The Municipal World

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

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Calendar for October and November, 1904

Legal, Educational, Municipal and Other Appointments.

OCTOBER—

1. Last day for returning Assessment Roll to Clerk in cities, towns and incorporated villages when assessment is taken between 1st July and 30th September.—Assessment Act, section 58.

   Last day for delivery by Clerks of Municipalities to Collectors, of Collectors' Rolls, unless some other day be prescribed by by-law of the Municipality.—Assessment Act, section 131.

   Last day for passing resolution by boards of Separate School Trustees in urban municipalities adopting voting by ballot at elections of Separate School Trustees.—Separate Schools Act, section 32, subsection 1.

   Notice by Trustees of cities, towns, incorporated villages and township boards to Municipal Clerk to hold Trustee elections on same day as Municipal elections due.—Public Schools Act, section 61 (1.)

   Night Schools open (session 1904-05.)

   Ontario Normal College opens.

5. Make returns of deaths by contagious diseases registered during September.—R. S. O., chapter 44, section 11.

   Copy of Roll, or summarized statement of the same, as the case may be, to be transmitted to County Clerk.—Assessment Act, section 83; Assessment Amendment Act, 1899, section 7.

   Seventh Canadian Conference of Charities opens at London.

10. Selectors of Jurors meet in every municipality.—Jurors' Act, section 18.

30. Last day for passing by-laws for holding first election in junior townships after separation.—Con. Municipal Act, 1903, section 98.

NOVEMBER—

1. Last day for transmission by local clerks to County Treasurer of taxes on lands of non-residents.—Assessment Act, section 132.

   Last day for transmission of Tree Inspector's Report to Provincial Treasurer.—Tree Planting Act, section 5.

9. King's Birthday.

   Last day for collector to demand taxes on lands omitted from the roll.—Assessment Act, section 166.

The Municipal World

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

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ST. THOMAS, ONT., OCTOBER 1, 1904.

We have again to call the attention of our subscribers to the fact that we will not answer any question submitted to us by correspondents who neglect or refuse to append their signatures to their communications.

* * *

Mr. Thomas Beasley recently completed his fiftieth year as clerk of the City of Hamilton.

* * *

Mr. Henry Key has been appointed clerk of the Township of Oakland, to succeed Mr. Mahlon Edy.

* * *

A by-law to raise $16,000 for the construction of local improvements was recently carried by the electors of Parry Sound by a majority of 78 votes.

* * *

A by-law to raise $7,500 debentures to purchase what is known as the Caldwell Mill property, a tract of 26 acres on the western boundary of Carleton Place, with the river bank on the north side and the concession line on the south, was voted on at Carleton Place recently and carried by a majority of 14 votes.

* * *

We clip the following from a recent issue of the Collingwood *Bulletin*: "It is surprising to see one or two of the towns moving towards having the county council composed of mayors and reeves. An active mayor of a town surely has sufficient to occupy his time and attention with matters relating to his own charge without seeking to enter a wider field and necessarily increase the duties which, if properly attended to, are already sufficiently onerous and responsible for one individual. This is notably true in the case of the chief magistrate of Collingwood, and we believe that the same will apply to the mayors of Barrie, Orillia and Midland, the other large towns within the county. A change, we believe, would prove disadvantageous to the towns at least, and as far as can be seen at present, would not aid the townships."

Mr. William Stothers, for many years the efficient clerk of the Township of Ashfield, died last month.

* * *

Our attention has been called to a number of instances where municipalities have undertaken to fix the assessment of manufacturing institutions at a stated rate annually for a term of years by resolution or by-law passed in the ordinary way. In pursuing these methods the councils are treading on dangerous ground, as they are not complying with the provisions of the statute in this regard. It is provided by section 591a of The Consolidated Municipal Act, 1903, that the word "bonus" where it occurs in section 366a or sub-section 12 of section 591 of the Act shall mean and include, amongst other things, "the fixing of the assessment of any property for a term of years." (See clause (g) of section 591a). Sub-section 12 of section 591 makes provision for the passing of BY-LAWS for granting aid by way of bonus for the promotion of manufactures within the limits of the municipality, and clause (a) of this sub-section provides that no such by-law shall be passed until it has received the assent of the electors in conformity with the provisions of the Act in respect of by-laws for granting bonuses to manufacturing industries. Council should not transact business in a way that suggests itself to them as being easier and cheaper than the method the statutes provide. Although it may entail some trouble and considerable expense in the first instance, a strict compliance with the provisions of the statutes, will always be found the cheapest and easiest in its results.

