tax Sales.

447.—SUBSCRIBER.—1. Can we make vacant lots or houses pay a water-rate? I believe it is done in Ottawa.

2. Are there two years in which to attack the validity of a tax deed?

3. A lot is sold at a tax sale. Can buyer take immediate possession? At end of year if lot is redeemed could buyer remove buildings he erected?

4. (a) Is ten per cent. at tax sale per annum?

(b) Can owner of land pay up day after sale and take possession before year is up.

5. How to sell parts of lots, suppose a building built on each half?

1. Yes. See section 686 and subsection 3 of section 682 of the Municipal Act. No exception from assessment, is made, in either of these sections of vacant lots or houses.

2. No. Only one year from the day of the sale exclusive of that day. See sections 200 and 201 of the Assessment Act.

3. The buyer can take immediate possession but he does so subject to the owner's right of redemption. See *Cotter v. Sutherland*, 18 U. C. C., p. 357. If he erects buildings on or improves the land within the period allowed for redemption, he does so at his own risk. If the land is redeemed in the manner directed by statute he cannot remove the buildings.

4. (a) The 10 per cent. must be paid on the whole arrears of taxes. It does not mean at the rate of 10 per cent. per annum.

(b) Yes.

5. Section 184 of the Assessment Act, sub-section 1 enacts that "If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, the treasurer shall sell by public auction so much of the land as is sufficient to discharge the taxes and all lawful charges incurred in and about the sale, and the collection of the taxes, selling in preference such part as he may consider best for the owner to sell first." Under this section the treasurer should sell so as to do as little harm to the owner as possible.

Qualified for Councillor.

448.—P. K.—A ratepayer was elected to the Council of a township last year and immediately proceedings were started to unseat him, and after he had been served with a proper notice, and consulted his solicitor, he filed a disclaimer with the clerk.

If said ratepayer becomes possessed of enough property and is assessed for it this year, is he eligible for election at the next election?

Yes.

Pay County Rates—Debentures—Vote on By-Law and Elections—Assessment Railway Personality.

449.—M. F.—1. The municipality of the township of Snowden in the provisional county of Haliburton, desires to borrow say \$1,500 by the issue of township debentures extending over a period of 20 years, but we are somewhat in a muddle as to the "*modus operandi*." The proceeds of the said debentures are to be applied in payment of arrears of county rates, to the extent of the above named sum.

2. Can a township borrow money to pay off incurred debts? (See Harrison's Manual 5th edition, section 340 note (K), also section 384, Municipal Act.)

3. Can township debentures be issued for less amounts than \$100 each? (See section 436 Municipal Act,) and to whom should we apply for authority under this section?

4. Do the debentures in question require the assent of the Lieutenant Governor?

5. Is there any valid objection to taking the general vote of the Electors "re voting on by-laws" at the date and place of the annual municipal elections?

RE RAILWAY ASSESSMENT.

6. Is railway rolling stock personal property, and if so, is it liable to assessment under section 38 and 39, sub-section 2, Assessment Act. See also section 5 of this act, and if so can a railway company successfully set up the plea that A's headquarters are at Toronto, and A's rolling stock there assessed neither end of said railway, nor no portion of same being within 120 to 160 miles of Toronto?

7. Can a collector return Railway lands as unoccupied over which trains are running daily, in the event that rolling stock is not assessable, and upon which a collector makes affidavit that there is no distress?

1. The representatives of your municipality ought not to have allowed the county rates to fall into arrears, and the county representatives were derelict in their duty in not insisting upon the payment of county rates from year to year. It is unjust that the present ratepayers should be called upon to pay these arrears. We do not think the council has power to pass such a by-law as is proposed. Section 223 of the Assessment Act provides for making up deficiencies in county rates, and section 462 of the Municipal Act provides for levying yearly rates, which must not however exceed in the aggregate 2 cents on the dollar. If you cannot make up the arrears under this section you must obtain special power from the legislature.

2. The section to which you refer does not apply to such a case as the one in hand at all. It confers power upon municipal councils for contracting debts for certain specified purposes, and not for the purpose of paying off debts already incurred.

3. No. The words "unless specially authorized so to do" in section 436 do not imply that there is some person, body or corporation to which the council may apply for authority to issue debentures for a less sum than \$100. These words mean that debentures for a less sum than \$100 cannot be issued unless they are issued under some special act which gives authority to issue debentures for a less sum, as for example, The Ontario Drainage Act sub-section 2 of section 19 of which authorizes the issue of debentures in sums of not less than \$50 each.

