The Municipal Miscellany.

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Calendar for May, '91.

1. Arbor Day.
   (The assessor's roll will have been returned to clerk the day previous—S. O. 1889.)
   Last day to pass by-laws altering school boundaries.
   Last day for local treasurers to make statistical return of finances to Bureau of Industries.
   County treasurers to balance their books and charge lands with arrears of taxes.
   Liquor licenses dated from.
   Notice of candidates for Entrance Examinations due.
   Last day for filing notice of Separate School supporters with clerk—S. O. 1890.
   Legislative school grant apportioned.
   Persons intending to present themselves for examination as cullers to give notice to Commissioner of Crown Lands not later.
3. Inspectors of schools to notify Department number of papers required for Entrance Examinations.
7. Return of township clerk to county clerk of school accounts.
14. Last day for receiving appeals against assessment.
25. First day on which a court of revision may sit.

QUESTION DRAWER.

In answer to "R. W." in your March number you say, "the council may pass a by-law authorizing pathmasters to search for and take timber, gravel or stone within the municipality for making repairs on roads, etc. By-law may also give power to search for and take gravel in an adjoining municipality," etc. Is it not necessary that the number of the lot or lots and the concessions from which such material is proposed to be taken, should be specially set forth in such by-law before any action can be taken by the pathmaster for the removal of such timber, gravel or stone? Or do you mean that such pathmaster can be empowered by by-law with a "roving commission" to "search for and take timber, gravel or stone" *anywhere* "within the municipality" or "in an adjoining municipality" where such can be found, without having the lots, etc, specially mentioned in such by-laws from which such material is to be removed?

A. M. F.

Sub-section 8 of section 550 of the Municipal Act gives power to local councils to pass by-laws "for *searching for* and taking such timber, gravel, stone, or other material or materials (within the municipality) as may be necessary for keeping in repair any road or highway within the municipality." This does not require the number of the lots or concessions to be mentioned in the by-law, although where the exact place is known it would be preferable to state it, as it is always advisable that the contents of by-laws be as explicit as possible. The intention of the law appears, however, to be to give local councils the power to authorize any and all pathmasters or overseers of public roads to search for and appropriate to the public use such material as might be necessary for repair of roads. Corporations being responsible for keeping roads in proper repair, if they have no material of their own would be in a bad fix if private owners refused to sell. The statutes have always upheld the principle that individual rights are subordinate to the public interest, and therefore it is no greater stretch of authority to give power to search for and take necessary material wherever found within the municipality for public uses, than for railway companies to go on and take possession of a roadway through private property as is constantly done. In both cases the owners are to be compensated. The right to go into an adjoining municipality to search, etc., is dependent on first getting the council of the latter to consent by a resolution, and the amount to be paid the owner must be agreed upon before removal of the material. In the latter case there would be no difficulty in having the lot named in the by-law, as it is hardly likely that any council would propose to take material from an adjoining municipality without there was absolute necessity and it was known beforehand the exact lot where the material was to be had.

Since the foregoing was written we received a communication from "S. S." referring to the matter under discussion. We copy elsewhere his letter and also a report of Justice Street's judgment, which our correspondent kindly forwarded. We have to confess that the decision arrived at by the judge has upset all our ideas of the reading of the sections of the Municipal Act bearing on the subject. Of course it would never do for a layman to insist on an interpretation of the law at variance with a decision of the courts, and however difficult it may be to swallow, we must, as in duty bound, rescind the opinion given above in answer to our correspondent, A. M. F. Had it fallen to our lot to prepare a by-law similar to that of the township of Wawanosh, we fear that it would have shared the same fate if brought before the same tribunal. None of us are too old to learn, and this only proves the need for the light of discussion on numerous doubtful points with which municipal officials have constantly to deal. Judge Street's opinion might possibly not hold good with other judges, as even judges often differ in their interpretations of law, but usually so much stress is laid on precedents that it would not now be safe to frame a by-law to *search for* gravel, timber, etc., until after the material required has been actually found and the exact locality described in the by-law.

Can municipal councils impose and collect a percentage on taxes unpaid after the 14th of December? T. Y.

The Assessment Amendment Act of 1888 provides that "the council may by-law or by-laws impose an additional percentage charge not exceeding five per cent. on every tax or assessment, rent or rate, or instalment thereof, whether the same be payable in bulk or instalments, which shall not be paid on the day appointed for the payment thereof, and in towns, villages or townships, where no day shall have been appointed for payment, the council may by by-law or by-laws impose such percentage on those which shall not have been paid on or before the 14th day of December in each year, there having been fourteen days previous demand as hereinafter provided, and such additional percentage shall be added to such unpaid tax or assess-

ment, rent or rate, or instalment thereof, and be collected by the collector or otherwise, as if the same had originally been imposed and formed part of such unpaid tax or assessment, rent or rate, or instalment thereof." In order that the council may know the exact amount of the additional percentage to be collected on the roll, the by-law should require the collector to deliver the roll to the clerk on the 14th December that the additional amounts may be added to the roll, and a certificate of the total additional amount should also be added in order that the treasurer may know the amount to be paid him by the collector when he makes his final return.

