

THE MUNICIPAL WORLD

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- MAY
2. Last day for treasurers to furnish Bureau of Industries, on form furnished by Department, statistics regarding finances of their municipalities.—Municipal Act, section 293.
 - County treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
 3. Arbor Day.
 5. Make returns of deaths by contagious diseases registered during April.
 15. Last day for issuing Tavern and Shop Licenses.—Liquor License Act Section 8.
 - Contents of earth closets to be removed on or before this date. — Public Health Act, Schedule B, Rule 2, of Section 14.
 23. Empire Day.
 24. [REDACTED]
 31. Assessors to settle basis of taxation in Union School Sections. — Public Schools Act, section 51 (1.)
- JUNE
1. Public and Separate School Boards to appoint representatives on the High School Entrance Examination Board of Examiners. High Schools Act, Section 39 (2).
 - By-law to alter School Boundaries, last day for passing. — Public Schools Act, Section 38 (3).
 20. Earliest date upon which Statute Labor is to be performed in unincorporated Townships.—Assessment Act, Section 122.

NOTICE.

The publisher desires to ensure the regular and prompt delivery of THE WORLD to every subscriber, and requests that any cause of complaint in this particular be reported at once at the office of publication. Subscribers who may change their address should also give prompt notice of same, and in doing so should give both the old and new address.

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The Municipal World

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K. W. McKAY, EDITOR,

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

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ST. THOMAS. MAY 1, 1901.

Mr. Frank M. Yarnold, clerk of Port Perry, died last month, and was succeeded by Mr. W. H. Harris, barrister, of that place.

A petition has been presented to the county council from residents of North Oxford and Ingersoll, asking that steps be taken in accordance with the act of the legislature just passed at its recent session to abolish toll roads in the two municipalities.

Mr. Andrew Patullo, M. P. P., of Woodstock, and Mr. Archibald Campbell, Deputy-Commissioner of Public Works, accepted an invitation to attend and speak at the Southern Convention of the National Good Roads Association, at New Orleans, on April 29th and 30th. President McKinley and his Cabinet attended, and addressed the convention. The two Canadians were the guests of the association throughout their trip.

A recent decision by Mr. Justice Strong places Toronto council in rather an unenviable position. It appears that some years ago the city council acquired land from the Grand Trunk railway for the purpose of making a public highway into the lower part of Union Station, on the express promise that they would not designate any part of it as a stand for cabs or express wagons, and then, having obtained the property and laid out the highway upon it, they proceeded to declare the whole street a stand, in defiance of the known objection of the other parties to the contract. These facts were clearly established and formed part of his Lordship's finding, and he quashed the by-law passed by the city council, and issued an injunction restraining them from passing another by law.

The amendments to the Ontario Shops Regulation Act, impose a penalty on owners of shops or factories for neglecting to provide sanitary conveniences. It also repeals section 39 of said Act, and substitutes another in its regulating hours of labor in bakeshops on Sunday. The bill likewise adds a new section to said Act, making it an offence, punishable by fine, for an employer or owner of a barber shop to do work or allow work in his shop on Sunday. All such shops must close on Saturday not later than twelve o'clock at night, under a penalty of not less than \$20, or more than \$50. Bakers and barbers must respect the sanctity of the Sabbath.—Ontario Reformer.

The *Weekly Sun* has the following to say about the recent "scrap-iron" legislation: "One of the principal events at the legislature, recently, was the withdrawal by the government of the bill which provided that street railway, telegraph, telephone, gas and other companies should be assessed and pay taxes upon their full value. These concerns are now assessed not at their real value, but for what the rails, wires, etc., would bring if they were torn up and sold at a junk shop. As a substitute for this bill the government introduced a measure which provides that these concerns shall be assessed, not piecemeal in the different wards of a city or town, but in one block. All the companies, railway, gas, water and others were strong in their opposition to the bill. They vigorously objected to being assessed on the actual value of their property, and persisted upon their iron and steel being assessed at its value as "scrap" or waste.

"Municipal ownership of street railways is gaining ground greatly in Europe," writes the United States consul in Zurich, Switzerland. It seems that in Zurich most of the lines are owned by the municipality, and those that are not are soon to be acquired. Although the lines are constructed very expensively, and soft coal costs from \$6.37 to \$7.72 a ton, yet the fare charged on the street railway is but a shade over two cents a ride when tickets are purchased. There are twenty-five miles of municipal tracks in Zurich. They have no poles to disfigure the streets in that city, as the trolley wires are almost invariably fastened to the houses on each side of the streets, a special sound-breaker being used to prevent the transmission of sounds in the buildings. Where houses could not be used tubular steel poles are set up, which are also made use of for gas or electric lights.

The township of Markham, a short time ago, began proceedings against one James Boyd, of Cedar Grove, for unlawfully cutting and removing timber off the highway. The complainants put in a resolution passed by the township of Markham, in April 1860, wherein a grant of forty dollars was made to open up the eleventh concession from lots one to five, and

Messrs. William Lapp, Samuel Reesor and Samuel Shank were appointed commissioners. The minutes were signed by David Reesor, reeve, and George Eakin, clerk. Squire Wilson, in dismissing the case, said "there was no doubt but old Squire Boyd had purchased the timber from the commissioners when the road was opened, but whether a time limit was set for its removal or not, or whether the trees cut by the defendant had grown up since it was impossible to tell. The case was a trivial one, in any event, as the trees cut were shown to be dead and of little value. They dismissed the case with costs \$10.33, against the township.

The following from *The Mail and Empire*, would indicate a very unsatisfactory and deplorable state of affairs. It affords ample proof of the fact that party politics and municipal councils should be total strangers to each other:

"Since the municipal elections in January last, the city council, being evenly divided politically, has been at a dead-lock over the appointment of committees. None have, as yet, been appointed, and all appropriations for cleaning the streets and other public works have been voted down, and almost the entire work of the city has been at a standstill. The matter has become so serious that a petition was circulated and signed by almost all the merchants and business men of the city calling upon the mayor and aldermen to resign their positions. The request is drawn up as follows:

"We, the undersigned ratepayers of St. Catharines, believing the city's interests to be neglected, do hereby ask you to call a special meeting of the council, and that the mayor and council do resign in a body."

The Board of Health have taken the matter up, and notified the mayor that if the streets are not cleaned immediately they will have the work done under authority vested in them."

Publications Received.

Municipal Accounting, by F. H. MacPherson, C. A., Windsor.

This is a neat little volume that will be appreciated by municipal clerks, treasurers and waterworks officials. It contains a comprehensive treatise on the subject of Municipal Accounts, illustrated by specimens of improved forms of books and reports; it also includes sinking fund and debenture instalment, or annuity tables, for terms of two to thirty years, at rates of interest from two to six per cent. These are not published in any other form, and are alone worth more than the price, which has been fixed at \$3. Orders may be sent to the publisher, or to this office.

Money to Loan on gilt-edged real estate security, or to purchase small lots of Municipal Debentures. Apply, stating particulars, to The Municipal World Office, St. Thomas.

Municipal Officers of Ontario.

Clerk of the Township of Plantagenet.

Mr. Viau was born in the township of North Plantagenet in 1867.



MR. D. M. VIAU.

He was educated at the public schools in his neighborhood, and, at the county Model School. He carried on farming and lumbering for a number of years and taught school from 1891 to 1900, in which year he was appointed clerk. He is a so clerk of the division court.

Clerk of the Township of Collingwood and Thornbury.

Major Rorke is of Irish parentage and was born in the county of Sim-



MR. ED. RORKE.

coe. He was educated at the public schools. He was appointed clerk of the township of Collingwood in 1876 and of the town of Thornbury in 1886 and has been an active member of the militia for over thirty years.

Clerk of the Town of Collingwood.

Mr. Duncan was born in Waterloo, N.Y., in the year 1852. His family afterwards moved to Canada and settled at Cobourg. He was educated at the public schools, and learned the trade of tinsmith. He worked at his trade at Buffalo, Pittsburg and



MR. J. H. DUNCAN.

other places, and returned to Canada in 1871, finally settling in Collingwood. He was chairman of the property committee of the public school board for three years, and a member of the council from 1888 to 1897. He was appointed clerk in 1901. Mr. Duncan is Chief of the Sons of Scotland.

Clerk of the Township of Tiny.

Mr. Beaudoin was born in 1864 in the township of Tiny and was educated at a public school in that township. He was appointed postmaster at

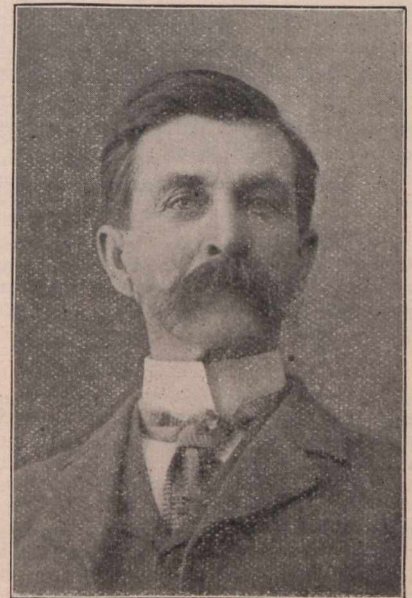
Lafontaine in 1886 and started a general store there. He was assessor and collector from 1894 to 1899 when he was appointed clerk. He is also local manager for the Bell Telephone Company and secretary and salesman for the Lafontaine creamery.



MR. M. BEAUDOIN.

Clerk of the Township of Dalton.

Mr. Alex. Montgomery was born near the town of Freemantle, Australia, in the year 1845. In 1848, he came, with his family, to the township of Whitby, and moved to the township of Dalton in 1868, when it was a wilderness. He was appointed clerk of the township in 1887. He is, at present, engaged in farming and ranching, and is also agent for the Massey-Harris Company.



MR. ALEX. MONTGOMERY.

Municipal Legislation, 1901.



An Act Authorizing Municipal Grants for the Reception of Their Royal Highnesses, the Duke and Duchess of Cornwall and York.

1. Any municipal council within the province may include in their estimates, and expend such sums as may be deemed prudent in giving a fitting reception to Their Royal Highnesses, the Duke and Duchess of Cornwall and York, upon their visit to Canada during the year 1901, or as soon thereafter as the said visit may be made, and such expenditures are hereby made legal and valid.

A Million for Good Roads.

There has been much speculation as to the form the new Highway Bill would take appropriating \$1,000,000 of the Provincial surplus to be expended for good roads. The government has not moved hastily in the matter and the bill has received mature consideration from the entire House. A special committee was appointed, during the last session of the legislature, to take evidence and consider the bill as first introduced by the Premier, and while some minor changes have been made, in the main, the Act is still very much in its original form. A careful consideration will show that the new Act has great merit, every clause being marked with liberality. It provides for assistance to both county and township municipalities, and as to whether any of these will comply with the conditions necessary to receive the grant is entirely in the hands of a majority of the people. The amount appropriated is substantial and only sufficient restrictions are placed to secure durable results and guard against extravagance. The bill, which will repay careful study, is as follows:

AN ACT FOR THE IMPROVEMENT OF PUBLIC HIGHWAYS.

1. The sum of \$1,000,000 is hereby set apart to be paid out of the Consolidated Revenue Fund of the Province to aid in the improvement of public highways, subject to the terms and conditions hereinafter set forth.

PROCEEDINGS FOR COUNTY CONTROL.

2.—(1) The highways to be improved in any county may, before the 1st day of January, 1903, be designated by by-law of the county council, and a copy of such by-law shall be transmitted forthwith to the clerks of the townships of such county.

(2) The municipal councils of the townships shall, within three months of the receipt of such notice from the clerk of the county council, take into consideration the highways so designated in said by-law, and shall report their acceptance or rejection of the same to the clerk of the county council.

(3) On receipt of such reports by the clerk of the county council from the clerks of the township councils in the county, if it should appear that one-third of the township councils are adverse to the highways designated by the county council as county highways, then the roads within such townships as reported adversely, which are to form part of the county highway system of such township, shall be determined by arbitration, as provided in *The Municipal Act*.

(4) Where it appears that more than one-third of the township councils disapprove of the system of highways designated in the by-law submitted by the county council, the county council shall then submit to the ratepayers of the county, qualified to vote on money by-laws, the question, "Are you in favor of a county road system?" If a majority of the votes cast is in favor of a county road system, the roads to be designated and assumed within any township, the council of which disapproved of the roads designated by the county council, shall be determined by arbitration, as provided in *The Municipal Act*.

3. Before the final passing of a by-law by a county council, designating and assuming roads as provided in sub-sections (1), (2) and (3) of the next preceding section, the county council may submit the same for the approval of a majority of the ratepayers of the county qualified to vote on money by-laws.

WHEN GRANT PAYABLE TO TOWNSHIPS.

4. In case the by-law or question so submitted fails to receive the assent of a majority of the ratepayers of the whole county so voting, or the county council neglects to take action, as provided in section 2, then the council of any local municipality in the county may, on or before first of January, 1904, pass a by-law, designating the roads within such local municipality to be improved, but no by-law for the improvement of roads in any municipality shall take effect until such by-law is approved by a majority of the ratepayers of such municipality in the manner provided by *The Municipal Act* with respect to by-laws for the creation of debts.

TOLL-ROADS.

5. Any municipality may apply the whole or part of the moneys, to which it may be entitled under this Act, towards paying any expenses that may be incurred for the purchase of toll-roads within such municipality, or for freeing the same from tolls. Such toll-roads as are purchased shall be included in the roads to be designated and assumed or improved in accordance with the provisions of this Act.

ROAD MILEAGE AND CONSTRUCTION.

6. Any highway, in order to come under the provisions of this Act as to aid, shall be constructed or repaired according to the regulations of the Public Works Department with respect to highways.

7. The road mileage to be designated and assumed in accordance with this Act shall, as nearly as practicable be in proportion to the assessed area of each township and county, provided always that no township or county shall receive, out of the said sum of \$1,000,000, more than the sum to which it is entitled under this Act.

8. On the completion of any work of road improvement under this Act, the council of the municipality under which such work was carried on, shall submit to the Public Works Department a statement setting forth the cost of such work, such statement to be certified by a competent engineer, who shall further certify that the regulations of the Public Works Department have been complied with, and on

the receipt of said statement by the Provincial Treasurer, certified and approved by the proper officer of the Public Works Department, the municipality shall be entitled to receive, out of the monies hereby set apart for public highways an amount equal to one-third of the cost of the work, but not to exceed the proportion of the appropriation to which such municipality is entitled.

LIMIT OF DEBENTURE ISSUE.

9. The municipal council of any township or county taking advantage of this Act may raise by debentures, payable in twenty years, as provided by *The Municipal Act*, such sums of money as may be necessary to meet any expenditure on highways under this Act, but in no case shall the debentures, issued under this Act, exceed two per cent. of the equalized assessment of the county.

STATUTE LABOR TO BE COMMUTED.

10. The statute labor, for which all lands fronting on roads constructed or repaired under this Act, may, from year to year, be liable, may be commuted and may be applied towards the improvement of the other highways of the municipality as may be determined by the township councils concerned.

11. In the case of any township receiving grants from the consolidated revenues of the Province for colonization roads, the amount of such colonization grants shall be deducted from any sum of money to which such township is entitled under this Act.

12. Where any township has been in receipt of grants for colonization roads out of the consolidated revenue fund, for the five years previous to the date of this Act, the assessed area of such township shall be deducted from the area of the county in which such township is situated, in determining the sum to which the county is entitled under this Act.

Toll Gates to be Abolished.

For some years there has been a general agitation throughout the province for the abolition of toll gates. Municipal authorities have had power to deal with the matter, but many toll roads still exist. The Honorable G. W. Ross, believing that travel on all highways should be free, brought in a bill during the recent session of the legislature making the purchase of toll roads compulsory, when the ratepayers of the municipalities interested petition the municipal authorities to take the necessary proceedings. The prices to be paid for the roads are to be determined by arbitration and the purchase money may be paid by a county, a portion of a county or a township, and, if the municipal authorities cannot agree on any of these plans, they may continue the tolls until the amount required to pay for the road has been collected, but not for a longer term than ten years.

AN ACT TO FACILITATE THE PURCHASE OF TOLL ROADS BY MUNICIPALITIES.

1. This Act may be cited as "*The Toll Roads Expropriation Act, 1901.*"

2. Where the words following occur in this Act, they shall be construed in the manner hereinafter mentioned unless a contrary intention appears:

1. "Owner" or "owners" besides including any person or persons, in whom the legal and equitable estates are vested shall also include any joint stock company as well as any municipality."