4. The Lieutenant Governor has no power to authorize your council to issue debentures for a less sum than \$100.

5. No, provided the by-law is one which the electors have the right to vote on.

6. Sub-section 2 of section 39 of the Assessment Act, enacts that the personal property of a railway company, (which includes its rolling stock) is exempt from

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assessments. Section 5 of the act has reference to the real estate of a railway company only.

7. If the railway company is assessed as it ought to be for the portion of its real estate situated within the boundaries of your municipality, the collector should not return these lands as unoccupied under the circumstances you mention. If the company neglects or refuses to pay its taxes after a proper legal demand made therefor, the collector should seize such personal property of the company (including rolling stock) as will be necessary to satisfy the taxes, in accordance with section 135 of this act.

Vote to Carry Exemption By-Law.

450.—A. J. S.—Will you please let me know what is the necessary vote to carry a by-law exempting a pork packing establishing from taxation for 10 years, under 62 Vic. chap. 26, section 25? (Ontario Statutes, 1899.)

Clause (c) of the section cited provides as follows: "To render valid a by-law of a municipality for granting exemption from taxation, under this section, the assent shall be necessary of two-thirds of all the electors on the voters' list, as well as a majority of the electors voting on the by-law." As to who may vote, see section 353 and following sections of the Municipal Act. Section 338 and following sections provide the mode of voting on by-laws by the electors. The voters' list referred to is one to be prepared specially by the clerk under section 348 or 349 of the Act.

Closing a Street—Power of Council.

451.—T. C. N.—A tannery in our town is situated at the rear end of a back street. This end of the street has never been improved or rendered fit for traffic; in fact, a vehicle could not drive over it. The tannery is the only building situated on this end of the street. A few residents living up towards the other end of the said street naturally find a convenient outlet in the other direction. The said tannery wishes to secure possession of that portion of the street which adjoins their building.

Has the town council the power and right to grant this request, even though a few rate-payers should object?

Assuming that the street is a public highway, the council can close it up and sell it to adjoining owners, or in case they refuse to become the purchasers, at such price as the council thinks reasonable, then to any other person for the same or a greater price. As to the proceedings to be taken by the council preliminary to closing the street, see section 632 of the Municipal Act. As to authority to sell see section 650 sub section 11. The above proceedings must be taken however, subject to the provisions of section 629 of the act, which enacts as follows.

629.—(1) No municipal council shall close up any public road or highway, whether an original allowance or a road opened by the quarter sessions or by any municipal council, or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands, or place of resi-

dence over such road, unless the council, in addition to compensation, also provides for the use of such person some other convenient road or way of access to the said lands or residence.

(2) If the compensation offered by the council, to the owner of the lands, or the road provided for the owner in lieu of the original road, as a means of egress and ingress, is not mutually agreed upon between the council and the owner or owners, (as the case may be), the matters in dispute shall be referred to arbitration, under the provisions of this act respecting arbitrations.

Assessment of Pension.

452.—TOWN—Mr. A, ex-manager of a life insurance company, in W, draws a pension of \$2,800 per year from the said company. He lives and owns property in the municipality of B. The assessor of B has assessed him for income tax, and the assessor of W has also assessed him for same. Now the question arises, should Mr. A pay income tax to B or to W?

Section 42 of the Assessment Act provides that if a person has no place of business, he shall be assessed (*i. e. for his assessable income and personal estate*) at his place of residence. If Mr. A has not a place of business elsewhere than in B, or if he is out of business altogether, and his residence or domicile is in B he should be assessed for his personal estate and income in B only. If Mr. A is in business and his place of business is in B, section 41 of the act makes provision for the mode of assessing his personality.

Impounding Cattle—Running at Large.

453.—T. W. T.—A and B own farms joining one another, and situated or being in the incorporated village of W. A's cattle break into B's field (from their owner's field,) B drives said cattle to the village pound. B afterwards accepts one dollar for damages. The council for 1898 passed a by-law restraining certain animals from running at large within the village, with schedule of fines and a copy of which was given to pound-keeper who imposes a fine on A, for breaching cattle as given in schedule, that is \$1 per head.

1. Would the by-law cover the case where cattle break into another man's field from his own field?

2. Can pound-keeper charge fines and fees mentioned in schedule attached to by-law?

3. Has the council power to act on this case, as by-law says all horses, cattle, etc., shall be impounded when found running at large?

4. Would the cattle breaking out of their own field into a neighbor's field be running at large or would statutes apply in this case. R. S. O., chap. 272, section 20, 1897?