"A" is a candidate for the position of a councillor for re-election. It was understood that his qualification was faulty, nevertheless he was nominated by two respectable ratepayers. (1) Can returning officer refuse to accept such nomination? (2) "A" gets elected, in fact heads the poll; can the clerk refuse to accept his declaration of qualification and office? (3) Must the question remain until a protest is entered against such procedure? (4) Whose duty is it to see the law enforced? W. L.

The duties of the returning officer and the clerk are ministerial. They have no power to decide as to the qualifications of a candidate. Their duty is simply to see that the election itself is carried out in accordance with the statute, and the question of qualification of a candidate must be left to the decision of the courts. Any ratepayer may take the necessary steps to set aside an election.

A side-line which is unused because of a road in lieu of it passing through the land of A, has been fenced in by the latter and used as a pasture. Can his neighbor B, whose land also adjoins the side-line, claim the use of half of the land? W. G.

No. Section 552 of the Municipal Act says that in case a person is in possession of any part of a government allowance for road laid out adjoining his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, such person shall be deemed legally possessed thereof as against any private person, until a by-law has been passed by the council having jurisdiction over the same.

Can an electric light plant, poles and wires be assessed to their full value? Would it come under the head of personal property? J. F.

A somewhat similar question appears on page 5 of the February number to which we refer our correspondent. The dynamo and apparatus situate in the building is certainly liable to assessment. If not attatched to the building it would be assessed as personal property, but if a fixture, it would become a part of the real estate, the same as machinery in a manufacturing establishment. In reference to the poles and wires on the streets there does not seem to be any provision for their assessment. A change in the act is desireable in order to get over the anomoly in some way.

A person comes into a village during the time the assessor is doing his work, starts business as a merchant, has the goods in trust, and claims exemption in consequence. Can a corporation claim the $50 deposit from him as a transient trader under the Municipal Assessment Act of 1888, section 23, sub-section 90, a by-law being in existence under the same? If so how long or when would the amount deposited be taken up in taxes? If the said merchant claims or demands to be assessed for personal property, and is assessed accordingly, could the corporation still collect the $50 deposit under the by-law? M. E.

The municipality can insist upon payment of the license fee at any time so long as the person's name has not been entered on the assessment roll for income or personal property for the current year. A resident not already so assessed would also be liable before doing business. The fact of not owning the goods would not affect his liability in this respect. The assessor has until 30th April to return his roll, and no particular day is specified for entering any name, so that he would not be bound to accede to the request of the party for immediate assessment, and where he had reason to believe that to do so would result in loss to the municipality he would be justified in delaying the entry, for once the name is entered as assessed for personal property, no further claim could be made in respect of a transient trader's license. The trader who has paid the license fee is entitled to credit for it afterwards on his taxes if he remains until taxes are due, even though it might take more than a single year's taxes to take it up. The intention of the law is good, as it aims at protecting the municipality in the matter of revenue, and protecting the legitimate dealer from unfair competition from the numerous Cheap Johns who make a business of opening out for a short time in country villages, to unload surplus stocks, by which local trade is demoralized. The clauses of the Act referred to by our correspondent could have been improved by being made more explicit in their terms so as to cover all the ground relating to such cases.

DIVISION COURT CLERKS' ASSOCIATION.

The following questions were discussed by the Division Court Clerks at the last annual meeting of the Association, and as these questions and replies are of considerable interest, we copy them entire. With all due respect, however, we have to express dissent from the answers given to a few of the questions. For instance, question 11 asking a clerk can issue a garnishee summons attaching money in his own hands as clerk is answered there in the affirmative. We hold that such money is not garnisheeable at all, and even if it were so the proper course would be to obtain a judge's attaching order to serve on the clerk, as it is against all practice for an official to issue papers for service on himself. Then as to the answer to question 15, in which it is suggested that the clerk would be justified in interpreting a judge's order to enter judgment "forthwith," as meaning *immediate* without reference to the time given by statute is surely wrong. The word "forthwith" does not always mean *immediate*, and cannot fairly be so interpreted in sub-section 4 of section 111 of the Division Courts Act. Had no defence been entered, the plaintiff would not be entitled to a limitation of the time given in section 109, and the mere reference of the nature of the defence to the review of the judge for his decision, allowing that he set it aside, was surely not meant to give the plaintiff a better position than he would have had provided no defence had been entered at all. The word "forthwith" in sub-section

4 of section 111 therefore clearly means that judgment may be entered by the clerk on the order of the judge as soon as the time elapses that would have had to elapse had no defence been entered, instead of waiting until the date of the regular sitting of the court for which the summons had issued.

If the bailiff seizes an article upon which the execution creditor afterwards claims to hold a lien, and forbids sale, is the bailiff entitled to any costs?

Ans. I think not. If the claimant were some one other than the execution creditor, and the claim was valid, the bailiff would not be entitled to costs, and I think it can make no difference that the claimant happens to be also the execution creditor. It is certainly a hardship upon the bailiff, but I see no escape from this conclusion.

2. Can a clerk issue a subpœna for a witness to attend any other court than his own?

Ans. Yes, a Clerk can subpœna a witness to attend any Division Court in the same County in which his own Division is situated, but not to attend any court outside the County. The subpœna may be served anywhere in Ontario, Sec. 131, D. C. Act.

3. *(a)* If the decision in an Interpleader suit is in favor of the Claimant, has the bailiff any lien upon the goods for costs? *(b)* If not, who pays Bailiff's costs, and costs of Interpleader Summons, trial etc.?