2. "Road or "roads" shall include any parcel of land or franchise respecting or any easement in any land, and also any toll houses or other buildings erected thereon or used therewith. R. S. O., 1897, chapter 239, section 2.

3. The municipal corporation of any township or of any county may agree with the owners or lessees of any road as to the amount to be paid in order that tolls on such road may be abolished, but in the event of their failing so to agree, the same shall be determined by arbitration as hereinafter provided.

PETITION TO COUNCIL.

4. Where a toll road owned by a person or corporation lies wholly within one township, the municipal council shall, within three months after the receipt by the clerk of the municipality of a petition signed by fifty ratepayers by by-law, appoint an arbitrator for the purposes of this Act. Where such road lies within two or more municipalities of the same county the municipal council of the county shall, within two months after the receipt of a petition from each of the municipalities concerned, signed by at least fifty ratepayers of each of such municipalities by by-law, appoint an arbitrator for the purposes of this Act.

APPOINTMENT OF ARBITRATORS.

5. On the appointment of an arbitrator, as hereinbefore mentioned, either by a township or by a county, the clerk of the township or of the county, as the case may be, shall notify the owners of the road of such appointment. On the receipt of such notice, the owners of such road may appoint an arbitrator and, in default of their doing so within twenty-one days of the receipt of such notice, the judge of the county court shall appoint an arbitrator to act in their behalf. The two arbitrators, so appointed, shall, within seven days of the appointment of the last person appointed, meet and appoint a third arbitrator, and, in default of their doing so from any cause, then the judge of the county court shall *ex officio* act as a third arbitrator.

6. No member, officer or person in the employment of any corporation which is concerned or interested in any arbitration, nor any person so interested shall be appointed or act as an arbitrator in any cases of arbitration under this Act; but nothing in this section contained, shall prevent the appointment of or disqualify as an arbitrator any person by reason merely, that such person is a ratepayer of or within any municipality concerned or interested in the arbitration.

PROCEEDINGS OF ARBITRATORS.

7. Sections 9 to 12, 15, 17 to 27, and 40 to 44 of *The Arbitration Act*, shall apply to arbitrators appointed under this Act and to arbitrators thereunder.

8.—(1). For the purpose of ascertaining and determining the prices to be paid for any toll road the arbitrators may agree with the owners as to the price and terms of payment.

(2). If the arbitrators and owners are unable to agree, the prices to be paid shall be determined by the arbitrators in the manner provided for by *The Act respecting the Public Works of Ontario* and all the provisions of the said Act in regard to the mode of determining compensation to be paid for lands or other property or rights to be acquired by the Commissioner of Public Works shall apply as nearly as may be in determining the compensation to be paid for roads or rights to be acquired for the purposes of this Act, but, in lieu of making any tender, the arbitrators may name a price which they are willing to fix as the price to be paid, and notice thereof to the owners shall stand in lieu of a tender. The compensation agreed to or awarded as aforesaid shall be the price to be paid for the roads or rights described in the agreement or award, in case the same are taken under this Act, within one year after such valuation or award has been made or after such price has been agreed upon.

(3). The arbitrators may examine the toll roads held or owned by any person, company or minor municipality for which they are appointed and for that purpose shall have power to travel over, measure, dig into and otherwise examine, such roads as they may deem necessary.

(4). The said arbitrators shall also have power to examine all books and records connected with the management of any such road or roads and may require any owner or owners to produce the same for the purpose of being examined, and shall also have power to examine any person or persons under oath relative to the value, cost, income or expenditure, or net profit of any such road or roads, and in case any person shall refuse to testify or refuse to produce such books or records, he or they shall be punished for contempt of court in the manner provided for such cases in the courts of law.

(5). If the person or company owning the roads could not, without this Act, have conveyed the same or agreed for the compensation to be paid therefor, or if any owner or party to whom the compensation money, or any part thereof, is payable, refuses to execute the proper conveyance or other requisite instrument of transfer of the roads, or if the person entitled to claim the compensation cannot be found, or is unknown, or if there is reason to fear any claim or incumbrance the compensation money agreed upon or awarded may be paid into the High Court of Justice and a copy of the conveyance or of the agreement or award, if there be no conveyance, verified by affidavit, shall be delivered to the accountant or other proper officer of the court.

(6). The compensation money for any roads acquired or taken under this Act without the consent of the proprietor or proprietors, shall stand in the stead of such roads, and any claim or encumbrance upon such roads shall be converted into a claim to the compensation money or to a proportionate amount thereof, and shall be unavailing as respects the roads themselves.

(7). Possession shall not be taken of any part of any road valued as aforesaid until the amount agreed on or awarded for the same has been paid to the company or owner, or to the persons appearing to be entitled to receive it, or has been paid into court under the provisions of this Act.

(8). If the road is not taken and paid for within one year as aforesaid, the owner shall be entitled to receive from the municipality concerned, the costs to which he has been put in any proceedings taken for determining by arbitration the value of such road; the amount of such costs shall be stated in the award of the arbitrators, whether the arbitrators direct that the party shall be entitled to such costs in the event of the road being purchased, or direct otherwise.

(9). Subject to the provisions of the preceding section the arbitrators shall have full authority to determine by and to whom any costs incurred in connection with any arbitration shall be paid, but any costs which should be paid by an owner shall be directed by the award to be paid to the treasurer of the township or county; the award as to costs shall not take effect until the road is purchased, and if any costs are directed to be paid to the said treasurer by any owner the same shall be deducted from the price of the road.

(10). The award of the arbitrators shall become final and absolute at the expiration of thirty days from the filing thereof with the clerk of the county or township, as the case may be, but the court or a judge may, under special circumstances, allow an appeal after fourteen days to the High Court of Justice, and such appeal may be heard before a judge sitting in court, as appeals from the Master are heard, and the judge may, upon the appeal, either amend the said award in any way and to any extent that he may deem proper, or refer the same back to the arbitrators for amendment in whole or in part, with such directions as to law or fact as he may deem proper, or he may confirm the same.

DEBENTURES FOR PURCHASE MONEY.

9. After the award of the arbitrators has become absolute or settled on appeal, the township or county council, as the case may be, may, in the manner provided for in *The Municipal Act*, pass a by-law, for borrowing the amount required to purchase the said roads, in accordance with the award of the arbitrators, by the issue of debentures of the municipality, payable in not more than twenty years. The county council may provide, by such by-law, for raising any amount required to pay and may pay to any municipality or municipalities which are not materially or only slightly benefited by the purchase of the road or roads, such a sum, by way of bonus, as may be deemed a fair or partial equivalent for the amount which such municipalities will be required to pay towards the said purchase or any part thereof.

10. In the alternative, where the roads to be purchased or taken are situate in but one or in a small number of the municipalities of the county, or where some of the municipalities are not, in the opinion of the arbitrators, interested in the roads, or in the abolition of the tolls, the arbitrators may, in addition to all other matters hereinbefore mentioned, report whether, in their opinion, the by-law of the county council should be a sectional by-law, and applied to such of the municipalities as, in the opinion of the arbitrators, should pay for the roads. In such case the by-law of the council for raising or providing money for the purchase next hereinbefore mentioned, may, if the council think proper, name the municipalities or portions of municipalities which shall be liable to repay to the county the amount paid for the purchase of the roads or abolition of tolls as aforesaid, and may also fix the amount for which each said municipality shall be liable. In adopting a by-law under this section the council may provide a bonus, as in the last preceding section, if they think proper.

11. The County Clerk shall, on or before the 31st day of December in each year, send to the clerk of each municipality interested, a written statement of the amount to be levied during the ensuing year by such municipality for the purpose of providing the amount necessary to meet the said annual payments of principal and interest, and the council of said municipality shall levy such amount accordingly.

TOLLS MAY BE CONTINUED.

12. Instead of raising by taxation for the repayment of debentures the full amount of the purchase money of any toll road, as in the preceding section mentioned, the council of any township or county may defer the abolition of tolls for a period of not more than ten years, and may apply the proceeds of such tolls *pro tanto* towards the payment of such debentures, but in all such cases the municipality or municipalities interested, as may be set forth in the by-law to that effect, shall maintain such road out of the general taxation on the assessed property of the municipality.

13. Where a toll road is owned by the township within which it is situated, the council of the township shall, within three months after the receipt of a petition signed by fifty ratepayers, pass a by-law fixing a date when the collection of tolls shall cease, said date not to be more than ten years from the passing of such by-law. Such by-law may be submitted to the ratepayers for approval as the council may deem expedient.

14. Where a municipal council has passed a by-law for the abolition of tolls as in the preceding sections mentioned, all tolls thereafter collected shall be paid over monthly to the treasurer of the municipality, and shall be applied to the maintenance of roads within the municipality as the council may by by-law direct.

15. On the completion of the purchase of the roads by any county, and, upon the removal of tolls therefrom, all tolls shall be removed from the roads owned by any city or town within such county within the limits of such city or

town. Upon the removal of the tolls from any road under this Act, the responsibility of thereafter maintaining and keeping the same in repair shall rest upon the local or minor municipalities through which the same pass as in the case of ordinary highways.

16. Section 34 of *The General Road Companies Act* is hereby repealed and the following substituted in lieu thereof:

34. All municipal authorities representing the interests of the locality, through or along the boundary of which any toll road passes, shall set apart as a fund for the purchase of such road all taxes collected from such road company and all dividends received on the stock of the same, which may be owned by such municipality; and such municipalities and all cities, towns and villages, within three miles of said road, may add to such purchase fund from the other monies of the municipality; and such fund may be invested from time to time in the stock of such road company, or where such road is not owned by a company in purchasing a fixed interest therein, on the completion of the purchase of the whole of the stock of said company by the municipality or municipalities, and payment of any debt incurred therefor, or sooner if the council of the municipality or municipalities shall so decide, all gates shall be removed from such toll road.

17. Chapter 239 of the Revised Statutes of Ontario, 1897, is repealed.

The Municipal Amendment Act.

The amendments to this Act are somewhat numerous, but are not particularly important. A great many others were considered during the session, but owing to the rush of business and for want of sufficient information in reference thereto, they were not included. The more important amendments refer to the separation of farm lands from cities, towns and villages. When in cities or separated towns, application to the Lieutenant-Governor-in-Council is necessary. When in other towns and villages, the county council has jurisdiction. Provision is made for the return to the ward system in cities and towns, and separate ballots will now be used when aldermen or councillors are elected by general vote. One man, one vote, will be the rule hereafter in all municipalities. A new system for filling vacancies in councils forms the subject of a somewhat extended section, and the method of procedure for county valuers is suggested. The time in which debentures to purchase public works may be issued is fixed, and Local Improvement by-laws may include several works. Town and city councils may pass by-laws to regulate the use of bicycles and motor vehicles, and may provide for the inspection of electric wires. By-laws may be hereafter passed to prohibit immoral plays in theatres, and the traffic on narrow streets may be regulated. Bread may be sold in any sized loaf providing a label showing the weight is attached thereto. Laundries may be licensed, and dealing in trading stamps may be prohibited. Municipal regulations may include the use of tickets, cheques and coupons by dealers in milk, bread or other foods. Local improvement notices may include any number of works, and sewers may be constructed by either a special or a frontage

rate. Consumption hospitals may be established, and plank sidewalks may be laid, under the local improvement system, without notices. Railway bonus by-laws may provide for the issue of debentures on equal annual payment plan. When a prosecution is brought by a member of the police court, or an employe of the municipal corporation, the pecuniary compensation is to be paid to the corporation, and the rights of gas companies are preserved, notwithstanding the provisions of the Municipal Amendment Act of 1899.

The Act as passed reads as follows:

SEPARATION OF FARM LANDS FROM CITIES, TOWNS AND VILLAGES.

1. Section 17 of *The Municipal Act* is amended by striking out the words "town or village," in the first and second lines, and inserting in lieu thereof the words, "or town separated from the county for municipal purposes," and by striking out the words "town or village," in the fifth and eighth lines, and inserting in lieu thereof the words "or town."

2. Section 18 of the said Act is repealed and the following substituted therefor:

18. (1) Upon the application of the council of any town or incorporated village or of such number of the owners of any lands therein wholly used for farming purposes as shall represent at least one-half of the amount of the assessed value of all lands included within the limits or area proposed to be withdrawn from such town or village the council of the county in which such town or village is situated may, in their discretion, but subject as hereinafter mentioned by by-law, reduce the area of such town or village and may exclude and detach such farming lands or any portion thereof or any lands situate outside the new limits to be defined by such by-law from the said town or village and annex the same to some adjoining municipality.

(2) The by-law of the county council shall provide that such reduction of area and detachment or separation of farm lands where the council of the town or village, as the case may be, opposes the same shall be submitted to and be subject to the award of the arbitrators in sub-section (4) hereof mentioned, who, by their award, may approve of, modify or vary, or entirely reject the proposed reduction of area and detachment or separation of farm lands and in the event of entire rejection by the award of the said arbitrators no further proceedings shall be taken under the said by-law and the same shall have no effect.

(3) The said by-law of the county council shall further provide that in the event of the proposed reduction of area and detachment and separation of farm lands not being entirely rejected by the arbitrators, but by their decision taking effect in whole or part, the terms and conditions of such separation and the adjustment of assets and liabilities with respect to the lands so separated between the municipal corporation of such town or village and the municipality to which such lands shall be annexed shall, in default of an agreement being arrived at within one month after the passing of the by-law by the county council, be submitted to the said arbitrators, who shall award the amount to be paid to the town or village from which such lands have been taken by the municipality to which they have been annexed and the amounts to be received by such last mentioned municipality from the town or village, together with such other terms and conditions as the said arbitrators may impose.

(4) One of the said arbitrators shall be appointed by the county council and named in the said by-law; another shall be named by the council of the town or village and the county judge shall be the third arbitrator, and the

award of the said arbitrators, or a majority of them, shall be final and binding.

(5) The fees of the arbitrators, including the cost of the award, shall not in any case exceed \$75, and shall be paid by the county and the town or village municipality in equal shares.

(6) After the separation of such lands from the town or village, the municipality to which the same shall be annexed shall pay to the town or village from which such lands have been taken such part, if any, of the debts of the town or village as may have been agreed upon or determined by arbitration, and shall be entitled to receive from and be paid by the said town or village the value of the interest which, at the time of such separation, the lands so separated had in the property or assets of the town or village as hereinbefore provided.

(7) The by-law shall define by metes and bounds the new limits intended for such town or village, but the town or village shall not by such change of boundaries be reduced in population below the number of 750 souls, nor in limits or area below the proportionate limits prescribed by this Act.

(8) The municipal privileges and rights of the town or village shall not be thereby diminished or otherwise interfered with as respects the remaining area thereof.

(9) This section shall not apply to any town which is separated from the county for municipal purposes nor to any town incorporated as such town since the 15th day of August, 1866.

3. Subsection 2 of section 71a of *The Municipal Act* enacted by section 2 of *The Municipal Amendment Act, 1898*, is hereby amended by adding after the words "provisions of" in the second line thereof, the words "subsection 1."

WHEN CITIES AND TOWNS MAY RETURN TO THE WARD SYSTEM.

4. The said section, 71a, is further amended by adding thereto the following subsection:

(3a) "At any time after two annual elections have been held under the provisions of sub-section (3) of this section, the council of the town or city may, and upon the petition of twenty per cent. of the electors shall, at the time of holding an annual election, submit a by-law providing for the election of aldermen or councillors by wards, as provided in section 71 of this Act. If the said by-law shall receive the assent of a majority of the electors voting thereon, the council shall thereafter, so long as the said by-law remains in force, be annually elected as provided in section 71 of this Act. The proceedings in regard to the submission of any such by-law both as to its enactment and repeal shall be as provided in this Act in regard to by-laws requiring the assent of the electors."

5. Subsection (4a) of the said section, 71a, is amended by striking out the word "later" in the twentieth line of said subsection and inserting the word "sooner" instead thereof.

6. Section 119 of the said Act is amended by striking out the word "town" in the sixth line thereof.

FORM OF BALLOT PAPERS.

7. Subsection 2 of section 140 of the said Act is repealed and the following substituted therefor:

(2. In the case of cities and towns where the aldermen or councillors are elected by general vote or in two electoral divisions one kind or set of ballot-papers shall be prepared for all the polling subdivisions containing the names of the candidates for mayor, and another kind or set shall be prepared for all the polling subdivisions of the city or town or of each electoral division containing the names of the candidates for aldermen or councillors, as the case may be, in the city or town, or electoral division, and the forms of ballot papers contained in schedule "A" to this Act shall be adapted to the foregoing provisions.

COUNTY COUNCIL BALLOTS TO BE FORWARDED

TWO DAYS BEFORE POLLING DAY.