* * *

In a recent issue a leading Toronto daily announced the fact that the clerk of the County of York had received a number of resolutions passed by local councils in the county approving of a change in the composition of the county council, and further stated that "by a recent Act it was provided that if the majority of the municipalities asked for this change in the constitution of the county council it will have to be put to a vote at the next municipal elections." This is an erroneous statement of the provisions of section 68a of The Consolidated Municipal Act, 1903, as amended by section 3 of chapter 22 of The Ontario Statutes, 1904. Clause (b) of sub-section 1 of this section now provides that, if the resolutions are passed by local municipal councils and filed with the county clerk as directed by the provisions of the former part of this sub-section, "the by-law shall be submitted to the electors at the time fixed by law for holding a poll at the election of the council of each local municipality for the year *next preceding the year in which polling for a general election of county councillors* would take place under the Act." There will be polling for a general election of county councillors at the next municipal elections, and also at those to be held for the year 1907. It will therefore be observed that a by-law of the kind in question cannot be legally submitted to the vote of the municipal electors of the county until the municipal elections for 1906.

Union of Canadian Municipalities.

The union of Canadian municipalities opened its fourth annual convention at London on Tuesday, 20th September.

The president, ex-Mayor Cook, of Ottawa, in his opening address explained the aims and objects of the union and the necessity for the protection of the mutual interests of municipalities against the big corporations. In this connection, municipal insurance, the nationalization of the trunk telephone lines and the necessity for the right to expropriate local systems, was referred to.

Secretary's Report.

Secretary Lighthall, in his report, said that at the close of this the third year of their existence as a union, he was glad to report another period of progress and success. Their membership was now 107, and the interest taken was becoming constantly more substantial. Three years ago there was none in Canada to represent the general body of the municipalities, as is done in Great Britain by the Board of Associated Municipalities, and in the United States to a large extent by the League of American Municipalities. Not only, therefore, was there no common ground for comparison of experiences in the Dominion, but the increase of injurious legislation sought by adventurers, monopolies and trusts, who had discovered that any municipality by itself was easily defeated was such as to cause the gravest alarm and despair among the friends of the public.

"This year," the report continued, "we have begun to harvest what may be called some of the ripe fruits of union, our legitimate demands being in most cases admitted with scarcely a struggle, and occasionally we have been favored by the muttered curses, deep and hard, of some whose curses are blessings in disguise. The people seem to be on the top just now, and the principal fear is that the municipal councils may be inclined to sleep on their arms. The signs are clear, however, that any relaxation of our vigilance and any mark of disunion is ready to be followed up by most sagacious and watchful depredators.

"Turning now to what we have effected in the matter of legislation, the result, in short, is that we have almost totally checked the stream of bad new legislation affecting municipalities. We have also been able to have much influence in restraining abuses in the conduct of the old established monopolies. We have still before us several heavy tasks. The first is to consolidate our organization, averting also the tendency to indifference which results from temporary securities ; the second is to arrive at some fair solution which will return to municipal authorities the control of their streets against the old companies now encroaching upon them; the third is to take up more fully all those many other matters of interest and improvement in municipal life of which this association forms the natural arena for the Dominion.

Municipal Telephones.

The following resolution in reference to municipal telephony was adopted :

"That in the opinion of this Union the long distance telephone business of Canada should be taken over by the Government of the Dominion, and legislation obtained whereby the local business of telephoning can be taken over and operated by the local municipalities in which such businesses are carried on, and for these purposes direct that a draft petition be prepared by the Union of Canadian Municipalities for presentation to the Dominion Parliament and Provincial Legislature, by the different municipalities through their representatives."

Controller Hubbard, of Toronto, in moving this resolution, said that he had come to the conclusion that anything that was a necessity to the public should be owned, operated and controlled by the municipalities. Water, lighting and street conveyance were distinctly necessities, and no business man could get along without a telephone. He thought that if the Government would take over the long distance telephone system, the municipalities would not have any difficulty in controlling the local system.