Ans. *(a)* No. (See page 341, O. P. R., Vol. 12). *(b)* Plaintiff may make himself liable for Interpleader costs by garnisheeing payment; otherwise Bailiff is responsible.

4. Can the clerk receive and enter a defence after the 8 or 12 days after service has expired?

Ans. No. If he were to do so he might become liable to the plaintiff for delaying judgment and execution.

5. Can any further proceedings be taken on Division Court judgment after a Transcript has been issued to the County Court?

Ans. No.

6. Is the Clerk bound to make copies of claims for service, regardless of their length?

Ans. The Clerk has a right to demand sufficient copies.

7. Can further proceedings be taken in the Home Court without a Judge's order, after Transcript of Judgment has been issued to another Division Court?

Ans. Yes, if the proper affidavit is filed with the Clerk, under Sec. 24, D. C. Act, 1889.

8. Can the Clerk renew an Execution without an order in writing from the Plaintiff?

Ans. The Clerk cannot renew an execution without an order from Execution Creditor or his agent. All such orders should be in writing.

9. Should the Clerk enter a defence which comes to him by mail not accompanied by 25 cents fee for entering the same?

Ans. He may refuse to enter it until 25 cents is paid, but if he does enter it without payment of the fee he must look to the Defendant, or the person who entered the defence, for the fee, and cannot charge it as costs in the case against Plaintiff. If he refuses to enter the defence he should at once notify Defendant or his agent that he refuses to enter until fee be paid; and if it is not paid within 8 or 12 days provided by the Statute, (Sec. 109 and 176 D. C. Act) he should not receive the fee and enter the Defence afterwards.

10. If after trial the Clerk issues a Transcript to another Division Court, and afterwards, within the 14 days after the entry of judgment, a new trial is applied for, what is the duty of the Clerk?

Ans. His duties are not prescribed, except to the effect that upon an application for new trial being made, proceedings must be stayed. I should say that the Home Clerk should forthwith notify the Foreign Clerk of the application for new trial, ordering him to stay seizure, sale or other proceedings on the transcript until advised of the judge's decision on the application, but not abandon goods if already under seizure, only in that case to postpone sale.

11. Can a Clerk issue garnishee summons attaching money in his own hands as Clerk?

Ans. Yes.

12. If a garnishee pays money into court either before or after judgment against him, is the Clerk justified in paying the same to the Primary Creditor immediately after judgment against the Primary Debtor, without regard to the time allowed by the judge?

Ans. Yes; he must do so if judgment is such that he could issue execution.

13. Is the Clerk bound to notify the Plaintiff of a Nulla Bona return to execution on judgment obtained in his own court?

Ans. No, but it pays to do so as a general rule, but no fee can be charged for such notice.

14. Shall the Clerk demand more than 25 cents fees when receiving a Defence? I have been accustomed in addition to charge 15 cents for the notice to Plaintiff, and postage.

Ans. The only fee which can be demanded from the person entering a defence is the defence fee, 25 cents. The other costs consequent on the entering of a defence, viz., for notice, taxation, and postage, are costs in the cause, and may be charged in the first instance to the Plaintiff.

15. A special summons is served, and defence entered next day, whereupon the plaintiff immediately applies to the judge, under Sec. 111 D. C. Act, to set aside the defence, and for the Clerk to enter judgment, the Plaintiff then demands that an execution be issued forthwith. Should the Clerk enter the judgment and issue execution before the ordinary return-day of the summons, viz: the 12th or 17th day after service?

Ans. If the judge's order was merely to set aside the defence, the clerk should not enter judgment until the return-day of the summons. If the judge's order was to enter judgment, without specifying when judgment should be entered, it is doubtful if the clerk should enter it before the return-day, although the Statute is by no means clear. But if the judge's order directed that the judgment be entered forthwith, the clerk should enter it forthwith, without regard to the return-day. The responsibility would then be on the judge, not upon the clerk, if the judgment were improperly so entered. By Sec. 111 D. C. Act, subsection 4, the judge clearly has power to order judgment forthwith as to *part* of a claim, and it would seem a reasonable inference that having power as to part of a claim, he shall also have power as to the whole claim. But the Statute is silent as to that, and I have been unable to procure any authoritative opinion upon the question.

16. A suit is entered in court mixed between a claim for money advanced and damages for non-fulfilment of contract, should a special or ordinary summons be used?

Ans. The clerk must use an ordinary summons, if special is used the defendant has the right to make application to the judge to have clerk's judgment set aside and to enter his defence.

The Minister of Education has introduced measures to consolidate and revise the High and Public School Acts. This is a move in the right direction, if by consolidation is meant the separation and classification of the various clauses relating to High Schools, Public Schools, rural school management as distinct from those of towns and villages, under distinct and separate headings. The heterogeneous mixture of clauses relating to different schools in the present school laws has often been a worry to trustees and others in search of information.

PENDING LEGISLATION.

The present session of the Ontario Legislature has not been behind its predecessors in the number of bills introduced to amend the Municipal Act, Assessment Act, Drainage Act, the High and Public Schools Acts, etc. To amend signifies to change for the better, but it is very questionable if some of the proposed amendments would not be a change for the worse. Fortunately a majority of bills introduced have to run the gauntlet of adverse criticism from members of the House, and have generally to stand considerable pruning in committee before being finally passed, and it may be taken for granted that the most objectionale features in such bills will be expunged before passing a final reading. It will, therefore, be unnecessary to refer at much length on the merits or demerits of the proposed changes at this stage. Probably by next issue some of the proposed measures will have so far advanced through the Legislature as to leave something tangible to discuss in the changes contemplated in municipal and school laws.