8. Section 142 of the said Act is amended by inserting the words "two days" after the word "and" in the fifth line of the said section.

NUMBER OF VOTES AT MUNICIPAL ELECTIONS.

9. Section 6 of *The Municipal Amendment Act, 1900*, is repealed and *The Municipal Act* is amended by inserting therein after section 158 the following section:

158a. In towns and cities where the councillors or aldermen are elected by general vote every elector shall be limited to one vote for the mayor and one vote for each councillor or alderman to be elected for the town or city, and shall vote at the polling place of the polling subdivision in which he is a resident, if qualified to vote therein; or when he is a non-resident or is not entitled to vote in the polling-subdivision where he resides, then where he first votes, and there only; and in cities where the aldermen are elected in two electoral divisions every elector shall be limited to one vote for mayor and to one vote for each alderman to be elected in each electoral division in which he has been rated for the necessary property qualification and shall vote in the manner hereinbefore prescribed.

10. Section 159 of the said Act is amended by inserting after the word "wards" in the third line thereof the following words "nor more than once in the township though the township is divided into wards where the election is for the township at large by a general vote."

ONE AGENT AT ELECTIONS IN CITIES.

11. The said Act is amended by adding after section 175 the following section:

175a. In cities where the aldermen are elected by general vote or in two electoral divisions, not more than one agent of any candidate shall be entitled to be present at the same time in any polling place during the voting or at the counting of the votes.

FILLING VACANCIES IN CITY COUNCILS.

12. The said Act is amended by inserting after section 215 the following section:

215a (1) In case of a vacancy in the office of alderman, in a city occasioned by death or resignation or by any cause where the aldermen are elected by a general vote, the unsuccessful candidate, who received the highest number of votes at the last municipal election, shall be entitled to the office upon taking the requisite oath of qualification within the time hereinafter prescribed, and, in the event of his failure to do so, or upon his disclaiming the office, one of the candidates, following in regular order as to the number of votes received, shall, in manner hereinafter provided, become entitled to the office on taking the requisite oath of qualification within the time hereinafter limited. In case of a tie in the number of votes cast for two or more of such candidates their order of succession shall be determined by the amounts for which they are respectively rated upon the last revised assessment roll, the candidate having the largest assessment to have the priority. When any such vacancy occurs in the office of alderman, it shall be the duty of the city clerk to give immediate notice in writing to the candidate, who stands first in succession, that he is entitled to such vacant office if he takes the requisite oath of qualification within one week after the giving of such notice, and if such candidate shall fail to take the oath within that period he shall be deemed to have disclaimed the office. If any candidate disclaims or fails to take the requisite oath within the time so limited, the clerk shall give immediate notice in writing to the candidate next in succession in the same terms as the notice to the first candidate until the vacant office has been filled or the list of candidates entitled to take it exhausted. The notice in writing to be given by the city clerk to candi-

dates under this section may be served personally, or by registered letter, addressed to the candidate, and a record of such service, or of such mailing and of the address of the letter containing the notice shall be preserved by the clerk.

(2) If all the aldermen have been elected by acclamation or no candidate takes the vacant office under provisions contained in the last preceding section the council shall immediately after the time for filling the vacancy under said section has expired, elect one alderman to fill such vacancy for the remainder of the term of the member whose seat has become vacant.

METHOD OF VALUING BY COUNTY VALUATORS

13. Section 310 of the said Act is amended by adding thereto the following as sub-section 3.

3. When valuers have been appointed under this section, the said valuers may ascertain the value of the said real property by inspecting and valuing from five to eight per cent. of the different parcels of land in different parts of each municipality in the county, and upon such inspection and valuation the said valuers shall compare their valuations with the valuations in the last revised assessment roll made by the assessors of the several municipalities within the county, and if upon such comparison it is found that the valuation of the county valuers nearly corresponds in the aggregate with the valuation upon the local assessment roll, the valuers and afterwards the county council shall accept the assessment roll of the local municipality as correct for the purposes of county valuation.

(a) Where it is found that the valuations of particular lots made by the county valuers differ materially from the valuations of the same lots upon the assessment roll of the local municipality the county valuers shall add or deduct a corresponding percentage to or from the local assessment, and a similar method shall be followed with respect to the valuation of real property in towns and villages.

14. Notwithstanding anything contained in *The Municipal Act*, or in *The Assessment Act*, the valuers appointed by the county council shall be required to attest their report by oath or affirmation only to the extent of the property actually inspected and valued by them.

DEBENTURES FOR PURCHASE OF PUBLIC WORKS

TO BE ISSUED WITHIN TWO YEARS.

15. Sub-section 3, of section 384, of *The Municipal Act*, is amended by prefixing thereto the words, "In the case of a by-law heretofore or hereafter passed," and by striking out the words "a year" immediately following the word "within" in the second line of the said sub-section, and substituting therefor the words "two years," and by striking out the words "one year" in the last line of the said sub-section, and substituting therefor the words "two years."

LOCAL IMPROVEMENT DEBENTURE BY-LAWS.

16. Section 433, of the said Act, is amended by adding the following sub-section thereto:

(5). Instead of passing individual by-laws as hereinbefore provided, councils may pass one by-law for several local improvement works giving the same information concerning each of such works as would be given in the several individual by-laws, and the passing of one by-law covering several distinct works shall not in any way invalidate the said by-law.

PAYMENT OF JUDGE AS POLICE COMMISSIONER IN

LARGE CITIES.

17.—Section 481, of the said Act, is amended by substituting for sub-section 3, of said section the following sub-section:

(3) The council of any city with a population of 50,000 or more may by by-law provide for the payment of a reasonable remuneration to the judge of the county court for his services as a member of the board of commissioners of

police, or for the payment of such remuneration to any one appointed to be a member of the board while the office of county judge or police magistrate is vacant.

BY-LAWS FOR SEWER RENTS.

18. Section 539, of the said Act, is amended by adding at the end thereof "and to provide for the payment of a commutation of such rent or for charging a gross sum in lieu of rent, and for the payment of such commutation or gross sum either in cash or by instalments with interest."

TOWN AND CITY COUNCILS MAY PASS BY-LAWS

TO REGULATE BICYCLES AND MOTOR

VEHICLES.

19. Section 540, of the said Act, is amended by striking out the words "having 100,000 inhabitants or more" in the paragraph before sub-section 7, of said section, and insert in lieu thereof the words "or towns."

BY-LAWS FOR INSPECTION OF ELECTRIC WIRES.

20. Section 542 of the said Act is amended by inserting after sub-section 3 of said section the following sub-section:

(a) For inspecting wires and other apparatus used or installed for the transmission of electricity for purposes of light or power along the public streets or highways, or upon or in any building in the municipality.

BY-LAWS TO PREVENT IMMORAL PLAYS IN THEATRE

21. Section 549 of the said Act is amended by adding the following sub-section after sub-section 8:

(9). For preventing the production or giving of any immoral or indecent play, sketch or performance in any theatre, hall or other public place of amusement or entertainment. It shall be lawful for any such by-law, in addition to any penalty lawfully imposed, to authorize the chief of police, the deputy chief of police, or any officer specially detailed for that purpose, upon the written instructions of the chairman of the board of police commissioners, to enter any theatre, hall or other place of public amusement or entertainment, and, if at the request of such chief of police, deputy chief of police or other officer so detailed as aforesaid, such immoral or indecent play, sketch or performance is not forthwith stopped, to apprehend the performer, or performers, without warrant, and carry him, her or them as soon as practicable before a justice of the peace.

GRANTS TO CEMETERY TRUSTEES.

22. Section 557 of the said Act is amended by adding the following subsection thereto:

3. For making annual or other grants of money to the owners or trustees of cemeteries situated within the municipality or any other municipality.

REGULATION OF TRAFFIC ON NARROW STREETS

23. Subsection 5 of section 559 of the said Act is amended by adding thereto the following words:

And for prohibiting the conveyance of traffic in any but one direction on streets, lanes or alleys, which, in the opinion of the council, are too narrow for the passing of one vehicle by another.

LAYING PIPES, ETC., UNDER STREETS.

24. Subsection 3 of section 566 of the said Act is repealed and the following substituted therefor:

3. For authorizing any gas, water or pneumatic transit company to lay down pipes or conduits for the conveyance of water, gas or merchandise and other things under streets or public squares, subject to such regulations as the council sees fit.

REGULATION OF WEIGHT OF BREAD.

25. Section 583 of the said Act is amended by inserting therein immediately after the words "For regulating the assize of bread" the words :

Provided however that no such by-law shall apply to bread or the sale thereof in loaves to which are attached labels showing the weight to be not more than the actual weight of the same.

LICENSING LAUNDRIES—DEALING IN TRADING STAMPS MAY BE PROHIBITED.

26. Section 583 of the said Act is further amended by adding thereto the following :

By-laws may be passed.

By the councils of towns and of cities having less than 100,000 inhabitants and by the Board of Commissioners of Police in cities having 100,000 inhabitants or more.

39. For licensing and regulating laundrymen and laundry companies and for inspecting and regulating laundries, but no such by-law shall apply to or include women carrying on the laundry business in private dwelling houses, and employing female labor only, nor shall any such by-law apply to or include such private dwelling houses.

By the councils of cities and towns.

40. For fixing the sums to be paid for licenses required under by-laws passed under the preceding paragraph 39.

Trading Stamps, Coupons, etc.

By the council of Cities, Towns and Villages.

41. For prohibiting the giving, selling, distributing or receiving of trading stamps, coupons or other similar devices, and for prohibiting the giving, selling or dealing therewith by any person, firm or corporation engaged in trade or business.

(a) No such by-law shall apply to any merchant or manufacturer who places in or upon packages of goods or delivers to the purchasers of goods sold or manufactured by him, tickets or coupons to be redeemed by such merchant or manufacturer either in money or merchandise.

(b) No such by-law shall come into force or take effect until after the first day of January, 1902.

REGULATION OF MILK TICKETS, ETC.

27. Section 586 of said Act is amended by inserting the following subsection :

(11) For regulating the use of tickets, checks or coupons by vendors of or dealers in milk, bread or other articles of food.

LOCAL IMPROVEMENT NOTICES.

28. Subsection 1, of section 669 of the said Act is hereby amended by adding thereto the following—"and any number of different works or improvements may be included in one such notice and will stand good for any one or more that may not be petitioned against that the council may determine to proceed with."

29. The said section 669 of the said Act is further amended by inserting therein after the first paragraph of said section the following sub-section :

(1a.) In addition to being given by publication, as provided in the next preceding paragraph, the notice of the intention of the council to undertake any work as a local improvement shall be given to the owners and occupants of the properties benefited thereby, by personal service or by leaving the notice at the places of business or residence of such owners respectively, or by registered letter, or by leaving the same with a grown up person on the premises when the owner's address or residence is unknown; and a declaration of the officer or person charged with the duty of giving any such notice that the same was served or mailed as stated in the declaration, shall be accepted as conclusive evidence of such service or mailing.

SPECIAL OR FRONTAGE RATE FOR SEWERS.

30. Sub section 1, of section 673, of the said Act is amended by adding thereto the words "or may assess and levy the cost thereof by a special rate upon the lands benefited thereby instead of by a frontage rate." The provisions of this section shall apply to sewers heretofore constructed as well as to those hereafter constructed.

31. Subsection 2 of section 673 of the said Act is amended by striking out the words and figures "671 and 672," in the last line of the said subsection, and substituting therefor the words and figures "674 and 675."

CONSUMPTION HOSPITALS.

32.—(1) Any municipality or any two or more municipalities in this province may agree with the National Sanatorium Association (hereinafter called the Association) for the establishment and maintenance by the Association of a Sanatorium for the treatment of consumptives, and the municipalities shall have similar powers to those conferred by chapter 57 of the statutes of Ontario for the year 1900, intituled *An Act respecting Municipal Sanatoria for Consumptives*, with respect to procuring plans, estimates and other information and the basis for establishing such Sanatorium, and the location thereof within or without the municipality, and the passing of by-laws to raise the monies, if any, proposed to be paid or contributed by the municipality in respect of the Sanatorium and to the issue of debentures therefor.

(2) The plans, estimates and agreement and proposed site shall be submitted for the approval of the provincial secretary in a similar manner to that provided for by section 3 of said Act, and upon such approval being given the said agreement shall be valid and may be acted on.

(3) Provided always that the parties to such agreement may make such changes in, or modifications thereof, as may be required by the provincial secretary as a condition to his approval.

(4) Sections 11, 12 and 13 of said Act shall apply to any Sanatorium established under the foregoing sections of this Act and to the trustees of the said Association.

VILLAGES MAY LAY PLANK SIDEWALKS WITHOUT

NOTICE.

33. Section 677 of the said Act is amended by striking out the word "or" in the second, fifth and eighth lines and inserting the words "or village" after the word "town" in the said lines respectively, and by striking out the word "plank" in the third line of said section, and by adding after the word "sidewalk" in the said third line, the following words : "of the following material, namely, plank, gravel or cinders, or a combination of any one or two of such materials, with tar and sand."

RAILWAY BONUS BY-LAWS.

34. Clause (b) of subsection 3 of section 696 of the said Act is hereby amended by striking out, in the third and fourth lines of said section, the words "to include a sinking fund."

APPLICATION OF PENALTIES.

35. Section 708 of the said Act is amended by striking out all the words therein after the word "corporation" in the fourth line and inserting in lieu thereof the following words :—

But when the prosecution is brought by a member of the police force or an employee of the municipal corporation or of the local board of health, the pecuniary penalty shall be paid to the municipal corporation.

GAS COMPANIES' RIGHTS.

36. Subsection 5 of section 35 of *The Municipal Amendment Act, 1899*, is amended by adding thereto the following words : "Nothing

in this section contained shall be deemed to annul any of the provisions contained in the Act, incorporating any gas company now operating in any city, nor shall it affect any Acts amending such Act of Incorporation, nor the right of any such city under such Acts to establish or procure the establishment therein of further works for the supply of gas : provided that any city corporation having, under the Act of Incorporation and amendments thereof of any gas company operating in such city, the right to establish or to cause or permit to be established, additional or further works for the supply of gas in such city, shall have power to construct and establish such further or additional works and to pass the necessary by-laws authorizing the levying of an annual special rate to defray the yearly interest on the expenditure therefor and to form a sinking fund for the payment of the principal within a time not exceeding thirty nor less than five years.

37. This Act shall come into force on from and after the first day of June next.

An Act to Amend the Municipal Drainage Act.

APPEALS FROM DRAINAGE REFEREE.

1. Sub-section (1) of section 71, of the said Act is amended by adding thereto the following: "The order of the referee upon such appeal shall be subject to appeal to the Court of Appeal for Ontario, and the decision of the Court of Appeal for Ontario shall be final and conclusive as to all corporations affected thereby."

IMPROVEMENT OF DRAIN WITHOUT REPORT.

2. Section 74 of the said Act is amended by striking out the words "deepen, widen or extend" in lines 7 and 8, and inserting in lieu thereof the words "make improvements thereto by deepening, widening or extending," and by striking out the word "repairs" in line 11 and inserting in lieu thereof the words "applications and."

APPLICATIONS TO DRAINAGE REFEREE.

3. Sub-section (2) of section 89 of the said Act is amended by inserting after the word "all" in the first line thereof the words "applications and."

4. Section 93 of the said Act is repealed and the following section substituted therefor :

93.—(1) All applications to set aside, declare void, or otherwise directly or indirectly, attack the validity of any petition, report of an engineer, resolution of a council, by-law provisionally adopted or finally passed, relating to a drainage work as hereinbefore defined, as well as all proceedings to determine claims and disputes arising between municipalities or between a company and a municipality, or between individuals and a municipality, company or individual, in the construction, improvement or maintenance of any drainage work under the provisions of this Act, or consequent thereon, or by reason of negligence, or for a mandamus or an injunction, shall hereafter be made to and shall be heard or tried by the referee only, who shall hear and determine the same and give his decision and his reasons therefor.

(2) Proceeding for the determination of claims and disputes, and for the recovery of damages by reason of negligence, or by way of compensation or otherwise, or for a mandamus or an injunction, under this section, shall hereafter be instituted by serving a notice claiming damages or compensation, or a mandamus or an injunction, as the case may be, upon the other party or parties concerned and the notice shall set forth the grounds of the claim.

(3) A copy of the notice with an affidavit of service thereof shall be filed with the clerk of the county court of the county or union of counties in which the lands in question are situate, and the notice shall be filed and served within two years from the time the cause of complaint arose.