Ald. Leitch, of Brantford, in seconding, said that it would be very unnatural, indeed, if the Bell Telephone Co. should forego their interest in their stock. They did not wish to condemn them at all, but he would urge that the Government be asked to take over the trunk telephone lines, then the municipalities could control the local service and have outside communication where they wanted it.

On the second day of the convention interesting discussions took place in reference to the demands of the underwriters for fire fighting appliances and the election of aldermen by wards or general vote. The general vote was favored by most of those present

Dr. S. Morley Wickett, of Toronto University, addressed the convention on the subject of "Special Civic Charters." He favored general legislation applicable to all municipalities granting powers less in detail and more in general, and the establishment of a local government board, composed of experts, to assist the municipalities.

Ald. Andrews addressed the convention on "Municipal Ownership of the Telephone," and referred to the campaign for civic phones in Brantford.

Mayor Ellis, of Ottawa, in an able address introduced the question of municipal insurance, which was referred to the executive of the union to report full statistics at next year's convention. The delegates were not prepared to approve of any general co-operative scheme of insurance between municipalities, although some favored its application to individual corporations on the principle of the township mutuals well known throughout Ontario.

Mr. F. G. Todd, landscape architect, of Montreal, delivered an illustrated evening lecture on "Parks and Practical Civic Art," which was most instructive.

City Engineer Graydon, of London, presented a paper on street improvement, and the Union passed a resolution favoring legislation, giving councils power to put down permanent pavements when recommended by the engineer and approved by two-thirds of council.

NOTES.

About fifty members attended the convention, among them being delegates from Halifax, Montreal and Winnipeg.

One hundred and seven municipalities are in the union, but only fifty-six contributed, the result being liabilities amounting to $844.72.

The future of the Union depends on the solution of the financial question.

Mayor La Porte, of Montreal, was elected president and W. D. Lighthall, M. A., of the same place, secretary for the ensuing year.

Mayor Beck and Aldermen, of London, entertained the delegates in a handsome manner while in the city.

Municipal Trading and Public Accounting and Auditing.

Report of the Joint Select Committee of the English House of Lords and the House of Commons on Municipal Trading.

The main conclusions arrived at by this committee are contained in the following extracts :

1. The present committee may be regarded as continuing the inquiry held by the joint committee on municipal trading appointed in 1900, an identical reference having been made in each case.

5. The committee felt that any attempt to survey the general subject of municipal trading could only have led to a second postponement of the inquiry, as it would have been impossible for them in the short time available before the close of the session (when the existence of every committee is terminated) to issue a report upon the whole subject. They agreed, therefore, to devote their attention to one or more distinct aspects of the question, passing by others until Parliament should be pleased to direct further inquiry.

6. The first branch of the subject with which the committee decided to deal was that of municipal accounts, with regard both to the form in which they are prepared, the systems under which they are audited and the right of access to them possessed by the ratepayers. The evidence taken has been mainly directed to those questions.

7. Whatever view may be taken of the proper limits, if any, which can be set to municipal trading, it is clearly important that wherever it exists, ratepayers should be not less fully and continuously informed of the success or failure of each undertaking than if they were shareholders in an ordinary trading company.

8. In a large number of cases this is undoubtedly done. But there is in some instances evidence to a contrary effect, and in view of the ever-increasing number and magnitude of municipal undertakings, it is most desirable that a high and uniform standard of account keeping should prevail throughout the country.

10. The committee have directed full attention to the question of audit.

11. The committee recommend that a uniform system of audit should be applied to all the major local authorities, viz. : The councils of counties, cities, towns, burgs and of urban districts.

14. All county councils, the London borough councils, urban district councils are subject to the local government board audit. This audit is carried out by district auditors, who, as a rule, are not accountants, and are not in the opinion of the committee properly qualified to discharge the duties which should devolve upon them. By special local acts the corporations of Tunbridge Wells, Bournemouth and Southend-on-Sea must, and the corporation of Folkestone may, adopt the local government board system of audit. The duties of the auditors seem to be practically confined to certification of figures, and to the noting of illegal items of expenditure.