* * *

The proposed High School Act as introduced by Hon. Mr. Ross is intended to make considerable change in the organization and management of these schools. The method of support, the manner of appointing trustees, the method of conducting examinations, the necessary increased staff of teachers called for, and the clauses relating to the peculiar facilities for dissolving existing union boards, are all changes which will evoke considerable adverse criticism in the country. We have often observed that those who are the most enthusiastic in demanding changes in commercial and social laws, are the most conservative when either churches or schools are interfered with by lawmakers, and the important changes proposed by the Minister of Education will no doubt create considerable dissatisfaction in the minds of many who had become accustomed to the existing state of managing school affairs, and against which but little complaint has been heard.

* * *

The Education Department, for reasons no doubt satisfactory to the Minister, is decidedly opposed to union boards of High and Public School trustees. The existing school laws provided that in the event of a majority of any existing union board resolving to disunite they could do so, and in that event no union was thereafter permissable. Nor were the trustees of Public and High Schools not already a union board allowed to unite as such. It would appear that so well did the existing union boards give satisfaction, that few, if any, have taken advantage of the law to disunite, and the High School Act now going through the House has provision made for making dissolutions of union boards a matter so easy of accomplishment, at the mere whim of a small minority, that it is likely if so passed to accomplish the purpose evidently intended by the Education Department. By the new act two-thirds only of one section of the school board is required. The proposed clause reads: "If at any meeting of a board of Education called for that purpose a majority of all the members thereof, or if two-thirds of all the trustees representing the High School, or if two-thirds of the trustees representing the Public School vote in favor of the dissolution of any board of education, such board shall be dissolved on and after the close of the current calendar year." It can easily be imagined that a combination of four or five from either section out of a total of fourteen members comprising the union board can thus hold a whip over the head of the majority who may favor union, and by this means the minority would have vastly increased powers in influencing any other business brought before the board, such as the engagement of teachers. If the Education Department at Toronto are so firmly of opinion that union boards are a detriment to the cause of education, it would be better to enact a clause to abolish them without further ceremony.

Since the foregoing was set in type we observe that the Minister of Education has decided to expunge the clauses of the School Bill relating to the method of dissolving union boards, so that the law will remain as at present so far as that is concerned.

COURT OF REVISION.

Appeals against the assessment must be made in writing and delivered to the clerk within fourteen days after the return of the roll. As the roll requires to be returned on or before the 30th of April, appeals would have to be filed with the clerk not later than the 14th May. If the assessor made a return of the roll previous to the 30th April appellants would still have the fourteen days of May to file appeals, but if from any cause the roll had not been returned to the clerk until some days after the time fixed, appellants would be entitled to a similar extension of time in which to file appeals. The law requires the roll to be open for inspection and a shortening of the time for inspection owing to the roll not being returned would not debar the rights of ratepayers to the full fourteen days allowed them. On receipt of the roll from the assessor it is well for the clerk to at once make a memorandum on the roll of the date when received. We have known of persons leaving notice of appeal against neighbors at a late hour on the last day of appeal, in order that a counter appeal might not be entered against themselves. This is a sort of midnight assassin business, but as the law stands it appears to be permissable, as the court can only investigate cases of appeal entered within the time laid down.

As soon as the time has expired for entering appeals the clerk should notify all the appellants and the assessor of the day and hour at which the court of revision will be held. In the event of any appeal affecting persons other than the appellant himself, such persons should also be notified of the time and the matter of the appeal, in order that the latter may attend the court if they so wish. The law does not explicitly lay this duty on the clerk, but as the appellant is not required to notify others than the clerk it is evident that a gross injustice might be perpetrated on individuals whose assessments might be changed without their knowledge. No doubt the list of complainants containing the matters complained against has to be posted up in some convenient and public place in the municipality, but as this is frequently the clerk's own office it does

not follow that the public generally see the list. We think such list should be inserted in a newspaper and dispense with other notices, but as the laws stand it is for the clerk to give written notices to the parties interested.

The court of revision consists of the whole council in townships and villages, but in towns and cities the council will appoint five of its members as such court. Every member of the court of revision must take and subscribe, before the clerk, the oath or affirmation laid down. A mere *vive voce* oath would not do, as each member must subscribe his name, and therefore it must be a printed or written document for each. Three members form a quorum of the court. The clerk is required to take down the proceedings, and the complaints are to be taken up in the order, as nearly as may be, in which they were filed with the clerk. Any case not then decided can be adjourned for consideration at a future meeting. The time for holding the first meeting of the court shall not be until after the expiration of ten days from the time given for entering appeals. This would mean ten clear days, therefore the date could not be sooner than the 25th May in any case. The time for holding the first sittings requires to be advertised in some newspaper published in the municipality, or if there be no newspaper published in the municipality the advertisement would require to appear in the nearest published newspaper no matter if it happens to be a newspaper published in a different county.