(4) All applications under this section shall be made by notice of motion based upon affidavits filed, not less than ten days before the date on which the motion shall be made, with the clerk of the county court of the county or counties in which the municipality whose proceeding is called in question is situate.

(5) No application or proceeding within the meaning of this section shall be made or instituted otherwise than as therein provided.

FINALITY OF DECISIONS UNDER THE ACT.

5. Section 94 of said Act is hereby repealed and the following section substituted therefor:

94. The decision of the referee in all applications and proceedings under this Act, not otherwise provided for as being final and conclusive between the parties, shall be subject to appeal to the Court of Appeal for Ontario and its decision thereon shall be final, conclusive and binding upon all parties to the application or other proceeding.

INCONSISTENT ACTS REPEALED.

6. The said Act is further amended by inserting therein the following section :

114. All parts of Acts inconsistent with this Act are hereby repealed.

An Act to Amend The Municipal Arbitrations Act.

1. Section 15 of *The Municipal Arbitrations Act* is amended by striking out all the words after the word "thereof" in the sixth line and inserting in lieu thereof the words following :

"Where any municipality, other than the City of Toronto, the County of York or the Township of York, has by by-law declared or shall hereafter declare that it is the desire of the municipality to be brought within the provisions of this Act an official arbitrator shall be appointed for such municipality by the Lieutenant-Governor in Council and shall have and exercise within such municipality all the powers conferred upon the Official Arbitrator by this Act."

An Act to Amend The Voters' Lists Act.

1. Section 14 of *The Ontario Voters' Lists Act* is amended by inserting therein the following subsection (4a) :

(4a) Any one who will be of the age of twenty-one years within thirty days from the day fixed for hearing appeals to the county judge and who possesses the other necessary qualifications to entitle him to be entered in the Voters' List shall have the right to apply to the judge to have his name entered and inserted in the Voters' List as entitled to vote at municipal elections and elections to the Legislative Assembly, but nothing in this subsection contained shall be construed to confer upon any person the right to vote who is not of the full age of twenty-one years.

Assessment Act Amendments.

Until the final report of the Assessment Commission is presented, the legislature have thought it best not to consider many amendments to this Act. Those enacted this year make clear the meaning of the exemptions passed in 1900 in reference to property held by Children's Aid or Immigrants' Societies. The celebrated Scrap Iron decision and the bill reported by the Assessment Commission was the subject of considerable discussion, and it is now well understood that any suggestion for the taxation of companies will receive the support of members from both

sides of the House. An amendment suggested by the Ontario Municipal Association was adopted for the purpose of doing away with this decision and as referred to in section 2 of the Act. Another amendment of some importance in townships authorizes the commutation of statute labor not performed to be entered in the collectors' roll for the current or the following year.

The Act as finally passed reads as follows :

EXEMPTION OF CHILDREN'S AID AND IMMIGRANT SOCIETIES.

1. Subsection 10a of section 7 of *The Assessment Act*, as enacted by the *Assessment Amendment Act, 1900*, is amended by inserting after the word "Ontario" at the end of the fifth line the words "whether held in the name of such society or in the names of trustees or otherwise for the purposes of such society."

ASSESSMENT OF REAL PROPERTY.

2. *The Assessment Act* is amended by inserting therein after section 18, the following sections :

18a. Real property belonging to or in the possession of any person or incorporated company and extending over more than one ward in any city or town or situate in any township, may be assessed together in any one of such wards at the option of the assessor, or the assessment of the property may be apportioned amongst two or more of such wards in such manner as he may deem convenient, and in either case the property shall be valued as a whole or as an integral part of the whole.

18b. In the case of any bridge belonging to or in possession of any person or incorporated company, which crosses any river forming the boundary between the Province of Ontario and any other country, or province, which is liable to assessment, the part of such structure within Ontario shall be valued as an integral part of the whole and on the basis of the valuation of the whole. Any bridge belonging to or in possession of any person or company between two municipalities in the province shall also be valued as an integral part of the whole and on the basis of the valuation of the whole.

3. Subsection 1 of section 58 of *The Assessment Act* is amended by striking out the words "containing a population of 30,000 or more" in the eighteenth and nineteenth lines.

4. Subsection 2 of section 58 of *The Assessment Act* is amended by striking out the figures "31st" in the second line of said subsection, and substituting therefor the figures "15th."

5. Section 62 of *The Assessment Act* is amended by inserting after the word "arbitrator" in the last line of the first paragraph of said section the words "or where such official arbitrator is a judge or junior judge of the county in which the city is situated."

STATUTE LABOR NOT PERFORMED MAY BE ENTERED ON ROLL FOR CURRENT OR FOLLOWING YEAR.

6. Subsection 1 of section 110 of *The Assessment Act* is amended by inserting the words "current or" after the word "the" in the ninth line of the said subsection.

The municipality of the township of Crowland has purchased their second road machine, that purchased last year having given good satisfaction. A man is employed to operate the machine, who also looks after keeping it in running order. The township finds the investment is a good one.

Municipal Auditing.

The April number of *Municipal Engineering*, published in Indianapolis and New York, and one of the best known magazines of its kind, has the following :

"In 1896, the Province of Ontario created the office of Provincial Municipal Auditor, whose duties it is to examine the account books of any public official, to make recommendations of changes in methods which are desirable, and to report to the proper authorities deficits, errors and other results of such examinations. The report of the office for the year 1900 is at hand, and demonstrates the value of the office. In this one year about \$6,000 has been saved to the municipalities whose books have been examined, poor methods of bookkeeping, and possibly in some cases a little dishonesty, having been responsible for deficits amounting to this sum, which would not have been discovered but for the official examination. These amounts were recovered, being paid without question by the treasurers involved. The books of one hundred and twenty-two public offices were examined during the year. Many peculiar methods of keeping accounts and taking care of money are reported. The office does not seem to have power to enforce its recommendations directly, but the regular channels for taking care of deficits are open, and public opinion can be depended upon to improve methods which are not adequate to the business done, when they are reported upon officially. The effect of the office upon municipal accountants is shown by the statement that in 1897 the department discovered losses of about \$100,000, which were not recovered; in 1898, about \$11,000; in 1899, about \$4,000, and in 1900 nothing, all reported deficits having been made good. This is an object lesson which should have its effect in aiding the movement toward uniform municipal accounting, and the project for State supervision of accounts which is taking a prominent part in the discussion.

The passage of the bill appropriating a million dollars for the improvement of Ontario highways will be followed by active campaigns in many of the counties of the province. At present Hastings and Wellington are said to be the only counties eligible for a grant, as their country road systems had been previously organized. The *Renfrew Mercury* is so aroused on the question that it proposes a summer school of practical instruction in road-making in that town. The Eastern Ontario Good Roads Association is arranging for a tour through several counties of a complete outfit of road-making machinery, with which samples of good roads will be made at intervals to serve as object lessons.

A by-law to provide for taking over the waterworks by the town was submitted to the electors of Iroquois recently, and was carried by a vote of 135 to 20.

Engineering Department

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

Commutation in Pelham.

Many townships are now carefully considering the advisability of commuting statute labor, but fear that such a change will involve extra taxation and much prejudice and opposition. In order to show how the change can be brought about, and what the effect, will be where the council takes a genuine interest in carefully planning the change and in consulting the ratepayers before undertaking it, we reprint the report of Mr. J. C. Crow, clerk of the Township of Pelham, to the Provincial Highway Commissioner, giving the experience of the council in this connection. The council of Pelham has taken a warm interest in the road question for some years back, and the members have devoted considerable time to the discussion of this question, and preparing the ratepayers for the change. Mr. Crow, one of the most capable of township clerks in the province, spent much time in perfecting a scheme for managing the work after statute labor was commuted and the by-law of this township has been very largely consulted in the preparation of others. Mr. Crow's communication is as follows:

CLERK'S OFFICE.

RIDGEVILLE, JAN. 15, 1901.

DEAR SIR,—No doubt you will be interested to hear how the by-law commuting our statute labor, and the council which passed it last spring, fared at the annual municipal elections a week ago.

You will perhaps remember that our council adopted the new system last April (after your visit here) without submitting the matter to the people. If it were necessary to seek a reason for the council taking upon itself the responsibility of making such an important change, one need go no further than to the preamble of the by-law itself, which reads as follows:

"Whereas the highways of this municipality have been maintained by sufficient grants from the township levies to meet all the expenditure connected therewith;

"And whereas for several years an agitation has been gaining strength to have the statute labor commuted or paid in money, instead of worked out as heretofore by the ratepayers under the direction of pathmasters chosen for each road or locality;

"And whereas the ratepayers of the township, at a public meeting recently called by this council to discuss with the good road commissioner of the province the advantages of commutation system, did express themselves as desiring its adoption, and the council believes that better results would be possible if the change asked for were inaugurated, and the commutation moneys thus available judiciously expended where most needed,

by one or two competent overseers to be placed in charge of all public highways of the municipality;

"Be it therefore enacted, etc., etc."

It is but just to one councillor, Mr. Brown, to say that while he personally favored commuting the labor, still he thought the by-law ought to be submitted to the ratepayers for their approval, and moved a resolution to that effect, but found himself alone in this view, getting no seconder. Mr. Brown then ceased all opposition and joined heartily with his colleagues to make the by-law as perfect as possible.

At a later stage, a petition came from Mr. Brown's neighborhood bearing the signatures of 125 ratepayers, praying the council "Not to pass a by-law affecting our present statute labor by-law until council has taken the vote of the people at the next municipal election." This petition had no weight with the council, probably because the petitioners, notwithstanding that *commutation* had been before the township for three years, very carefully refrained from saying in their petition how they stood on the issue, or how they would vote in January if the council postponed action till then.

With this slight opposition, if such it may be called, the by-law was finally passed on the 4th of April and the road placed in charge of two overseers instead of the ninety-six we had the previous year, and a second road machine was bought. As was to be expected, there were occasional grumblings from some disappointed petitioner or other ratepayer who was wedded to the old system, and now and then boasts would be heard that at the annual town meeting and election the new system and the commutation council would see their doom.

On the other hand, it was quite noticeable and frequently remarked, as the work progressed, that the new method was continually gaining friends. In the weeks just prior to the town meeting I heard numerous ratepayers whom I had not considered favorable to the commutation frankly state that it could not be fairly judged by one season's experience, but was entitled to a couple of years' trial before its operation and advantages could be fairly measured.

Nevertheless we were anxious to see what the town meeting would produce and what might be the feeling of the people as a whole. The weather was favorable and our large town hall, in which you spoke with such acceptance and good results last February, was well-filled, evidencing a deep interest in the commutation by-law, which, of course, was the chief subject talked about. The retiring councillors all declared themselves in favor of the new system and were all renominated.

I am told they had agreed with each other to present a solid front and stand or fall together, if the advocates of the old system forced the issue. But, to our surprise, of the eight new men nominated, all but one announced themselves as favoring the commutation which thus at once ceased to be an issue, though we had the luxury of a contest, purely personal in structure and without any issue at stake that I could discover, councillor Beckett, at the last moment, developing an unexpected desire to contest the reeve-ship with retiring reeve Johnson.

The polling resulted in a decisive victory for the old reeve, while Mr. Brown, of whose caution I have spoken, headed the poll as councillor, both in the whole township as well as in his own division, whence had come the petition for delay to which reference has been made. The one anti-commutation candidate, who openly confessed himself as such, and who went to the polls, stands at the bottom of the list, having received but 135 votes out of exactly 500 polled. The two new men elected are strong for commutation as were the men whom they replace.

At the organization meeting of the new council yesterday the reeve in his inaugural speech pointed out to his colleagues how much the success or failure of the new system now depends on the council and even more upon the commissioners. He handed copies of the by-law and of the *instructions*, which were issued thereunder last year, to the commissioners, to the members of the council with the request that they study them carefully and be able to point out any desirable changes or improvements at the next meeting of the council.

The idea we hit upon for making the by-law itself quite general in its scope and provisions, and of annually issuing to the commissioners *instructions* as to details, seems to be a good one, as thus what at the beginning was to us a new and untried system will become perfected by our own experience.

We have cheerfully complied with many requests from outside municipalities for copies of our by-law, glad to know that the agitation for better roads was spreading, and we have noticed with especial pleasure the many kindly allusions to the by-law which you yourself have from time to time made in the public press. I have given as close attention as possible to the working of the by-law during its first season, besides enquiring from time to time of the commissioners as to whether it is feasible and workable, with the, to me, surprising result that no part of it is condemned. The changes required even in the *instructions* for 1901 will be minor at most.

To my mind the most noticeable advantage of the new system thus far is the uniformity of width of the roads graded and the evenness and straightness of the watercourses and ditches bounding them. The council laid down very definite

instructions in both these particulars, and they have been faithfully carried out by the commissioners, with the result that we already have many miles of roads graded or rounded so that surface water can not stand on them, ditched so that the water must run away, and withal so pleasing to the eye that comment is frequent both from our own people and travellers passing through. A couple of years more of like experience and our highways (we have about 150 miles of them in this little township 5 miles by 6) will hardly be recognized.

There was not as much gravel (of which we have abundance) hauled upon the roads as in former years, but this was because of the very sensible instruction of council to not gravel any roads until they have been properly graded and crowned, and side ditches made with sufficient fall and outlet to carry water off and keep the road-bed dry and firm.

From a dollars and cents standpoint. In 1899, besides the statute labor performed, we raised by taxes and spent on our roads \$950.03. In 1900, having the statute labor in cash, we only required taxes of \$779.78, thus saving more than half the price of the new road machine.

In 1899 the councillors' committee time (which is almost exclusively on R. & B. Service) aggregated \$86.25, while last year it was nearly as much, \$73 50. But this is because the system, like the commissioners enforcing it, was new and untried, and also because members of the council could not seem to relinquish to the commissioners the authority they have so long exercised upon the roads. I trust, however that in future the councillors will have more confidence in the officers of their own choosing, and that there may not be this divided authority and jurisdiction, which I am glad to know you, on every occasion, warn municipalities against, and which cannot but militate against the success of the system.

With best wishes to yourself personally as well as for the success of the good roads movement throughout the province for which you are doing so much:

I am, dear Sir,

(Sd) J. C. CROW, Clerk,

Township Pelham

Tar Macadam.

Tar macadam pavement, which has been successfully tested in Hamilton, has attracted considerable attention. The specification, under which this is now laid, is as follows:

"All earth or other material above the sub-grade shall be excavated so as to conform to the level of the sub-grade, which will be 12 inches below the finished surface of the roadway; and should the sub-grade be above the level of the natural ground, then earth shall be deposited until the level of the sub-grade is reached. The sub-grade shall be

shaped to the profile and cross-section, which will be furnished by the city engineer. After the sub grade has been formed to the proper camber of the road, then it shall be thoroughly rolled with the steam road-roller, and if by this means soft spots are revealed they shall be filled with good solid material. The first six inches shall be made in the ordinary way for a macadam or Telford roadway, thoroughly rolled. If so required it may be made of hard, broken stone, furnace clinkers, or brick rolled smooth, and finished to the required camber of the road. Upon this shall be placed the tarred stone; the first layer, four inches thick, to be composed of stones capable of passing through a 2-inch ring. On this a layer composed of fine gravel or quarry chippings, $\frac{3}{4}$ inch thick, shall be placed, and well rolled in, so as to fill all interstices. Before finishing, a dressing of screenings shall be scattered broadcast, to be worked in by the traffic. All these layers except the last shall be compacted by rolling. The stone to be tarred shall be heated on an iron fl or, under which are flues from a fire, until the moisture is driven out. The material in its heated state is then to be thoroughly mixed with a sufficient quantity of tar. The tar should be boiled in iron kettles holding fifty imperial gallons, to which should be added a bucketful of pitch; eight imperial gallons should be added to each cubic yard of the coarser material, and ten to twelve gallons of the finer kinds of stone. The work must be done in the summer months, and all work must be suspended during wet weather.

The cost of these pavements new has averaged 80 cents to 95 cents a square yard. The stone used is limestone, obtained from the Hamilton mountain for \$5 a cord. This is broken for \$1.75 a cord. Labor in Hamilton costs 18 cents an hour. Refined tar is used, as coal tar as it comes from the works is found to be unsuitable.

Sidewalks.

The year 1900 has witnessed the laying of a greater extent of cement concrete sidewalks than has any previous year, according to the reports of cement dealers, and when the use of this material is better understood, it is probable that there will be a still greater demand for its adoption by the general public.

As in other years, however, much poor work has been done, with the result that a good deal of dissatisfaction will arise, and cement concrete as a sidewalk material will be unjustly condemned by those who do not know where the blame should be placed. No material will better repay careful handling than will Portland cement, and no material will more quickly betray carelessness and inexperience in its use.