15. To apply this system of audit to municipal corporations would arouse strenuous opposition from them, and the course may be considered impracticable ; but in addition to this the fact that district auditors are not accountants seems to unfit them as a class for the continuous and complicated task of auditing the accounts of what are really great commercial businesses.

16. The committee, accordingly, recommend that—

(a) The existing systems of audit applicable to corporations, county councils and urban district councils in England and Wales be abolished.

(b) Auditors, being members of the Institute of Chartered Accountants or of the Incorporated Society of Accountants and Auditors, should be appointed by the three classes of local authorities just mentioned.

(c) In every case the appointment should be subject to the approval of the local government board, after hearing any objections made by ratepayers, and the auditor, who should hold office for a term not exceeding five years, should be eligible for reappointment, and should not be dismissed by the local authority without the sanction of the board.

(d) In the event of any disagreement between the local authority and the auditor as to his remuneration the local government board should have power to determine the matter.

(e) The Scots' practice of appointing auditors from a distance, in preference to local men, to audit the accounts of small burghs should in similar cases be adopted in England.

17. The committee are of the opinion that it should be made clear by statute or regulation that the duties of those entrusted with the audit of local accounts are not confined to mere certification of figures. They, therefore, recommend that—

(a) The auditor should have the right of access to all such papers, books, accounts, vouchers, sanction for loans, and so forth, as are necessary for his examination and certificate.

(b) He should be entitled to require from officers of the authority such information and explanation as may be necessary for the performance of his duties.

18. Auditors should be required to express an opinion upon the necessity of reserve funds, of amounts set aside to meet depreciation and obsolescence of plants in addition to the statutory sinking funds, and of the adequacy of such amounts.

19. The auditor should also be required to present a report to the local authority. Such report should include observations upon any matters as to which he has not been satisfied, or which in his judgment called for special notice, particularly with regard to the value of any assets taken into account.

20. The local authority should forward to the local government board both the detailed accounts and the report of the auditor made upon them. It should be the duty of the auditor to report independently to the board any case in which an authority declines to carry out any recommendation made by him.

21. A printed copy of the accounts, with the certificate and report of the auditor thereon, should be supplied by the local authority to any ratepayer at a reasonable charge.

27. The committee suggest that in view of the large changes recommended by them it might be advisable to create a new body, in the form of a board of commissioners of local audit, in some respects analogous to the railway commission. This body could be entrusted with the powers which the committee recommend in their report should be vested in the local government board.

The editor of *Public Policy*, in commenting on the above report, says :

> We do not believe there is a single instance of a municipally owned and operated industry, in England or anywhere else, by means of which a true economic gain has been made for the people over the results they can obtain from a properly authorized and regulated private monopoly. We have always contended that the profits of municipal ownership are almost entirely the result of bad bookkeeping. We are gratified with the evidence now furnished, showing that the members of a committee of the two houses of Parliament, appointed to investigate the subject, are inclined to be of the same opinion.

TOWNSHIP TREASURER FOR HALF A CENTURY.

It is indeed a rare occurrence when a man occupies any public office continuously for half a century, but such is the record that Thomas Crawford, treasurer of Bosanquet township, has made, having recently completed fifty continuous years in that position. During all of that long period he has retained the fullest confidence of the officials and people of the township, and of other communities with whom his business brought him in contact, and there has passed through his hands without the loss of a cent the sum of over $730,000. When he assumed the office a great majority of the present residents of the township had not yet been born. While Mr. Crawford was going on in the even tenor of his way, faithfully discharging year after year the duties of his comparatively humble position, some of the most important events in modern history were transpiring elsewhere. . . . Governors-General, Premiers and other public men have come and gone, but the treasurer of Bosanquet, now in his 82nd year, is to all appearances as hale and hearty as he was twenty years ago. Mr. Crawford's farm homestead, on lot 13, concession 1, Bosanquet, ranks among the best of the many fine homes in the township. Mr. Crawford, who was born in the north of Ireland, came to this country when a young lad, and lived with relatives some years at Markham. When about 27 years of age he came to Bosanquet, accompanied by his mother. On July 15, 1862, he was married to Miss Elizabeth Crone, daughter of Francis Crone, of Forest. . . . There are seven children living, viz., Mrs. John D. Boyes, of Lesmahagow, Scotland; Mrs. Jackson, in Manitoba; Dr. D. T. Crawford, of Innisfail, Alta; Frank Crawford, township councillor, Warwick; Dr. J. Crawford, L.D.S., in Michigan, and McKenzie Crawford, at home.—*Forest Free Press.*

LARGE PROFITS IN MUNICIPAL OWNERSHIP.