In cases which come before the court it shall determine the matter, and confirm, amend, increase the assessment or change it by assessing the right person. In the event of changing the assessment to the name of some other person than the one already assessed, the clerk is required to give such other person or his agent four days' notice of such assessment, within which time he must appeal against the assessment if he objects to it. The day on which the notice is given and the day for holding an adjourned session of the court must be outside of the four days' notice.

When it appears that there are palpable errors in the roll which need correction the court may extend the time for making complaints ten days further. This does not mean to give power to permit new appeals under other circumstances. The errors must be palpable, that is, plain to be seen or self-evident. The new appeals in such a case must have reference to these palpable errors only, at least that is our view of the intention of the law in permitting the new appeals and in giving the assessor the right to become the appellant, as they would most likely be unintentional errors of his own which on discovery he would wish to have corrected. The wording of the section is none too exact, and some might construe the re-opening of the time for appeals to include the right of appeal as to any assessment whatever. We do not think that was the intention of the framers of the law, but still appellants might contend that to them at least a palpable error was apparent. The court of revision is obliged to complete the revision, in so far as they are concerned, not later than the 1st July, except in the township of Shunia, Algoma, where the time is extended to the 15th July. In giving the several dates above at which certain duties relating to the court of revision are to be done, we have not intended to refer to places where by-laws have been passed by county councils changing the regular time for making assessments.

OMISSIONS IN ASSESSMENT.

Section 154 of the Assessment Act says :—

"That if it appears to the treasurer that any land liable to assessment has not been assessed, he shall report the same to the clerk of the municipality ; thereupon, or if it comes to the knowledge of the clerk in any other manner that such land has not been assessed, the clerk shall, under the direction of the council, enter such land on the collector's roll next prepared by him thereafter, or on the roll of non-residents, as the case may be, as well for the arrears omitted of the year preceding only, if any, as for the tax of the current year ; and the valuation of such land so entered shall be the average valuation of the three previous years, if assessed for the said three years, but if not so assessed, the clerk shall require the assessor or assessors for the current year to value such lands ; and it shall be the duty of the assessor or assessors to value such lands when required, and certify the valuation in writing to the clerk ; and the owners of such lands shall have the right to appeal to the council at its next or some subsequent meeting after the taxes have been demanded, but within fourteen days after such demand which demand shall be made before the tenth day of November ; and the council shall hear and determine such appeal on some day not later than the first day of December."

The above is a very important provision of the law. In cities, towns and villages where property is constantly being sub-divided, and where changes of owners and tenants are so frequent, it requires the greatest watchfulness on the part of an assessor to see that every property is assessed, and in the nature of things, it often happens that some properties are omitted. The above section is intended to correct such errors of omission if by chance they come to the knowledge of the county treasurer or the municipal clerk. But the provisions of the statute are of a somewhat limited nature. The time for discovering such errors is limited, as they must be entered on the collector's roll next prepared by the clerk, and the omissions must be those of the preceding year only, thus only one year's omission of a particular property could be thus corrected even if through mistake or inadvertance the same property had been omitted from the roll for more than one year. This does not cover the case of an omission discovered by the clerk in the assessment roll of the same year from which the collector's roll is made up. In such a case the proper course would be to enter an appeal to the court of revision, if the omission is noticed in time, but if not, the matter would lie over until the following year. The Act limits the correction to real estate only. Personal property omitted by inadvertance until too late to be corrected by court of revision, cannot afterwards under any circumstances be assessed or placed on the collector's roll. The valuation of the land must be the average valuation for the previous three years, if the identical property has been assessed during that time, but if not, then the assessor has to make a new valuation and certify to the same in writing to the clerk. The council must direct by resolution that the omission be corrected, otherwise the clerk has no authority to place the arrears for omission on the roll. It is also very important that the collector make the demand on the owner before the 10th day of November, otherwise the claim is entirely lost. This is to place the owner in the same position as he would have been had his property been assessed at the proper time, and to enable him to

appeal if dissatisfied with the valuation. The demand made should, we think, be accompanied with either a written or printed statement of particulars as to property, assessed value and taxes, in order that the owner may have sufficient information to enable him to appeal if he wishes. As the collector only receives his roll on the 1st October he should at once examine it in order to see if there are any claims of this nature, and if so, it would be well to make the demand at the earliest moment possible, for if it is left until near the 10th Nov. he might not succeed in finding the owner or making the demand in time. We know of a case where the owner being absent and his house shut up, the time elapsed before the demand was made, and the owner objected to pay the taxes in arrear, and legal advice upheld his position, so that the taxes were lost to the municipality. Like some other incongruities in municipal laws, the supposition that the county treasurer may know of omissions in assessment and the duty specially placed on him to make such known to the clerk, shows that those who prepare the laws have not always a clear conception of the position and work of the different officials. The county treasurer is not in a position to know anything whatever of the properties entitled to be assessed in a municipality. His information extends only to the lots returned to him as non-residents, and of such other lots which have been assessed but in which a default has been made in payment of taxes. The collector and assessor in their rounds are the persons most likely to discover errors of this kind made in a previous year, but the law does not require them to give any notice of such omissions.

COUNTY councils, city councils, and town councils separated from the county for municipal purposes, have the exclusive right to pass by-laws to license hawkers and pedlars. As the municipalities of other towns, and of villages and townships derive no benefit from such licenses, the authorities in these places do not as a rule trouble themselves to enquire whether or not persons so engaged as hawkers or pedlars have taken out licenses. It is believed, that a majority of pedlars travelling through the country are unlicensed, and that the county revenue is very little benefitted from such sources. It would be better to place the licensing of these in the hands of each municipality in order that such itinerent traders bear a share in the municipal burdens.