Timber suitable for sidewalks is every year becoming more scarce, and more expensive, so that there is every need for

municipal officers to acquaint themselves fully with the means to be adopted, to secure the best class of workmanship in laying this popular substitute, cement concrete. Councillors cannot be expected to have an engineer's knowledge of this material, and to rely upon any contractor who submits the lowest tender is folly, if not worse. The one step which councils can and should take, is to employ a proper person to act for them in protecting the interests of the town. What constitutes a "proper" person should not be lightly interpreted, as meaning an agreeable citizen who wants a job as inspector; nor should it be simply an "experienced" man, if his experience is bound up in the fact that he worked for a contractor last year. The handling of cement is not to be successfully done by rule of thumb, and can only be safely done by one who combines good judgment, experience and technical education. The use of cement is a matter which is not too small to be trusted to an engineer, and even then, the possibility of error is not wholly removed.

A reference to sidewalks is not complete without noticing the growing extent of brick walks, made from a second grade of paving (vitrified) brick. These walks cost slightly less than the good cement concrete, are easily laid, and are by many, preferred to cement concrete.

Electric Lighting.

The town of Woodstock has recently purchased the electric light plant from a private company, and it will hereafter be operated by the municipality. The price paid the company according to a press report was \$14,000, and the town will spend \$1,600 on improvements. This is a step which many towns in the province are considering at the present time, and it is to be hoped that many more will follow the example of Woodstock. The time is not far distant when water supply and electric production will be regarded as much a part of municipal organization as are sewers, and street improvements. Public services which are essentially monopolies can be safely and justly controlled by the municipal corporation. By adding to the responsibilities of municipal government, a greater interest in all branches is taken by the electors, the best men feel a greater incentive to accept municipal office, and the citizens feel more fully the necessity of electing the right men. The forest reserves owned by some German towns pay not only all municipal taxes, but permit a bonus to be distributed annually among the inhabitants. Other lucrative means of providing municipal revenue, such as ferries, nurseries race-courses, can be referred to. The towns of Ontario have an opportunity in supplying electricity for lighting and power, to much reduce the burden of taxation, if properly managed, and such an object is certainly worth a struggle to obtain.

Question Drawer.

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

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

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

Local Improvements—An Illegal By-Law.

232 - H. L.—A corporation in 1899 enacts a by-law for local improvements on frontage system by an unanimous vote of the council "not by a majority of the electors." Property owners, abutting, to pay 50% of actual frontage, not crossings or intersections or angles. They built a small piece of walk in 1899. In 1900, the council re-enacts said by-law by a new one, so as to conform to the amendments in the statutes of 1900, by full vote of council only. They build walk enough under provisions of said by-law, that the amount due by the people or property owners abutting said walk in 1900 and 1899 amounts to say \$1,600. Under said by-law debentures were to be issued on twenty annual payments to pay said portions of individual's part, but not to be issued until after December 30th in any one year for that year's work. No debentures have yet been issued. The council, as provided by said by-law, paid the amount from the general fund until such times as the debentures could be issued. Our council of last year asked for an expression of the legally qualified electors, who could vote on by-laws at the municipal election last, to vote and say whether or not they wanted the said by-law repealed or not. About two-thirds of the qualified electors on the Voters' Lists voted and about two-thirds of them said repeal the by-law. Now, we will say that the above Local Improvement By-Law is bad. Of the \$1,600, there is about \$1,200 of it on that portion of the street adjoining the individual property on the inside. The other \$400 is on the individual property between the inside of walk and their buildings.

1. Can the council pay any or all of it from general funds?
2. Can they make the individuals pay their portion of it? If so, how, and when?
3. If they do pay it from the general fund can they do it this year when, with the amount and the amount they will have to raise to meet current expenses "not including school funds," it would make somewhere about 25 mills on the dollar?

The proceedings which were had in regard to the work in question were irregular and invalid, and the only course which we can suggest is to apply to the legislature for a special Act, validating the by-law, or to authorize the council to issue debentures to raise sufficient money to pay the cost of the work out of the general fund.

Electric Railway Law.

233—A.B.—In the book purchased from you, "Ontario Municipal Law," section 589, you state certain things in regard to electric roads. Are you correct in your interpretation of the statutes? We have just had some experience in regard to it and the company's lawyer claims you are incorrect.

We have received the following reply to your question from Mr. Anger, the author of the book to which you refer:

To-onto, April 11, 1901.

GENTLEMEN,—Your favor of the 29th ult. came duly to hand, but as I was out of the city it could not receive answer until my return.

Re section 589. The party does not state in what particular this section fails in its interpretation of the Act respecting electric railways. The section does not purport to give the steps necessary to be taken to procure the right to construct or operate an electric road in such municipalities, but for the information of citizens, states the fact, that in the municipalities indicated, the written assent of one-half the owners of the property fronting on such street must first be obtained, unless the commissioner for public works, for sufficient cause, dispenses with such assent.

We have carefully examined the statutes again and fail to see wherein this is not a clear interpretation.

Section 39, chapter 209, R. S. O., 1897, upon which section 589 of our book seems to be based, we think, cannot be read in any other light; and we do not find any other section of the Act or subsequent amendment that modifies that provision in this section.

Yours respectfully,
W. H. ANGER.

Seizure for Taxes.

234—E. N.—Can a municipal collector seize for taxes a boiler left after the building in which it was used had been burnt down, said boiler still standing on the walls in which it was placed before being burnt?

No, this boiler is a fixture, immovably attached to the land, and is considered realty, and assessable as such.

Assessment of Stock at Saw and Woollen Mills.

235—CLERK.—1. Is the stock and output or manufactured articles of a woollen mill liable to assessment as personal property; also the stock of barley and malt in a malt-house?

2. Is the stock of saw-logs at a saw-mill liable to assessment if they have been brought from another municipality?

1. Yes, unless the actual cash value does not exceed \$100, when they will be exempt under sub-section 25 of section 7 of the Assessment Act.

2. Yes, provided the actual cash value is over \$100. In assessing the property above referred to, the just debts owed on account of such property must be deducted from the value thereof. See sub-section 24 of section 25.

Payment of Doctor's Fee for Vaccination.

236—M.—According to notice enclosed, doctors went to every house instead of waiting at their offices and vaccinated people and then put their bill to council for every one they vaccinated.

Can they collect from the council? If so can the council add the amount to the taxes of parties so vaccinated? Or is it not proper for the doctors to collect the amount themselves?

The notice you sent us purports to have been given pursuant to a resolution of your council passed in conformity with the Public Health Act of Ontario. This Act makes no provision for compulsory vaccination, but section 15 of the Act respecting vaccination and inoculation (chapter 249, R. S. O., 1897) does. If a proclamation be issued and published in accordance with the provisions of this section, every person resident in the municipality must comply with the law as to vaccination as laid down in the Act, within seven days from the publication of the proclamation. The council is not in any way liable for the payment of the fees of the doctors performing the vaccination, unless it has entered into an agreement or contract with them under section 4 of the Act, and in that event, only to the extent of the expense of vaccinating poor persons, who are themselves unable to pay the fee allowed by section 12 of the Act.

Annexing a Portion of Townships.

237—J. C. S.—Townships are adjoining. A portion of one is separated in itself by water and seems naturally to belong to the other township. The ratepayers of that portion wish to be annexed to the other township, what would be the proper steps to take to accomplish that end?

The statutes make no provision for detaching a portion of a township and annexing it to an adjoining township. Application will have to be made to the legislature for the passing of a special Act to accomplish it.

A Disputed School Site.

238—SUBSCRIBER.—A new school-house has to be built in school section No. — to replace the old one which was burnt. A dispute arose between the ratepayers and trustees over the choosing of a site. The minority of ratepayers and two of the trustees wanted to move it to the east, the majority of the ratepayers and the other trustee wanted it built on the old site. The matter was left to arbitration, each party choosing a man—the Public School Inspector being the third person to the arbitration. The award of the arbitration was that the school-house should be built on the old site. This was last year. Nothing has been done towards building yet. The minority party of the ratepayers and two trustees came before the township council in March, 1901, with a petition praying the council to pass a by-law to divide the section. At the same time, representatives of the majority party and the other trustee were present, objecting to any change being made, as the matter had been settled by the arbitration. All was done according to law.

1. Would the council be justified in passing the by-law under the circumstances?
2. Must the school be built on the old site and remain for five years?
3. Can the trustees be compelled to commence building the school-house?

158 of March No. perhaps answers my question, but I would like to be certain.

1. No.
2. Yes.
3. Yes.

See answers to questions Nos. 158 (March) and 189 (April), 1901.

Partial Prohibition of Cattle Running at Large

239—W. D.—1. Has a township power to pass a by-law regulating the hours or prohibiting the running at large of cattle within the

limits of a town plot of an unincorporated village, said by-law not to apply to the remainder of the township?

2. Can such a by-law be passed for the whole township? See sub-sections 7 and 8 of section 586, chapter 223, R. S. O., 1897.

1. There may be special circumstances warranting the passing, by your township council, of a by-law confined to that part of your municipality, comprising the unincorporated village, but, as a rule, the powers vested in municipal corporations should, as far as possible, be exercised by by-laws, general in their nature and impartial in their operation. If these special circumstances exist in the case you put, the council can pass the by-law. See question No. 219, 1901.

2. Yes.

Council Should not Build Road Crossing.

240—J. S.—Is a township council obliged to build an entrance or road into a man's farm or garden off a company road, or from any road, or maintain such an entrance?

A township council cannot be compelled to construct an entrance road or bridge leading from a man's farm, etc., to a road adjoining it. In the case of *McCarthy vs. Oshawa* (19 U. C. Q. B., p. 245), Mr. Chief Justice Robinson says, at p. 247: "Then, as to the other grounds of action introduced by the amendment, namely, the neglect by the defendants, of an alleged duty, to provide a bridge or crossing from the plaintiff's land and house. No authority has been shown for asserting that to be a duty incumbent on the corporation, and we do not think it is." See also questions No. 89 (February), 357 (September) and 434 (December), 1900.

Payment Should be Refunded.

241—L. X.—Our engineer made an award under the Ditches and Watercourses Act, in which he assessed so much work to be done by the Grand Trunk Railway. The time for completion of work, having expired without the G. T. R. having done any of their portion of work, A, the moving spirit in the matter, goes to the engineer and requests him to proceed to have the G. T. R. portion of award completed. The engineer agrees to do so, on condition that A will be responsible for the expenses of the contract, if the G. T. R. were not liable, the G. T. R. solicitor having repudiated all responsibility in the matter and the engineer's mind not being clear on the matter. This A agrees to do and the engineer then proceeds according to the D. & W. Act, puts up notices and lets contracts by public auction. It was awarded to A, he being the lowest bidder. A goes on and completes the work, then goes to the engineer and leads him to believe that the council was willing to pay for the work, if he would give him a certificate that work was performed. The engineer gave him a certificate that work was performed and also gave him a sealed letter to council telling them the terms, on which A had got the contract. A then goes to the council, presents the certificate, gets an order for the money, gets it cashed (the council not being sure of the responsibility of G. T. R.) and then he hands the letter to the reeve, stating the terms on which he had received the contract from the engineer, which having read, he told A that if he had given this letter, when he should, he would not have got his money. A simply said he had forgot he had it. Can council compel A to refund the money? If so, how will they proceed?

The engineer had no authority to award the construction of any part of the drainage work against the railway company, unless an agreement on the part of the company to construct the portion awarded had been previously entered into between the company and the council of the municipality. (See section 21 of chapter 285, R. S. O., 1897.) In default of such an agreement, therefore, the company are not liable for the cost of the work done by A. We are of opinion that the council can recover by ordinary action at law, the sum paid to A for doing the work, as, from your statement of the facts, his conduct appears to have been very suspicious throughout the whole transaction, and the money appears to have been paid in ignorance of the facts.

Regularity of Council Meetings.

242—M. C.—The council held its regular monthly meeting on March 12th, and the reeve finding it necessary to leave before the meeting closed appointed one of the councillors to the chair. Before council adjourned it was unanimously decided to hold a special meeting on March 26th. The chairman concurred in this and no resolution was passed. The clerk was instructed verbally to notify the absent reeve, which was done by letter. When the council assembled on the 26th, (one member absent,) the reeve stated that the meeting, in his opinion, was not called according to the statutes in that behalf, and that any business transacted would not be legal. As a way out of the difficulty he verbally notified the clerk to call a meeting at 1 o'clock. The clerk notified verbally the members around the table but the absent member could not be communicated with. Council assembled at one o'clock same day and transacted business.

1. Has the reeve power to appoint a chairman when he vacates his chair, or does he have to be appointed by resolution of council?

2. Would a special meeting, arranged for as above, with the reeve absent but a chairman regularly appointed be a regular meeting and business transacted thereat be legal?

3. Was the meeting called by the reeve as above, with one member not notified, a regular meeting, and would any business transacted thereat be legal?

1. The reeve has no authority to appoint a chairman during his absence, the council should do this by resolution. See section 272 of the Municipal Act. However, the members of the council appear to have acquiesced in the reeve's choice, and no objection to the constitution of, or the business transacted by the council at that meeting, could now be taken.

2 and 3. There are two kinds of council meetings, viz., regular and special meetings. The time of holding regular meetings must be fixed by by-law, and the time thus appointed is presumed to be known to the members of the council, and it is their duty to attend such meetings without further or special notice, and absent members, equally with those who are present, are bound by whatever is lawfully done at a regular meeting or any regular and valid adjourned meeting. If the meeting be a special one, the general rule is that notice is necessary, and must be personally served, if practicable, upon every member of the council entitled to be present, so that each one may be afforded an oppor-

tunity to participate and vote. In the case of a special meeting, each member should also have notice of the particular business which is to be considered at such special meeting, and it is improper to take up any other business at such special meeting than that of which notice has been given. It, therefore, follows that the business done at the one o'clock meeting was illegal because one of the members had no notice of it.

Local Improvement System in Village.

243—G. H. B.—1. Is it legal for the council of a village in which the local improvement system has not been adopted to construct such walks under section 678, chapter 223 R. S. O., 1897 without a petition as provided by section 668 chapter 223 R. S. O., 1897?

2. If so, would a petition against such proposed work as provided by chapter 223 section 669 be sufficient to prevent the council from undertaking such work under section 678?

3. If work can be carried on under section 678 would it be necessary for council to advertise the work to be undertaken as per section 669?

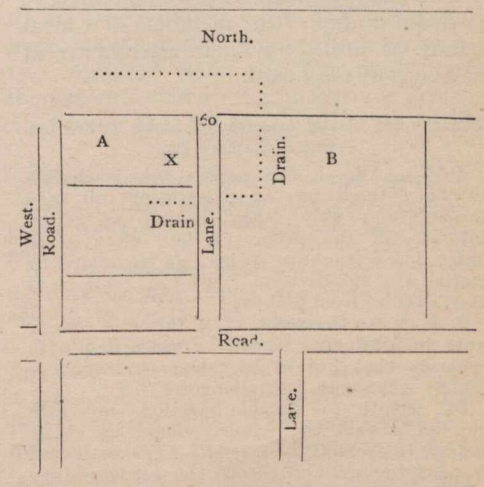
1. No.

2. Yes, if the petition is signed by a sufficient number of persons representing sufficient property.

3. The council must have a sufficient petition, under section 668; or it must advertise in the manner provided by section 669, and if a sufficient petition is presented in opposition to the work, the council can do nothing under the authority of this section.

An Unsanitary Drain.

244 W. R. M.—I own village lot marked A. Lot marked B is a graveyard. My dwelling on lot A is marked thus X. There is a lane sixty feet wide between my lot and the graveyard. The fall or drainage from the graveyard is toward my lot. There is about three feet fall across said lane to my lot. The soil over the rock at my dwelling and well is only four feet deep. It is somewhat deeper at the graveyard. I have marked two drains (underground) that lead from the graveyard. I fear this graveyard may be injurious to the health of myself and family. What can I do to remedy this matter?



You do not say whether this cemetery or graveyard is owned by a company, incorporated pursuant to the provisions of chapter 213, R. S. O., 1897, by the municipality, private individual or individuals,

or otherwise. If owned by the first-named, and the water in your well has been fouled by drains constructed from the graveyard by the company, it is liable to the penalty mentioned in section 7 of the Act. If owned by any of the other parties named, and the matter complained of amounts to a nuisance, likely to impair the health of your family, it should be brought to the notice of the local board of health of your municipality, who would have authority to cause its abatement under the provisions of the Public Health Act. See section 63 and following sections of the Act. We may say further, that unless the drain has been in existence for at least twenty years you may stop it up and prevent the water running into your premises.