The Municipal Electric Light service has been in operation in Chicago for sixteen years and the city felicitates itself upon the outcome of the enterprise undertaken in 1888. Not a few of Chicago's shrewdest men took an unfavorable view of the project when it was mooted, but the advocates of municipal ownership were able to carry their point, being assisted in their plans by the splendid showing which the city's waterworks make annually, the net earnings of the same reaching nearly $2,000,000.

City Electrician Ellicott nas completed the annual report and we glean from it the following facts :

For the year just closed the system exhibits a profit of $297,048.

In sixteen years of municipal ownership the city has spent for construction and operation $3,720,099.

The total cost for all kinds of city lighting is much less now than in 1896, although the candle power supplied has been largely increased. In 1895 the cost was $1,098,220, and light equal to 3,964,000 candle power was furnished. By 1900 the cost had fallen to $919,163, and the candle power risen to 9,513,400. In 1903 the cost was only $916,212, and the lamps of all kinds were of 12,269,000 candle power. The total amount spent on the city electric lighting plant in 1903 was $258,454.

Score another for municipal ownership.

Midland town council has granted $10,000 for the erection and equipment of a high school in that town and a site is now being sought for. The school will probably be established in a couple of rooms this fall, until the new building is up.

CARE OF THE DESTITUTE INSANE IN HOUSES OF INDUSTRY.

The policy of the Provincial Government in reference to the care of the insane in Houses of Industry is not generally understood. In this connection the following extract from a letter from the Inspector of Asylums will be of interest :

"There is a tendency with the Superintendents of Houses of Industry throughout the Province, as soon as a person becomes a little noisy, or doting and talking, to want them sent to an asylum. We cannot fill the asylums except with those that are criminally, dangerously insane and those that may be benefited by the treatment they will receive.

The Houses of Industry throughout the Province must not think that as soon as a patient becomes a little troublesome in the night, they can be relieved and the patient placed in an asylum. This will not be done. The counties will have to construct their buildings so that those who are inclined to be talkative during the night and a little noisy may be placed where they will not disturb those who are not in the same condition of mind."

Section 589 of the Consolidated Municipal Act gives the following directions in reference to the support of the destitute insane.

"The County Council of each County shall, from time to time, make provision for the whole or partial support, either in the county goal or some other place within the county, of such destitute insane persons as cannot properly be admitted to the provincial asylums, and shall determine the sum to be paid for such support, and also the party to whom such sums shall be paid by the County Treasurer.

Few, if any, of the County Houses of Industry have the accomodation necessary for the care of insane persons, who, although not dangerous, may be very troublesome to those in charge.

If the suggestion of the Provincial Inspector is a proper one, it will be interesting to know what facilities should be provided and under what conditions and to what extent inmates may be forcibly restrained or confined, without changing the character of these county institutions.

Inmates sometimes become insane after their admission to a House of Industry and applications for transfer to an asylum are generally delayed. This is also the case with insane prisoner, in goals. In dealing with the destitute insane, application for admission to an asylum should be made by the reeve or mayor, or other official of the municipality in which the person resides, under the provisions of section 11 of chapter 317, R. S. O., which reads as follows :

"1. In any municipality within the Province of Ontario, where an insane person is in destitute circumstances, and is a fit person for asylum treatment, application may be made to the head of the municipality for an examinatinn to be made and certificate given, in accordance with sections 7, 8 and 9 of this Act, and the head of the municipality, if satisfied that the insane person is in destitute circumstances, shall, immediately after receiving the application, notify two medical practitioners to make the required examination.

2. The council of the municipality shall pay the medical practitioners, for the examination and certificate, a sum not exceeding $5 each, and twenty cents for each mile necessarily travelled, and shall also pay the necessary expenses incurred in conveying such insane person or persons to one of the provincial lunatic asylums : said sum to be reimbursed to the municipality by the county where the municipality is a part of the county."