* * *

SECTION 91, sub-section 41 gives power to the councils of cities, towns and incorporated villages to pass by-laws or licensing and regulating the owners and keepers of stores and shops, where tobacco, cigars or cigarettes are sold by retail, and for preventing the sale of such to children under the age of fourteen years, except on the written order of the parent, guardian or employer of the child. This power is not, however, to include licensed taverns and shops. So far as we know the power thus given to regulate the traffic in tobacco and cigars has never been exercised by any municipality. When one sometimes sees a small boy with a stump of a cigar in his mouth, or a beastly man expectorating vile tobacco juice, a restrictive law that would regulate them, or compel them to pay a heavy license for the privilege, would be universally popular.

CORRESPONDENCE.

By your favor I have had the pleasure of examining the publication called the MUNICIPAL MISCELLANY. I am greatly pleased to know that it is meeting with a fair share of favor from municipal officers and others. I think it will be a very valuable addition to the reading of every clerk—not that I regard your views or the views of any man as infallible, but I think it will be a medium through which clerks and others, by getting the views of the many, cannot fail to be helped. I have been helped already by your remarks on the subjects handled. Your remarks on assessment of income were, I think, correct, though you modestly yield to the *Municipal Manual*. I think sub-section 23 does not exempt any part of an income derived from personal earnings, if the income is greater than $700. But sub-section 24 does exempt $400 of income from any or many sources, including earnings as well as incomes from cash invested when the same are below $1,000. R. W.'s question about taking gravel, etc., is a very important one, and one not at all understood; if we are to be guided by a recent judicial decision, Rose *vs.* West Wawanosh, which seems to be at variance with all usage so far as I am acquainted. I have not seen the judgment as delivered, but from statements made to me by one of the legal gentlemen connected with the suit, understand that a by-law must first be passed to search for the gravel, a copy of which must be served upon the owner of the land. The search may be made by a surveyor; the quantity of land or, rather, the area, to be taken is staked out and described by metes and bounds, and the value of this, together with the value of the right of way to the gravel, is made the subject of arbitration. My knowledge on the subject is not so full as I could desire, and I would feel greatly obliged if you would look the matter up and give us full information. The case I refer to was tried during last summer. M. C. Cameron, of Goderich, was solicitor for the township of West Wawanosh, and Mr. Garrow, M. P. P., for Mr. Rose. The judges' names I cannot from memory give. It was tried on appeal at Toronto, I think. Mr. Cameron, in a letter to me, says of the suit: Before private lands can be entered upon and gravel removed,

1st. The necessity for such taking must be present, that is, they, the council, cannot pass a by-law in anticipation of such necessity arising.

2nd. The land to be entered upon must be specifically described.

3rd. The quantity to be taken must be shown. (This, I think, means the area must be described and stated.)

I think this is a bad law. If it should apply to taking timber for a bridge, or stone, in which case how could a description be given except the general one, lot so and so?

Since writing the above I have obtained a copy of the judgment, which I enclose. It is as follows:—

"QUEEN'S BENCH DIVISION. *Before Street, J.* Rose *v.* township of West Wawanosh.—Judgment in action tried at Goderich without a jury on 1st April, 1890. The plaintiff claimed to be the owner of the lands in question under the will of his father, subject to the life estate of his mother, Isabella Rose. The action was brought to restrain the defendants from removing gravel from the land in question. The defendants claimed the right to take the gravel under a by-law passed by them, ostensibly under sec. 550, sub-sec. 8. of the Municipal Act, R. S. O., ch. 184. The by-law provided that the pathmasters and other employes of the corporation shall be authorized and empowered to enter upon any land within the municipality when necessary to do so, save and except orchards, gardens, and pleasure grounds, and search for and take any timber, gravel, stone, or other materials necessary for making and keeping in repair any road or highway in the township, and providing that the right to enter upon such land, as well as the price or damage to be paid to any person for such timber or

materials, shall, if not agreed upon by the parties concerned, be settled by arbitration, etc. Street, J., is of the opinion that in passing the by-law in this form the Council did not carry out what was intended by the Legislature by the section referred to; that what the Legislature did intend was that the Council should, as necessity arose for their doing so, exercise the right to take gravel from any particular parcel or parcels of land, having first declared the necessity to exist and chosen and described the land from which the parcel was to be taken by a by-law; that the by-law is upon its face illegal because it purports to confer upon the officers powers much wider and more extensive than the statute authorizes; and that there is nothing in sec. 338 of the Municipal Act to prevent the plaintiff from maintaining this action so far as it is based upon a claim to restrain further damage. The defendants also denied the paintiff's title to the land on which they claimed the right to enter, and this involved the construction of the will of his father. Upon this the conclusion of the learned judge is that the property of which the testator intended to dispose was his own property situate in the second concession of West Wawanosh, upon which or upon part of which he was living, and that any further description inconsistent with this construction should be rejected. He therefore holds that the plaintiff is entitled under the will to a vested remainder in fee, and by virtue of that estate to restrain the defendants from injuring his inheritance by taking away gravel, and to the injunction asked. The defendants to pay the costs of action. No enquiry as to damages."