Payment of Attendant on Parties Quarantined.

245—TOWNSHIP CLERK.—In case a contagious disease makes its appearance in a family living in a township municipality, and the board of health quarantine the occupants of the house, is it necessary that some person should act as errand messenger for the safety of the public?

Who should pay the messenger, the corporation or the parties quarantined? In some cases the quarantined parties might be too poor to pay the expense. In other cases the quarantined parties might be able to pay the expense but refuse to do it.

Assuming that by "errand messenger" you mean some person whose duty it shall be to carry provisions and other necessities to the family quarantined, and otherwise give them attendance, we consider the employment of some person for this purpose justifiable and necessary. If the persons quarantined are able to pay the messenger or attendant for his services they are liable for the amount. If they are poor and unable to do so, the municipality must foot the bill. See section 93 of the Public Health Act (chapter 248, R. S. O., 1897).

Payment of Member of Local Board of Health

246—E. R.—Is it lawful for township councils to pay the members of the local board of health for their services, while sitting at board meetings, the members of the board not being members of the council, except reeve and clerk?

The statutes make no provision for the payment of any of the members of a local board of health for their attendance at meetings of the board.

Farmer's Son, Jointly Assessed Not Liable for Poll-Tax.—Vote of Farmer's Son.

247—A. B.—1. Is a person, who is eligible to be entered on an assessment roll as a farmer's son only (they having no actual interest in the property) but elect to be entered as a tenant or owner, as permitted by section 14a, sub-division f, of the Assessment Act, exempt from poll-tax?

2. How can the right of a farmer's son to vote as an owner or tenant be reconciled with the oath that has to be taken by owner or tenant when vote is challenged?

In regard to second question, my own opinion is that the voter should be sharp enough to demand the farmer's son's oath and stand right by it and throw the responsibility on the returning officer, if he rejects the vote. As the Assessment Act does not govern the case on election day many good votes have been rejected simply because the voter would not take the oath as an owner or tenant. A little new legislation is certainly needed to clear up difficulties that arise on this point.

1. Yes, if you mean the tax imposed by section 100 of the Assessment Act.

2. If this man's vote be challenged, he is entitled to select for himself any of the forms of oath contained in sections 112 to 115 of the Municipal Act, both inclusive, and on taking such oath he should be given a ballot by the deputy-returning officer and allowed to vote.

A Fire Limit By-Law.

248—R. E. G.—In an incorporated town, we have a by-law respecting fire limits. It has been in force and obeyed for ten years. It provides that within certain limits of the business portion that all buildings erected, fronting upon the streets named, shall be two stories high, not less than that height, first story to be not less than one foot thick, if brick or stone. Second story to be not less than 9 inches, if brick, and roofed with fire proof material. It also provides that no repairs shall be made to existing building unless such repairs shall tend to make them more fire proof.

This is the substance of the by-law. It is now contended that we cannot enforce the by-law or that part of it regulating the height of building.

1. Can we enforce the whole by-law?

2. How high would be two stories?

3. Would we have power to amend our by-law and say how high two stories should be and how far back the two stories should extend from street front?

1. If your by-law is properly prepared, in accordance with section 542 of the Municipal Act, it can be enforced *in toto*, but we would like to have an opportunity of seeing the by-law, or a correct copy of it, before giving a positive opinion, and we would like to know the particular violation of the by-law which you desire to prevent. If we knew that and had a copy of the by-law before us, we could then express an opinion upon the matter and advise you.

2. If your by-law does not define the height of a storey, two stories would simply mean two floors—the ground and first floor—the height to the ceiling will, no doubt, vary, in different buildings.

3. Yes, but this amending by-law will not be retroactive in its operation.

Local Improvement System in Village.

249—S. H.—1. Is it lawful for the corporation of a village (which has not adopted the local improvement system) to construct sidewalks under section 678 of the Municipal Act?

2. If so, would a petition (from the owners of real property) under section 669 prevent the council from doing such work?

3. Would it be necessary for the council to publish a notice of their intention to undertake said work under section 669?

4. Or, in other words, has the council full power to pass by-laws to raise funds for local improvements under section 678?

1. The powers conferred by section 678 of the Municipal Act have, by section 47 of the Municipal Amendment Act, of 1900, been extended to incorporated villages, but section 678 was not intended to, and does not itself profess to give councils power to construct sidewalks. That power is given by section 664, and section 678 simply gives the councils of municipalities which have not adopted the local improvement system, under section 682, power to raise a certain part of the necessary funds to pay for the cost of work upon leading

or principal business streets out of the general funds of the municipality.

2. In the absence of a sufficient petition, under section 668, subsection 1, the council cannot initiate the work except in the manner provided by section 669, and if a sufficient petition is presented to the council in opposition to the work, the council has no power to go on with it under that section either.

3. Certainly, but as we have stated, if a sufficient petition is put in against the doing of the work, it cannot be done.

4. The answers already given furnish sufficient information to show clearly what the council can and what it cannot do.

Electric Railway Franchise—Provincial Audit.

250—A. D.—Has a township council power to grant a franchise for an electric railway to a private individual?

2. If a township clerk and treasurer's books were examined by the Provincial auditor and a report of same were sent to the council, would said report have to be adopted and published in minutes, or could the council receive and read report without publishing?

1. Yes, if such person has the parliamentary authority to construct the railway. Sub-section 11 of section 3 of chapter 209, R. S. O., 1897, provides that "the company" shall mean the company or *person* authorized by the special Act to construct the railway.

2. The report of the provincial municipal auditor need not be written in the minutes, but should be kept by the clerk as one of the records of the municipality.

Frontage Tax in Villages.

251—R. M. H.—Would you kindly inform me as to whether the power to build sidewalks on the frontage system extends to villages (incorporated villages) or not, as well as towns and cities?

Yes. See section 664 and following sections of the Municipal Act.

Assessment of Saw-Logs in Yard.

252—J. M.—Are saw-logs and lumber, shingles and shingle timber, which are piled in mill-yard assessable?

Yes, subject to the provisions of subsections 24 and 25 of section 7 of the Assessment Act.

Council Can Compel the Cleaning Out of the Drain.

253—A SUBSCRIBER.—A wants an outlet to drain a portion of his land and therefore brings on the engineer. The proper course of the water is not directly down the side of the roadway but entwines in and out of the land adjoining the roadway for some distance when it takes another course and goes across a farm to the outlet (a river.). The engineer put the drain straight down the road until it came to aforesaid farm, when he put it in a direct course. The parties benefitted dug the drain. The portion along the roadway is maintained by the corporation, while the party owning the aforesaid farm has to maintain his. The drain in the aforesaid farm was dug and maintained for some time. When now the road portion has been cleaned out the aforesaid party objects. Can the corporation legally bring on the engineer under the Ditches and Watercourses Act and compel said party to dig said drain?

Since both the municipal corporation and the person owning the farm are own-

ers, whose duty it is to maintain portions of the drain under the provisions of the engineer's award, the council of the municipality can take proceedings under section 35 of the Ditches and Watercourses Act (chapter 285, R. S. O., 1897) to compel such owner to clean out the portion of the drain awarded to be constructed and maintained by him, and to put it in a proper state of repair. By section 3, the word "owner," when used in the Act, is made to mean and include a "municipal corporation as regards any highway under its jurisdiction."

Duties of Assessor.

254—SUBSCRIBER.—Our town council appointed one assessor for 1901, with instructions not to use last year's roll, but to make an independent assessment. The assessor, when he started his work, took last year's assessor with him and the roll for 1899, which is identical with the roll for 1900. Had he a right to set aside the wishes of the council? He claims the old assessor is his clerk. What remedy has council?

The council should appoint, as assessor, a competent man at a reasonable salary, whose duty it is to assess all rateable property in the municipality, diligently and impartially, and to the best of his judgment, knowledge and ability, in accordance with the provisions of the Assessment Act. He can accept and use such assistance as he may deem necessary, but the valuation placed upon all properties must be the result of his own judgment and opinion, after having fully considered the circumstances of each particular case. Section 28 of the Act must be his guide in placing a value upon any and all kinds of rateable property. We do not think the assessor could properly carry around with him the assessment roll for 1899. This is one of the records of the municipality, and should be kept in the custody of the clerk, who is responsible for its safe keeping. But notwithstanding that the assessor ignored the instructions of the council, the only remedy there is, is an appeal by persons complaining of their assessment to the court of revision.

Assessment of Dogs.

255—RATEPAYER.—If, when the assessor is making his assessment, he fails to get all the dogs on the same, and, after having made the assessment of the municipality, is credibly informed and has good reason to believe that all dogs were not assessed;

1. Would the assessor be justified in adding those dogs to the assessment of the proper owners or harborers of the said animals?
2. Would the assessor be required to notify the said parties that he had assessed them for a dog, etc?
3. If required to notify, would a post card do or would a registered letter be required?
4. If the assessor inquires whether the assessed has a dog or bitch and is answered in the negative, what position does the party assessed place himself in, having a dog?

1. Yes, if he has not returned his roll.
2 and 3. He should either deliver a fresh schedule or a special notice to the owner or harborer, stating that he has assessed a dog to such owner or harborer in the manner provided by section 51 of the Assessment Act.

4. Section 4 of chapter 271, R. S. O., 1897, enacts that "The owner, possessor or keeper of any dog shall, when required by the assessors, deliver to them in writing a statement of the number of dogs owned or kept by him, whether one or more," and for every neglect or refusal to do so, and for every false statement made in respect thereof, he shall pay a penalty of \$5.00, to be recovered as provided in the section.

Councillor Appointed Clerk.

256—J. W. C.—A, B, C, D and E are reeve and councillors. At a meeting of the council, B is appointed clerk pro tem. Before the next meeting the regular clerk dies and B then applies for the clerkship. Can B be appointed clerk and then resign his position as councillor and accept the position? The reason for asking this question is, if B resigned his position in the council first and the resignation accepted, he would then have no vote for himself or any other candidate and there is a possibility of a tie in the council. Perhaps you can suggest a way that would be legal and proper.

If B wants the office of clerk, he should terminate his councillorship first to render himself eligible. It is the duty of the council to elect a clerk and we are of the opinion that it is not discharging that duty by appointing one of its own members to the office, and particularly so as the Municipal Act provides that a clerk shall not be qualified to be a member of the council.

Maintenance of Bridge—Application of Municipal Moneys Raised for a Particular Purpose.

257—SUBSCRIBER.—In the year 1893 county council passed by-law to assist a township to erect a bridge, as the law then provided, and maintenance for ten years was also passed. In seven years' time, planking became worn, broken and otherwise out of repair.

1. Would "maintenance" in this case mean replanking or would spiking two-inch plank, over the old (a cheaper method) be sufficient to comply with by-law?
2. Because county granted 27½% toward the construction of the bridge, is county in any way a joint owner, or does it all belong to the township?

In 1899 council by law borrowed \$1,500 to meet current expenses. Sufficient was levied to meet this liability but next council voted \$1,000 for roads and let the notes go unpaid for a year.

3. How do the statutes look upon such a transaction.
4. Should not the liability have been paid when taxes are collected?
5. How about selling drainage debentures to raise funds for the current expenses, letting the initiating municipality go unpaid?

The "maintenance" of this or any other bridge on a highway means the keeping of the bridge in such a condition that it will be at all times reasonably safe for persons and vehicles, etc., having occasion to use it.

2. No, the simple making of the grant would not constitute the county owner or part owner of the bridge; the ownership would remain the same as before the grant was made.
3. The statutes do not permit this use of the money. It should have been applied to the payment of the notes as they matured.

4. Yes, or in any event, at and when the notes fall due.

5. This cannot legally be done.

Assessment of Farm Lands in Village.

258—S. N.—A farm, 50 acres, was subdivided into village lots, under a registered plan.

The land is still utilized as a farm. The assessor, however, divides the property, taking ¾ of an acre land and house and barns at \$2500, the balance 49¼ acres, he assesses at \$1500. I claim that entire 50 acres with house and barn cannot be assessed at any more than farm land immediately next the corporation and in township about \$50 an acre, no matter what the house cost, as it is a farm house only. Who is right?

We are of opinion that these lands should be assessed as farm lands in accordance with the provisions of section 8 of the Assessment Act, and on the principles provided by section 29 of the Act for cases under that section. Your idea is the correct one.

Statute Labor of Owner of 5000 Acres.

259—T. W.—Mr. A. owns 5000 acres, mostly swamp land, in this township. He is a resident of the township and all his lands are entered on the resident roll. Our council have instructed the township clerk, when preparing the pathmaster's lists, to be governed by sub-section 2 of section 109, of the Assessment Act. The council contended that above mentioned sub-section applies to all parties assessed for more than 1000 acres of land. Mr. A. contends that said sub-section applies to non-resident lands only.

1. Which of the above contentions is correct?
2. Would said sub-section justify the township clerk in dividing Mr. A.'s property into 1000 acre parcels for the purpose of estimating the amount of statute labor to be charged against it?

1. This sub-section applies to any person assessed for lots or parts of lots in a municipality, whether resident or non-resident; but it does not apply to a non-resident who has not required to be assessed in respect of his non-resident lands.

2. No, the statute labor is to be rated and charged on the several parcels of land up to two hundred acres, as if the same were one lot, and in like manner on each two hundred acres or fractional part thereof, over and above the first 200 acres.

Exemption from Assessment of Municipal Property.

260—1. Can a township council exempt from assessment property in which they are stockholders?

2. Can the council be all disqualified providing some of them have their vote recorded against the motion?

1. A township council has nothing to do with *exempting* any property from assessment. The legislature only has power to do this. The *interest* of the municipality in the property is exempted from assessment by sub-section 7 of section 7 of the Assessment Act, unless the property is occupied by any person as tenant, as lessee, or otherwise than as a servant or officer of the corporation for the purposes thereof.

2. No.

**Tree Falling on Line Fence — A Fenceviewers Award—
Sheep Running at Large.**

261—SUBSCRIBER.—1. On the line between A and B some trees from B's bush have blown over the part of the line fence owned by A and broken it down. Whose duty is it to remove trees and repair fence?

2. An award drain was constructed some twenty years ago on a line between A and B, the drain being on B's side of the fence. A and B made the drain after the fenceviewers' award. A has tile drain flowing into drain. B is now changing his water route and threatens to fill his part of award drain in, it being the outlet. Can he do so? If not, how will A proceed to meet him?

3. On a boundary line between townships, A and B live opposite each other. In A's municipality stock is prohibited to run. In B's it is free. A's farm is open, B's sheep bother him. What can be done?

1. In such a case it is the duty of the proprietor or occupant of the premises, on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damages caused by the falling of such tree. For the proceedings necessary to compel the owner or occupant to comply with this duty, see subsections 2, 3 and 4 of section 16 of the Line Fences Act, chapter 284, R. S. O., 1897.

2. If the drain was constructed, under and in accordance with the provisions of a fenceviewers' award, made under the authority of the statute then in force, B has no right to fill in or in any way obstruct the drain, and can be restrained by injunction proceedings from so doing.

3. If B's sheep trespass upon or cause damage to A's land, they are liable to be impounded by A, but they cannot be interfered with, while on the boundary or town line between the two municipalities.

Payment of Orders by Local Board of Health.

262—B. D.—Under section 57 of Public Health Act, the treasurer of a municipality is required to pay out of any moneys in his hand, the amount of any order given by the members of the local board of health or any two of them.

1. Kindly give an outline of the procedure in order to comply with the directions of this section.

2. Would it simply be necessary for the party, in whose favor the order was drawn, to present the same to treasurer in order to secure payment?

3. Would it be necessary that the order should be first passed by the municipal council (first having been passed by local board of health or any two of them) and have the signature of reeve or mayor of said municipality?

4. Could the mayor or reeve prevent the treasurer of municipality from paying amount of any order regularly drawn and signed by two members of the board of health?

5. Is it necessary that the mayor or reeve of a municipality should sign all orders on the treasurer before the treasurer pays the same or can the treasurer pay orders passed by board of health without signature of mayor or reeve?

6. Would section 20 of the Public Health Act, or any other clause in P. H. Act, give the council of municipality any supervision or control of the expenditure of local boards of health?

7. Suppose two members of the local board of health instructed the M. H. O. verbally to inspect a certain nuisance and afterwards refused to pass his bill, that is, the bill of the M. H. O., for services performed, who should the M. H. O. sue to recover amount of

bill or how should he proceed to secure payment?

1. A person in whose favor an order on the treasurer of the municipality is drawn or given by the members of the local board of health or any two of them, should present it to such treasurer, who "shall forthwith pay out of ANY moneys of the municipality in his hands the amount of such order."