COPY OF BY-LAW NO. 6, 1898.

Being a by-law to restrain certain animals from running at large in the village of Arkona, county of Lambton.

The municipal council of the said village of Arkona, in council assembled enacts as follows.

And it is hereby enacted,

1. That no cattle, horses, mules, asses, hogs, pigs or sheep shall be allowed to run at large in the village of Arkona at any season of the year.

2. That any of the above mentioned animals found running at large in the village of Arkona shall be impounded by the person hereafter appointed for the purpose by the council, or any other person or persons may impound such cattle.

3. It shall be the duty of the pound-keeper to provide sufficient yards and enclosures for the safe-keeping of such animals as it may be his

duty to impound and to properly feed and water the same, and his fees for impounding of said animals shall be the amount stated in the annexed schedule.

4. And it is further enacted that, Hugh Ross be and is hereby appointed to drive all animals to pound that may be found running at large within the village. Any other person or persons are empowered to impound all such animals running at large and they shall be entitled to receive such fees as are mentioned in the schedule.

1. Yes.

2. Yes.

3. The council has nothing to do in the matter. It is a question to be settled by the owner of the animal, the party impounding, and the pound keeper themselves.

4. Yes.

Opening and Closing Streets Across Railways.

454.—A. O.—Some years ago the G. T. railway purchased the right to close certain streets and roads and the privilege of substituting others in their place, and in accordance with the agreement made, the council passed a by-law closing such streets and opening the new ones; but there are some streets not mentioned in the by-law specifically. Now we want to know if those streets have been closed for ever, or could they be opened across the railway. They would be level crossings. The portion of the municipality in which the said streets are situated was at the time surveyed into village lots.

The power to open a highway or establish a crossing over the line of a railway company is wholly vested by statute in the railway committee of the Privy Council. Your council should, therefore cause the necessary application to be made to the above committee requesting them to take steps to accomplish what you desire.

Assuming that Catherine street was in existence before the railway was constructed the railway company cannot prevent the public from using the street. We cannot understand why there should be any difficulty in the matter, if the company refuse to allow the public to use it, your course is to apply to the railway committee of the Privy Council.

Not Necessary to Register Payment of Debenture.

455.—SUBSCRIBER.—When a public school or a municipal debenture debt is paid in full should a discharge be filed in the registry office of the county or district?

No.

Nomination and Election Days.

456.—A SUBSCRIBER, ONTARIO.—1. On what date will the municipal nominations be held this year for townships not divided into wards?

2. Also the date for the same municipal elections to be held?

1. Since this year, the last Monday in December will be Christmas Day, municipal nominations will be held on the previous Friday, (the 22nd December.) See sections 119 and 124 of the Municipal Act. If the council of your county has passed a by-law under section 125 of the Act, the day for holding the nomination will be Monday, the 11th December next.

2. On Monday the first day of January, A. D. 1900. See section 95 of the Municipal Act.

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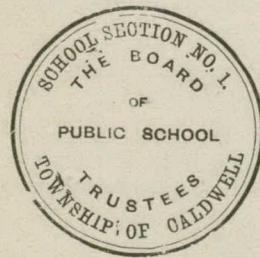


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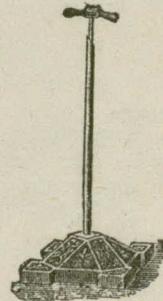
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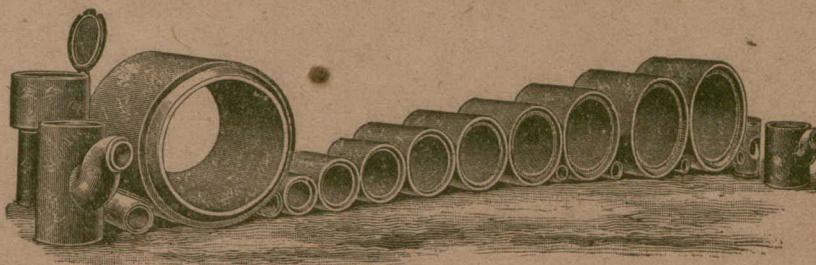
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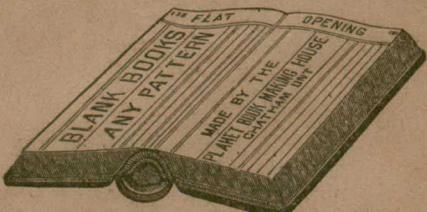
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