S. S., Hensall.

* * *

I see by your valuable paper mention is made of several township clerks regarding the length of time they have held office. Mr. Angus Bell's record of 41 years is the longest mentioned so far. I think I will surprise you when I tell you that the present clerk of the township of Nichol, James McQueen, Esq., received his appointment in the year of the McKenzie Rebellion, 54 years ago, and has continued to act ever since. We all hope he may continue to act until at least the end of the present century. I think this is a record-breaker. If you can beat this let us hear from you; we will then take a back seat. T. W. T., Fergus.

The above cannot but be of interest to our readers. It is a remarkable record, and one not at all likely to be eclipsed. We think it worthy of more than a passing notice, and some of our clerks in Mr. McQueen's vicinity should interest themselves in getting up a congratulatory testimonial that all of us might participate in. We heartily second the wish of our correspondent as to Mr. McQueen's continuance in his honorable work for many years to come.

* * *

In last issue of your valuable paper, mention is made of the number of years in which several of the township clerks and treasurers in Ontario have held office, and it may not be out of place for me to "rise and speak." On the 5th of January, 1835, I was appointed township clerk for Oro and held offices of clerk and treasurer (with the exception of 1837) till January, 1842, a term of six years. I was again appointed clerk and treasurer on the 19th of January, 1857, and have since held these offices continuously till the present time. I am now in the thirty-fifth year of my second term, and if my former record of six years be added Mr. Bell and I will be about equal. I would like to know how many are still "on deck" of our clerks and treasurers who were appointed in January, 1835. Many changes have been made in our municipal institutions since that time, as well as in officials. I was a member of our township council in 1852, '53, '55 and '56. I am much pleased with your paper; you have already given us some valuable information, a prelude of more to follow. Wishing you every success, GEO. TUDHOPE, Clerk and Treas. of Oro.

Please find enclosed one dollar, for one year's subscription to MUNICIPAL MISCELLANY. I have received three numbers, and am well pleased with them. Every municipal officer ought to become a subscriber. I suppose it will be in order for me to enter the list of long-service clerks and treasurers. I am only four years behind my old friend, Angus Bell, of Nottawasaga, having been appointed clerk and treasurer of Vespra, Co. Simcoe, in January, 1854, 37 years ago. I may state further that during that long period, either from sickness or any other cause, I have not once been absent from a meeting of the council.

GEO. SNEATH, Clerk and Treas. of Vespra.

REPORT OF COMMISSION ON MUNICIPAL INSTITUTIONS.

(EXTRACTS CONTINUED.)

But until the refugee loyalists and disbanded soldiers were brought to Canada, and settled along the St. Lawrence above Montreal, and in some places on Lake Ontario, the population of what is now the Province of Ontario was so small that municipal institutions of any kind could scarcely have existed there. Bouchette says that "in 1775 the population had increased to 90,000, in which estimate the present Province of Upper Canada is included; but as very few settlements had as yet been made there, its inhabitants could form but a very trifling difference in the census." After the conquest the western part of Canada was abandoned to the Indians as a hunting ground, occupied at its western extremity on Lake Erie by a few of the ancient French colonists. The French indeed had built forts, and established trading stations at various points on the lakes at an early period, their missionaries, traders and *courreurs du bois* made their way to the valley of the Mississippi, and as far west as the Rocky Mountains. In 1672-3 Fort Frontenac was built at the mouth of the Cataraqui, where Kingston now stands. In 1683 Fort Michilimackinac was built, and Father Marquette discovered the Mississippi. In 1681 Father Hennepin made his way to the Falls of St. Anthony, and in 1682 La Salle descended the Mississippi to the sea. In 1685 Denonville, after a successful campaign against the Senecas, rebuilt Fort Niagara. A trading post and Fort were established also near the site of Toronto. But although the soil was so much more fertile than that of the Lower St. Lawrence, and the climate so much more genial, no attempt to colonize appears to have been made anywhere, except in the neighborhood of Detroit. Trade relations were established with the Hurons and other Indian tribes then very numerous, and a great number of barges left Quebec and Montreal once a year for the trading posts, with a great number of canoes, in which were carried the merchandize to be exchanged for furs with the tribes of the remote interior. The French trade in peltry was large and profitable then, but long before the conquest the Hurons had been exterminated, and the numbers of the Indians of other tribes had been greatly reduced. The English who came to Canada immediately after the conquest settled in Quebec or Montreal, where they soon obtained control of the trade. It is stated that the exports from Great Britain to Canada in 1763 amounted to £8,624. Others sought and obtained employment from the Government, or settled on lands purchased at a small price from the seigniors. Grants of land were made also to the officers and privates of disbanded regiments. Afterwards the settlement of the district known as the Townships, with a British population, became the policy of the Government.

Major Rogers, who was sent from Montreal by Lord Amherst in 1760 to take possession of Detriot, found Fort Frontenac in ruins, and near Toronto the remains of the French Fort. At Niagara he obtained supplies from the garrison. He met several bands of Indians along the way, but he appears to have seen no settlement of white people

In 1767, as appears from a despatch of Sir William Johnson to the Earl of Shelburne, the traffic carried on at Toronto was so considerable that persons could be found willing to pay one thousand pounds a year for the monopoly of it.