2. Yes.

3. No.

4. No.

5. The signature of the mayor or reeve, as mayor or reeve of the municipality, is not necessary in order to authorize the treasurer to pay the amount of an order given by the members of the local board of health or any two of them.

6. No.

7. We cannot find, in the Public Health Act, that any authority is given to two members of the local board of health to order this inspection, or bind the board, so as to make them liable for payment of the cost or expenses of such inspection. An explanation or description of the nuisance inspected might throw some additional light on this question.

A Deviating Townline.

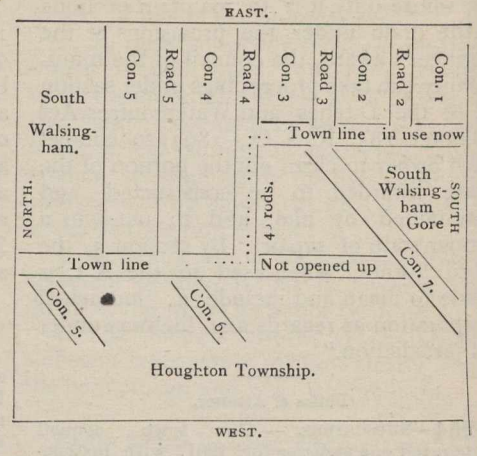
263—J. B.—The original townline between Houghton and South Walsingham for a distance of three or four miles is not opened up for travel, but there is a road forty or fifty rods from the townline, wholly in the township of South Walsingham, and farm houses on each side of it, called here, given road. This road goes from the fourth concession of South Walsingham to lake road, as shown in the diagram, but is claimed by some to not be used in lieu of a townline any more than the concessions of Houghton. Should Houghton help to maintain such given road?

A man going from the fifth concession of South Walsingham to the village of Clear Creek would take one of the concessions of Houghton; if going to Port Rowan, he would take given road.

Yes. See answer to question No. 264 in this issue, to which a diagram is appended.

A Deviating Town Line.

264 CLERK.—About seventy-five years ago the townline between the township of Houghton and the township of Walsingham was surveyed from the south to the 4th concession and the road was opened up. A number of years later on, the survey of the townline was completed, commencing at the north part of the township and running south to the 4th concession. On arriving at concession 4, the last survey brought the line 40 rods to the west of the first survey, leaving a gore of 40 rods width which was awarded by the court as belonging to South Walsingham. The townline proper, from the 4th concession running south, was never opened up, the township of Houghton using the townline marked X, which road is in South Walsingham. Is the township of Houghton liable to perform one-half the labor on the road now in use and, in case of any damages arising out of the road not being in a good state of repair, would the township of Houghton be liable for its share of the damages sustained? In 1900 the township of Houghton paid South Walsingham \$7.53 to be expended on this road.



Upon the facts of this case we are of the opinion that the road south of the 4th concession must be regarded as the town line *de facto*, and that the two townships must keep it in repair, and that if an accident happen by reason of the road being out of repair, both townships will be liable.

County and Township Councils not Liable.

265—M. N.—A certain member of the county council sold out the job of building a bridge over an engineer's award ditch on a townline between two townships in the same county. He got the consent of two members of said council privately by representing it to be a county bridge and stating he could get it built at a cost of \$10 or \$15 and when the bridge was completed he presented a bill to the council of \$54.74. The same two councillors with a majority of the whole council refused payment on the ground, first, that it is not a county bridge and second, he had not the proper authority to let the job (in the opinion of the council). Who has the right to pay for the bridge?

Under section 617, of the Municipal Act, it is the duty of the County Council to erect and maintain bridges over rivers, streams, ponds or lakes, forming or crossing boundary lines between any of the municipalities within the county. If the ditch in question is an artificial one, it is not a case within this section, and the county is under no obligation to pay for the bridge, even if it can be regarded as a bridge as distinguished from a mere culvert. You do not say whether the construction of this bridge was provided for by the award, and if so, you do not say by whom it was to be constructed. Under the Ditches and Watercourses' Act the township engineer appointed under that act would have no authority to order the county council to build the bridge. It seems to us clear, then, that the county council is in no way liable for the cost of the bridge in question, and that the county council acted properly in refusing to pay the bill.

Injury to Straying Cattle—An Unsafe Road—Mode of Impounding Cattle—Notice to Owner Under Ditches and Watercourses Act.

266—ENQUIRER.—An owner claims that two of his cattle strayed from sideroad across the cattle guards into G. T. R. property. One was killed and the other badly injured by train. Owner claims damages from township council on the grounds that some person

unknown to him, who was unable to cross a large creek without a bridge on the sideroad let down his fence to cross his bridge, the cattle getting out where gap was made in fence. Owner contends that council is liable because it has not built a bridge over the creek on the sideroad for public use, both ends of sideroad are open and all the way through except when the creek is in flood. Money has been expended and statute labor performed at the other end only, as another ratepayer lives at that end.

1. Can owner of cattle make council pay for cattle under those circumstances?
2. Can council be forced to build bridge over the above mentioned creek?
3. If a person drove into the creek and lost his life or that of his horse, would the council be liable? The sideroad is not enclosed.
4. It is contended by some that a person must drive any animal loose he is taking to pound. That he cannot halter it or put a rope on it to lead or drive it or take it in a vehicle. Is that so?
5. Ditches and Watercourses Act. Can engineer notify other owner to be present at an adjourned meeting under subsection 1 of section 16, when such owner's lands, though affected by the construction of the ditch, is more than 75 rods away from the line of the ditch or its commencement?

1. No.

2. The council should either build the bridge or close the road, after having taken the necessary preliminary proceedings required by the Municipal Act. As long as the road remains open, the public are invited to use it, and the council is bound to keep it in a reasonable condition of safety.

3. Yes, unless it could be shown that the accident was proximately caused by the negligence of the driver.

4. No; but the party taking or driving an animal to a pound should act with reasonable care so as to cause it no injury.

5. The engineer may notify all persons whom he may consider to be interested in the proposed ditch, or who may be effected thereby; but if he notifies a person whose lands are more than seventy-five rods from the ditch, such person need not attend the meeting, because the engineer would have no power to allot any part of the work to him.

Sale of Timber on Concession Line.

267—READER.—1. In a township, can one of the municipal councillors buy the timber on the concession line from the other members of the council?

2. If not, can the council sell timber on line to any private individual without putting it up to public auction?

1. No. A member of a council has no right to enter into a contract with the council of which he is a member, and such a contract is void, and unenforcible against the municipality. See section 83, of the Municipal Act.

2. Sub-section 7, of section 640, of the Municipal Act, gives the councils of townships power to pass by-laws for selling the timber on any allowance or appropriation for a public road. This sale can be made by public auction or privately, which-

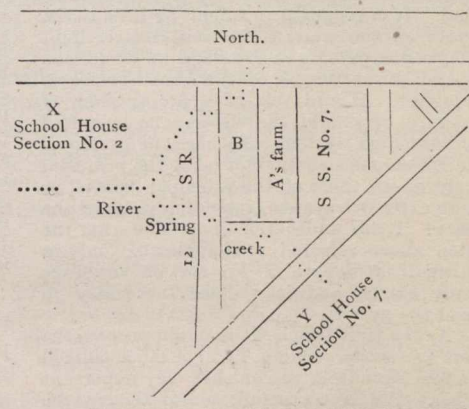
ever the council deems the more advantageous.

Mistake in Ratepayer's Taxes—Drainage Petition—Opening of Road.

268—R. W.—1. The clerk, in 1899, made a mistake of \$10.00 in collector's roll in one ratepayer's taxes. The mistake was not noticed. The ratepayer got a receipt for his taxes. I noticed the mistake the other day. Can the \$10.00 be collected yet?

2. Is it necessary to have a petition of the majority of ratepayers to have a drain cleaned out? It was dug some years ago under the Drainage Act.

3. Can A force the township to open S. R. 12, so his children can attend school? There has been some road work or statute labor done on the south end of road. The north end is fenced in with the farms. B does not wish the road opened, as it would cut off his water privilege. It would cost \$1,500 or \$2,000 to open the road and build the bridges, and also buy a right of way at north end. The school-house in section 2 is only about one-eighth of a mile farther than No 7. He could send his children there if he liked. The road, if opened, would be of very little use to the travelling public.



1. No.

2. No. See sections 68, 74 and 75, of the Act respecting the construction of drains. (Chap. 226, R. S. O., 1897.)

3. A cannot force the council to open and maintain this road for his purpose only.

A By-Law Commuting Statute Labor in Part.

269—F. G. J.—Enclosed you will find a copy of By-law No 460 of our township, and I would like your opinion on some matters connected therewith.

1. In road divisions, where a petition was sent to the clerk, according to clause 1 of the by-law last year, is it necessary to again send in a petition this year, or does the clerk mark that division commuted without a petition?

2. If the latter, how will a road division proceed, that commuted their statute labor last year and are desirous of working it this year?

3. A certain overseer last year commuted the statute labor in his division without sending in a petition or seeing the others in his road division about commuting. The overseer then sent a certified statement to the reeve, who gave an order on the treasurer for the amount due that division, and it was paid, and, of course, was not put on the collector's roll (there being no petition). Now am I, as clerk, to put the statute labor in the division on the collector's roll as arrears of taxes at the 60 cents a day, or is it to be put on at \$1.00 a day? The road list was handed to the collector about Dec. 1st, 1900, who returned it to the clerk

BY-LAW NO. —

Municipal Corporation of the
TOWNSHIP OF —

To repeal By-law No. — in part and amend the same.

Whereas it is necessary and expedient to pass a by-law to repeal By-law No. — and amend the same;

Be it, therefore, enacted by the municipal corporation of the township of —, and it does hereby enact:

1st. After a petition has been filed in the clerk's office of the municipality, signed by a sufficient number of the persons liable to perform statute labor within any road division in this municipality to represent a majority of the number of days' labor required to be performed in said road division, asking that the statute labor be commuted, the statute labor liable to be performed in such road division shall be commuted at sixty cents for every day's labor that is required to be performed within the division, according to the by-law of this municipality.

2nd. Such petition shall be filed in the clerk's office not later than the 15th day of June, in the year in which commutation first begins in the division.

3rd. After a petition is filed in the clerk's office, the clerk shall enter on the collector's roll for this municipality the amount required to be collected from all persons within the road division, and it shall be collected the same as other taxes are collected.

4th. The clerk shall, on or before the 10th day of June, furnish the overseer of the road division with a certified statement of the amount of money liable to be collected from the road division in which he is to act.

5th. It shall be the duty of all overseers of highways to expend the moneys received for commutation of statute labor for the benefit of the public roads within their respective divisions by public competition, and not less than four days' notice shall be given by every overseer of the time and place when and where any money will be expended or contract let, by posting, or causing to be posted, in not less than four bills in public places within the municipality, two of which shall be posted within the said road division.

6th. Upon the completion of such contract, the overseer in charge shall furnish the clerk of this municipality with a certified statement of the amount to be paid, and to whom it is to be paid, and upon the receipt of such statement, the reeve shall grant his order on the treasurer for the amount.

7th. All overseers of highways, acting under this by-law, shall receive 5 per cent. of all moneys liable to be collected in their respective road divisions for statute labor.

8th. That all by-laws, or parts of by-laws, inconsistent with this by-law, are hereby repealed, so far as they conflict with this by-law only, and this by-law shall come in full force and effect immediately on and after its passing.

By-law read a first time March 19th, 1900.
By-law read a second time March 19th, 1900.
By-law read a third time and passed March 19th, 1900.

Clerk.

Reeve.

1. After considering the by-law submitted to us, we have concluded that, after a petition has been filed, and the statute labor in a road division commuted under the provisions of the by-law, it must remain commuted in that division, as there is no provision made in the by-law for a return to the old system. This is especially the case in view of section 2, which is as follows: "Such petition shall be filed in the

clerk's office not later than the 15th day of June, in the year in which commutation first begins in the division."

2. The persons chargeable with statute labor in such a division cannot return to the old method of performing it, unless authorized to do so by a by-law of the township council.

3. You have no authority to place these amounts on your collector's roll, either for this or any subsequent year, either as arrears of taxes or commuted statute labor or otherwise.

Council Should Leave Parties to Their Remedies Under the Drainage Acts.

270—W. P.—There is a water run and a culvert on said place which has been kept up by the council. The man on east side of road ran an underdrain out at culvert and his neighbor, across the road, built a dam along his fence damming the water across road and filling up the culvert with clay. The man on west side of road claims that the council should take the water down the side of the road which would mean a cut eight or ten feet deep and about sixty rods long. What steps would the council take to have the water taken off the road and have the water run in the old course through the fields?

The council should not make the cut described to take the water away. This would be taking the water out of its natural course, and likely to lead to future trouble. It is doubtful whether the municipality can institute proceedings under the Ditches and Watercourses' Act, (Chap. 285, R. S. O., 1897,) to have a drain constructed to carry this water to its natural outlet. The point, so far, has not been decided by any High Court judge, but we understand that the judge of the county of Welland has held that a municipality has no right to commence proceedings under this section. The council should leave it to the private owners interested to take such steps as the Drainage Acts provide to remedy the deficiency. See also question No. 95, 1901, February issue.

Status of Separate Schools When Township is Being Divided Into School Sections.

271—C. B.—I have been requested to write THE MUNICIPAL WORLD with regard to forming school sections, as we are about passing a by-law for the purpose of forming the school sections of the township, and as we have separate schools or portions of separate schools, being in union with adjoining township. Should we form all the township into school sections, including the lots of separate school supporters, or does the board of trustees of separate schools form their own sections?

Every part of the township should be included in some section or union school section when the council is dividing it into school sections. Sub-section 1, of section 11, Public Schools Act, (chap. 292, R. S. O., 1897,) provides that "the municipal council of every township shall sub-divide the township into school sections, so that EVERY part of the township may be included in some section." Every person paying rates in any school section so formed, who is a Roman Catholic, and supporter of a separate school, in the municipality, or in a municipality contig-

uous thereto, on giving the notice mentioned in section 42, of the Separate Schools Act, (chap. 294, R. S. O., 1897,) shall be exempt from payment of all rates imposed for the support of public schools, etc. As to the mode of forming a Roman Catholic separate school, see sections 21, 22 and 23, of the Separate Schools Act.

Cash in Bank Assessable.

272—J. H. M.—Is assessor justified assessing private cash in bank as personal property, or only for income derived from it?

He is justified in assessing cash in bank as personal property. See sub-section 9, of section 2, of the Assessment Act.

By-Laws for Purchasing Electric Plant and Constructing Sewerage System—"Wards" Still Exist—Assessment of Owner and Tenant.

273—ENQUIRER.—1. Our town council have under consideration the installing of a system of waterworks and a system of sewerage, also the taking over of the present electric light plant, which is now owned by a private individual. It is proposed to submit by-laws to the electors on the waterworks and electric light plant, and of putting in sewerage under section 668, and sub-section 4, of the Local Improvements Act. Would this be a proper mode of procedure, or should the electors be consulted as to sewerage system, whether said system is installed on one street, (that being the principal street,) or say three of the principal streets, or a more extensive system, including many of the streets? I am under the impression that the section above referred to is applicable only in municipalities where a system of sewerage already exists, and it becomes necessary to extend the system.

2. As the time for clerks to again prepare the voters' list is approaching, I will be much obliged for a few hints from you on that very important subject. We have a population of about three thousand. I therefore take it for granted that the term "wards" does not apply to us, and should not be considered in compiling our list, but for the sake of convenience we may have the usual polling sub-divisions, and therefore a person assessed in more than one sub-division, and having sufficient property in each is only entitled to one vote in the municipality, and should have his name entered in one sub-division only.

3. There seems to be some uncertainty as to the meaning of "severally" and "jointly," in section 92, chap. 223, of the Municipal Act. Kindly explain difference in these expressions. Am I to infer from section 93, chap. 223, that if A (the owner) and B and C (tenants) are assessed for a piece of property valued on roll at \$575 (in town) that not one of the three is entitled to vote.

1. The by-law for the raising of the amount necessary to purchase the electric light plant should be submitted to the electors for their assent before it is passed, provided the amount to be raised is not to be paid within the year current at the time of the passing of the by-law, as we presume is the case. See sub-section 1, of section 389, of the Municipal Act. If the council of your town, upon the recommendation of the local Board of Health, affirm by a vote of two-thirds of all the members of the council at any regular meeting thereof, that it is desirable and necessary in the public interest, to construct, make, enlarge or prolong, a drain, sewer or sewers, etc., a by-law can be passed for the purpose, subject to the provisions of sub-section 4, of

section 698, without its having been first submitted to the vote of the electors. This sub-section seems to cover every case where it is in the public interest to make, enlarge or prolong a sewer.

2. "Wards" still exist in a town of less than five thousand inhabitants, notwithstanding the amendments to the Municipal Act, enacted by the Municipal Amendment Act, 1898. A voter's name should, therefore, be entered on your voters' list in every ward in which he possesses the necessary qualifications as a municipal voter, and he can vote for councillor in as many wards as he is so qualified, but has only one vote for mayor. See Amendment, 1601, in this issue.

3. No. Your town having less than three thousand of a population, all three are entitled to be placed on your voters' list.

Repairing of Bridge Damaged by Lumbermen.

274—W. G. H.—We are in a back part of the country where there are many rivers and streams to bridge, and the people are not able to keep or build expensive bridges. The lumber company, in running their logs, tears up the covering and railing, and does not replace them. As it was leaving the municipality liable for damages that might occur, they claim that the bridge should be high enough to let the tow-boat and cabin under. Is this so, or can we compel them to replace the covering and railing? The streams are not navigable. Please give us full detail of this in your May issue.

Under the circumstances you mention, the municipality is not bound to furnish parties floating logs or timber down the stream, with such bridges as the purposes of their business would seem to require. It is sufficient if the municipality erects and maintains in a condition of safety such bridges as are required by ordinary travel in the locality. If the lumber company in carrying on their business cause damage or injury to any bridge or any part of it, it can be compelled to repair it or pay for the damage done.

Township Councils in Districts Cannot Pass By-laws Under Sub-Section 1, Section 535, Municipal Act.

275—I. F.—May a township council in unorganized district pass a by-law under sub-section 1, of section 535, Municipal Act, 1897?

No.

Statute Labor—Licenses to Sell Liquor, Cigarettes, etc., in Police Village.

276—J. P. H.—1. There is a police village, composed of part of this township and part of the adjoining one. The police trustees are asking the councils of each to enter into an agreement with them giving them certain privileges. We are not sure if these can be granted. Can this township abolish statute labor in that part of the village within the township limits, or give the trustees power to do so, while they maintain the system in the remainder of the township.

2. If not, can they give the trustees power to commute the same at the rate of fifty cents per day, while they charge seventy-five cents per day from other residents of the township who wish to pay for same?

3. Can they give the trustees power to charge

unassessed residents a poll-tax of \$1.00 per day, while those assessed pay a lower rate?

4. Have the trustees power to charge fees for travelling shows, and to impose licenses for the sale of cigarettes, etc.? Or can council give them such power?

5. Would it be legal or right to grant the trustees the hotel license fees for all the hotels within the village, or should it just be a proportionate share of the same?

1. The police trustees have no authority to commute statute labor within the limits of the police village. This must be done by the councils of the adjoining municipalities, pursuant to section 103 of the Assessment Act, which provides that "the council of any township may, by by-law, direct that a sum not exceeding \$1 per day shall be paid as commutation of statute labor, for the whole or any part of such township, etc."

2. The trustees have no such power. The councils of the adjoining municipalities may commute the statute labor within the area of the police village, at a rate per day not exceeding \$1.

3. No. The rate of commutation fixed by the by-laws of the adjoining municipalities will apply equally to persons liable to perform statute labor under section 100 or section 102 of the Assessment Act.

4. Yes. Section 52 of the Municipal Amendment Act, 1900, repeals section 49 of the Municipal Amendment Act, 1899, and empowers the trustees of a police village to pass by-laws for the purposes mentioned in sub-sections 8 and 9 (regulating public shows, and licensing same), and sub-sections 28 and 29 (regulating the sale of tobacco) of section 583 of the Municipal Act.

5. Section 47 of the Municipal Amendment Act, 1899, provides that "the council of any township in which a police village or part of the territory comprising a police village is situated, may by by-law provide that the whole or any part of the sum collected and received by the township for licenses issued for premises situated in the police village or penalties imposed for offences committed in the police village under the Liquor License Act, shall be placed to the credit of the police village in the books of the township treasurer, and be available for the purposes of the said village."

Fees for Town Treasurer—A Tax Defaulter.

277.—W. R.—1. Is the town treasurer entitled to 10% or what, for collecting arrears of taxes over and above his salary, when nothing to the contrary is stated in the by-law making the appointment? State law, if any.

2. A citizen, for reasons of his own, declined to pay his taxes in 1899. There was plenty to distraint upon but the collector says he was instructed verbally to give the party time, yet he had not paid when the collector's roll was handed over to the treasurer in April of 1900.

Said taxes are not yet paid. Can the amount be collected? Please state how.

1. It is part of the town treasurer's ordinary duties to collect arrears of taxes due the town, and he is entitled to nothing above his salary for so doing.

2. These taxes cannot now be collected from the person who ought to have paid them. The town will have to look to the

collector and his sureties to make good the amount.

Rules of Order Governing Council Meeting.

278.—J. C. C.—I would like to know if you think it is necessary to have three separate motions, ordering respectively the introduction, the first reading, the second reading and the third reading, when passing an ordinary by-law, such as perhaps merely to appoint a new pound-keeper in room of one deceased, etc? Why would it not answer every purpose both as to form, legality, etc., by one and the same motion to agree that "by-law be introduced and read a first, second and third time," or perhaps better still, that "by-law be introduced and passed." Why does common usage give ordinary by-laws three separate readings?

You do not say whether your council has adopted any rules of order governing its procedure. If it has not, the parliamentary rules of procedure should be taken as a guide, in so far as they are applicable to meetings of municipal councils. We are of opinion that it is not essential to the validity of any by-law, in the absence of a rule requiring three readings of a by-law, that separate resolutions should be introduced and passed providing for three readings; nor that the by-law should be read three times before being finally passed. We see no objection to either of the forms you suggest. The custom of reading a by-law three times before passing it is taken from the parliamentary rules of procedure. (See Biggar's Municipal Manual, page 284)

Electric Light and Waterworks By-Law.

279.—C. M. T. What is meant by subsection 5 of section 569 of the Municipal Act, 1897?

The sub-section referred to appears to give the councils of certain towns power to pass by-laws for the purpose of extending or improving water and electric light systems, provided the same are first approved of by the Lieutenant-Governor in Council, it being first shown to the Lieutenant-Governor in Council that the extensions are necessary, and that a sufficient additional revenue will be derived therefrom to meet the annual special rate required to pay the new debt and interest, and provided also, that on the final passing of the by-law or by-laws, three fourths of all the members of the council vote in favor of the same.

If the legislature adopted the system of placing the provisions dealing with a particular subject together instead of placing them here and there in the statutes it would be much more convenient and obviate the necessity of hunting all over the revised statutes for the scattered provisions dealing with a particular subject.

Licensing Butchers.

280.—SUBSCRIBER.—The council of this municipality imposes a license on permanent butchers and also hucksters coming in out of any other municipality. The hucksters do not pay any taxes in the town. Can the town impose a license on the hucksters and exempt the permanent butcher, who pays taxes?

We are of the opinion that the council cannot discriminate between those persons who are and those who are not residents of the municipality. In the case of

Jones v. Gilbert (5 S. C. R., page 356), the Supreme Court of Canada held that a by law or ordinance of the city of St. John, discriminating between resident and non-resident merchants, traders, etc., by imposing a license tax of \$20 on the former, and \$40 on the latter, was invalid because the Act under which it purported to be passed, gave no power to the common council of St. Johns of discrimination between residents and non-residents such as they had exercised in the by-law, and we cannot find that the statutes of Ontario give municipalities in Ontario any such power.

An Illegal School Section By-Law.—Statute Labor of Defaulters.

281.—J. J.—A petition was presented to the council asking that two separate sections be formed out of one existing section. A by-law was passed giving effect to the petition on March 5th, 1898, but in defining the boundaries of the new-formed sections, certain lots were detached from two other sections and added to the new sections; thus three school sections were effected by the change. The persons affected were not notified, and a copy of the by-law was not served upon the secretary of the board of trustees effected. The secretary of the affected board of trustees has just now discovered his section has been affected by the by-law, and claims that the by-law is illegal.

1. The case being as it is, can the council repeal the by-law before five years?

2. In making out the collector's roll, should the clerk regard this by-law as valid, he knowing the persons affected thereby were not duly notified before the by-law was passed?

3. The newly-formed section has not yet elected trustees, or put in a levy. Can the section be dissolved? See section 9, (4) Public Schools' Act.

4. As this by-law is really not in the interest of the ratepayers affected, could you point out the easiest way to repeal it, if it is possible?

5. In case a local council does not pass a by-law fixing the rate at which persons may commute their statute labor, has the clerk any authority for entering \$1.00 for each day in the collector's roll against the name of a resident owner, who makes default in performing his statute labor?

6. If such a by-law is not passed, what remedy has a council against a resident owner who makes default in performing his statute labor?

1. The council can and should repeal this by-law, as it was illegally passed, the provisions of subsection 2 of section 38 of the Public Schools Act not having been complied with and cannot be enforced. On an application being made for the purpose, it can be quashed. In the case of Young vs. Ridgetown, 18 O. R., 140, the council having passed a by-law which was invalid, repealed it and this course ought to be taken here because the by-law, as it stands, may be attacked and the municipality be required to pay the costs.

2. The clerk will have to be guided by the provisions of the by-law so long as it remains unrepealed. He cannot assume the position of a judge as to whether it is good or bad.

3. Upon this statement of the facts, even if the by-law forming the new section were valid, the council could pass a by-law under the authority of this subsection, declaring such section dissolved, etc. The section quoted presupposes

an existing school section and therefore cannot apply to such a case as this, where the by-law establishing the section is invalid.

4. The council should pass a by-law repealing the by-law in question.

5. Unless the council has passed a by-law pursuant to section 104 of the Assessment Act or subsections 2 and 4 of section 561 of the Municipal Act; the clerk has no authority to enter any sum as commutation money opposite the names of *resident defaulters* on the collector's roll. Section 105 of the Assessment Act applies only to the lands of non-residents. The Assessment Act gives the council power to fix the amount at which statute labor shall be commuted and, if it has neglected to do this, we cannot find anywhere any power given to the clerk to fix the commutation.

6. In the absence of a by-law fixing the commutation the council has no remedy.

Liabilities of Pathmasters.—Prohibiting the Erection of Barbed Wire Fences in Townships.

282—H. S. M.—1. Pathmasters are usually appointed in March by municipal corporations. The statute requires the clerk to notify all municipal officers as soon as convenient after appointment. In by-laws of some township councils pathmasters are given forty days to qualify. Who is the legal pathmaster during this time that elapses between the appointment and qualification? How is the retiring pathmaster to know when his responsibilities cease if not like other municipal officers, at end of year? Should any damage accrue from defective culverts or washouts, which is customary at this season of the year, who would be responsible, the retiring pathmaster, believing his powers ceased upon the appointment of his successor, and his successor, believing his actions would be illegal until he signed declaration of office.

2. Can municipal councils of townships pass by-laws prohibiting the erection of barbed wire division fences? Chap. 223, section 545, sub-section 4, R. S. O., 1897, seems to answer in the negative, except in cities and towns.

1. The responsibilities of the retiring pathmaster cease on the passing of a by-law appointing his successor in office. The new pathmasters should qualify for the office as soon as possible after the receipt of notice of their appointment. If damages are sustained by reason of culverts being defective, the municipality, and not the pathmasters, will be liable.

2. The councils of townships may pass by-laws for providing proper and sufficient protection against injury to persons or animals by fences constructed wholly or in part of barbed wire, but they have no authority to wholly prohibit their construction or erection.

A Deviation of an Original Road Allowance.

283—S. J.—1. Our council has a road that deviates into a man's farm to avoid a steep hill. They have had peaceable possession of the road for fifty or sixty years. Can the owner of the farm through which the road runs make council pay for or close road up? There are no writings or by-laws to show how the council got possession of the road.

2. Can owner of farm on opposite side of the old original road allowance prevent council from selling timber off road? He has already notified the parties that were taking timber off road not to cut any timber. He claims that the cutting

of timber depreciates the value of his farm?

3. Can owner of the farm last referred to prevent council from selling or giving road in lieu of road occupied by council?

4. If council decides to sell or give original road should, I put up notices and advertise in the usual way?

1. It is, we are of opinion, now too late for the owner to object to the public using the road in question, and particularly so if statute labor and money have been expended on it, but the public is entitled to use only so much as has been actually used as a highway.

2. No.

3. No.

4. Yes.

A Separate School Question.

284—J. W.—In question 46 in February, 1901, the question is asked:

1. Is the separate school section entitled to the school tax? You answer that the separate school is entitled to the whole tax.

2. Will B's farm be exempt from paying anything towards improvement on the school-house? You answer "No."

I do not see how these two questions agree, if the money that was levied on B's farm for the improvement of the school-house in school section No. 6, where the farm is located, has to be paid to separate school section No. 4. You refer D. B. G. to section 42 of the Separate Schools Act, which says that a Roman Catholic and supporter of a separate school shall be exempt from rates for public school purposes within the city, town, incorporated village or section in which he resides. Now this lot is not in the section in which he resides but away in another section. Section 46 says if he is the owner of unoccupied land within the distance of three miles in the direct line of the site of the separate school, he can have it assessed for separate school purposes, but it does not say that he can have an improved rented farm away out of his own section assessed for school purposes. If there is anything in the School Act authorizing it, please give me the section as I do not know of any.

If you will carefully read section 42, sub-section 1, of the Separate Schools Act you will be convinced that there is no inconsistency in our answers to the questions you quote. This sub-section provides that "every person, paying rates, whether as owner or tenant, etc., shall be exempted from the payment of all rates imposed for the support of public schools, etc." The owner or tenant of the land, as the case may be, is exempt from the payment of the public school rates, after he has given the notice to the clerk of the municipality mentioned in sub-section 1 of section 42, and so long as he has not given the notice mentioned in sub-section 1 of section 47, the land itself is nowhere in the statutes exempted. Section 46 of the Act has no application in the case suggested by D. B. G. It applies only to unoccupied land located, as is in the said section mentioned. Sub-section 1 of section 42 provides that an owner paying rates, giving notice to the clerk that he is a Roman Catholic, and supporter of a separate school situated in the municipality or in a municipality contiguous thereto, shall be exempted, etc." Therefore, if the farm owned by A and occupied by B is located in the same municipality as the separate school section to the support of which the taxes are to be applied (as we

understand it to be) or in a municipality contiguous thereto, the taxes on this farm should properly be applied to the support of that separate school section, in case A has given the notice required by section 42, sub-section 1, and has not withdrawn it, pursuant to sub-section 1 of section 47.

Fences on Street Allowance.

285—T. S.—1. On a certain street in this municipality there are a number of property owners, whose fences are on said street allowance, but it is very hard to define the street in question owing to the fact that nearly all the surveyor's stakes are pulled up. The council as well as the ratepayers are desirous to have the fence in proper place but, for reasons already mentioned, cannot tell where proper place is. Has the council power to employ a P. L. surveyor and survey said street and make each property owner on said street pay proportionate costs for such work? Or are the costs to be paid by the corporation?

2. There are streets in the municipality which were surveyed many years ago but which have not been opened for traffic. But now there are residences being erected near said streets and the owners thereof have asked the council to locate and open said streets for ingress and egress. Is the council compelled to employ a P. L. S. to do said work and pay the costs thereof?

3. A certain street has been used for public travel for nearly twenty years. At a certain point on said street it has been discovered that the public have been travelling off the street allowance during the time mentioned, and the owner of the portion of the land, which has been used as a road, has closed up the street and torn up the approach. Can the owner in question do this without first obtaining permission from council?

4. Can council compel said owner to build said approach in its proper place at owner's expense.

1. The council should take proceedings under the provisions of section 15 of the Surveys Act (chapter 181, R. S. O., 1897). This section provides that "whenever the municipal council of any township, etc., adopts a resolution, on application of one-half the resident landholders to be affected thereby, or upon its own motion, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lot, in any concession, or range, or block, or part of a concession, range or block, in their township, such council may make application to the Lieutenant-Governor, in the same manner as is provided in section 14 of the Act, praying him to cause a survey of such concession or range or block, or part of a concession or range or block to be made, and such boundaries to be planted, under the authority of the commissioner of crown lands. Sub-section 3 of this section provides that the cost of such survey may be on the proprietors of the lands to be affected thereby, in the manner provided by sub-section 5 of section 4 of the Act.

2. The council is not bound to employ a surveyor to do this work, and to pay the cost of doing it.

3. Yes, but it would be more courteous if the owner would notify the council, so that they would have an opportunity of opening the road on the right line before that in use was closed.

4. No.