At the close of the American Revolutionary War a large number of U. E. Loyalists moved into what was then regarded as the Western part of Canada. They received free grants of land and were otherwise assisted by the Imperial Government. The disbanded officers and soldiers of the 84th Regiment also received free grants at the rate of 5,000 acres for a field officer, 3,000 acres for a captain, 2,000 acres for a subaltern, and 200 acres for a private. In order to provide for their settlement, the land on the St. Lawrence from the highest French setlement near Lake St. Francis up to Lake Ontario and round the Bay of Quinte was divided into townships and subdivided into concessions and lots. .... These townships were numbered, but not named until several years afterwards. Of the numbers there were two series, one including the townships on the river below Kingston, the other containing those from Kingston, inclusively, westward to the head of the bay. In the summer of 1784, the persons to whom those lands were assigned took possession of them, thus at once settling a territory of a hundred and fifty miles in extent on the river and lake. The same year the Loyalists composing Butler's Rangers, and those attached to the Indian department, had lands assigned to them near Niagara, on the west side of the river and south side of Lake Ontario, and also in the neighborhood of Detroit on the east side of the strait. .... The new settlers were accommodated with farming utensils and building materials, and for the first two years were supplied with provisions and some clothing at the national expense. Several other persons afterwards removed from the United States to Canada, and to these also, and to a number of discharged soldiers, British and German, free grants of land were made. The population of this part of Canada was about that time estimated at ten thousand. In 1786, Canada and the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland were formed into a viceroyalty, and Sir Guy Carlton (Lord Dorchester) was appointed Governor. The population was said to exceed 115,000. The country was regarded as prosperous. No change appears to have been made in the system of government.

When the independence of the United States was acknowledged, much of the territory enclosed within those boundaries was ceded to that country and its claim to more was afterwards successful. What was thus given away was probably regarded in England as merely a few miles of wilderness. The division of what remained into the Provinces of Upper and Lower Canada was made by Royal Proclamation.

The settlers in the west soon became dissatisfied with their political condition, and in 1791 the act known as the Constitutional Act was passed. Mr. Pitt, when introducing the measure in the House of Commons, "was so impressed with the impossibility of reconciling the jarring interests which had already developed themselves between the British settlers in the west and the French-Canadians in the east, that he stated he knew not how to reconcile or destroy their unhappy influence but by separating the people of such different origin, and of such different language and feeling."

The Constitutional Act as passed provided that there should be in each of the provinces a Legislative Council and Assembly, and that the king should have power "by and with the advice and consent of the Legislative Council and Assembly of such provinces respectively to make laws for the peace, welfare and good government thereof; such laws not being repugnant to this Act." Authority was given to summon a sufficient number of discreet and proper persons, being not fewer than seven to the Legislative Council of Upper Canada and not fewer than fifteen to the Legislative Council of Lower Canada. The members of the Legislative Councils were to hold their seats for life. It also provided, although this was never acted on, we believe, that "whenever His Majesty .... shall think proper to confer upon any subject of the Crown of Great Britain by letters patent under the great seal of either of the said provinces any hereditary title of honor, rank or dignity of such Province discernible according to any course of descent limited in such letters patent, it shall and may be lawful for His Majesty .... to annex thereto .... an hereditary right of being summoned to the Legislative Council of such Province discernible according to the course of descent so limited with respect to such title, rank or dignity, and that every person on whom such right shall be so conferred, or to whom such right shall severally so descend shall thereupon be entitled to demand .... his writ or summons to such Legislative Council." This right would be forfeited if the person to whom it descended absented himself from the Province for the space of four years continuously without permission of His Majesty, signified to the Legislative Council by the Governor or Lieut.-Governor, or if the person took an oath of allegiance to a foreign power. In all cases the councillors absenting themselves from the Province without permission forfeited their seats. The Speaker of the Legislative Council was to be appointed by the Governor or Lieut.-Governor, by whom also he may be removed. For the purpose of electing members of the Assembly, the Lieut.-Governor of each Province was authorized to issue a proclamation dividing each Province into districts or counties, or circles and towns, or townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each. "The number of members to be elected in Upper Canada was not to be less than sixteen, and the number in Lower Canada not less than twenty." The Governor was authorized to appoint the returning officers, and the members were to "be chosen by the majority of votes of such persons as shall severally be possessed for their own use and benefit of lands and tenements within such district, county or circle, such lands being by them held in freehold, or in fief, or in roture, or by certificate derived under authority of the Governor in Council in the Province of Quebec, and being of the value of forty shillings sterling, or upwards, over and above all rents and charges payable out of or in respect of the same; and that the members for the several towns or townships shall be chosen by a majority of votes of such persons as either shall severally be possessed for their own use and benefit of a dwelling house and lot of ground in such township .... by them in like manner .... and being of the yearly value of five pounds sterling or upwards, or as being resident within the said township for the space of twelve calendar months next before the date of the writs of summons for the election, shall *bona fide* have paid one year's rent for the dwelling house in which they shall have so resided at the rate of ten pounds sterling per annum or upwards."

The members of the Assembly, it was provided, must be British subjects and twenty-one years of age or upwards. The writs of summons and election must be issued not later than December 31st, 1792. Any acts of the Legislatures might be disallowed within two years from the time of their passing, and no bills reserved for the signification of the King's pleasure were to have force or authority until the royal assent had been given to them and duly signified.

This was really the introduction of representative institutions in Canada.

To be Continued.

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