The best procedure is to write the superintendent of the nearest asylum and request him to forward preliminary papers for the proposed application. These will be accompanied by further instructions and be followed by blank certificates to be filled in by two medical men. If attended to promptly, the patient should be in the asylum within ten days from first application.

By-laws to lend $20,000 to the Meaford Wheelbarrow factory and to extend the waterworks system were recently carried at Meaford.

Engineering Department

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

A MODEL ROAD.

Numerous councils throughout the Province have undertaken this season to construct a mile or so of one of their main roads in a permanent manner, in such a way that it will serve as a model for future work, and a lesson to the public of what a good road should be.

In deciding what to do in such a case, the advice of the Ontario Highways Department has been frequently asked. One of the first considerations is the thorough drainage of the road, and the grading should be done with this in view. The location of the main water courses should first be determined, and the road then graded in such a way as to slope in stretches to these.

The roads usually selected for improvement are the main lines leading to a market centre, such as collect traffic not only along the road, but largely from the intersecting roads, so that the travel to which the road is subjected is severe and concentrated. In view of the heavy traffic it is in the interest of economy that special measures be adopted which would not be required by the roads generally throughout the township. While a light gravel coating might be suitable and most economical for the majority of the roads of the township, yet, from the excessive wear, to surface such a road with crushed stone will often be found the most satisfactory step to take.

Before placing the new material on the road, certain work of grading and preparation of the roadbed is absolutely necessary. The grading machine should first be passed over the centre of the road, to scrape away any layer of earthy matter lying over the old hard gravel or stone bed, and which merely turns to a slushy mud in wet weather. Carrying this earth outward, the grader should be passed along the sides of the road, to cut off the square shoulders of earth and sod which have formed. All this earth and sod should be turned outward, across the ditch if necessary, and on no account should be drawn to the centre of the road. Earth and sod placed on an old gravel or stone foundation, would do the road a great amount of injury, both to the metal beneath and the new stone placed on the road.

In some cases the road to be improved will have been considerably raised with a coating of gravel, placed on from time to time. Some of this coating will be well preserved, but broken through in places, forming pitch holes in the spring. The soft earth in these holes should be dug out and new stone placed in them and rammed down before a general coating of new stone is placed over the road. If this is not done any new layer of stone will quickly be broken through at these spots, now filled with a soft earth and yielding readily when wet.

Where the road is gravelled, but flat, it is often advisable, having cut off the shoulders with a grader, to break up the centre with a pick plow, and draw whatever stone is on it to the centre, to raise it slightly ; having in view, in so doing, the new coating of metal to be applied, otherwise the finished road may be given too high a crown.

If this is not done, it would be advisable to level off any hard ridges on the road, by hand labor with a pick, and all large stones protruding above the surface should be taken out and broken. A man with a pick and hammer could keep ahead of the wagons as the new metal is being unloaded, and would do this work at a very small cost. One of the principal points to observe, in economical road making, is to properly prepare the road bed before the gravel or new stone is applied.

The side ditches should be opened, and carried to an outlet with a constant fall. Property owners along the road should not be allowed to obstruct these drains in making entrances to their land, but should be required to leave a free waterway. In places it will probably be found that the open drain is either completely stopped, or the pipe or box under these entrances is too small to freely carry away the flow of water in spring freshets. It is not the ordinary, but the maximum rushes of water that should be provided for, otherwise injury will result to the road in early spring. The natural channels leading from the road across private property should be made of ample size. Good drainage is essential in making good roads.

An important road should be graded to a width of twenty-four feet between the inside edges of open ditches, and the central nine feet should be given a coating of broken stone. If a portion of the road is pick plowed as suggested, the top of the grade should be turned back, so as to form shoulders to hold a new bed of broken stone. If there is a firm foundation, the road may require merely a top dressing of three or four inches, after it has been prepared in the manner previously described. But if is not a solid base, the road should have a depth of nine inches of stone at the centre and five at the sides.

The stone is usually received from the quarry in three grades ; first , such a will pass through a 2½ inch ring ; second, such as will pass through a one inch ring ; and third, stone dust, or screenings. The main body of the road should be composed of the coarse stone, and over this should be spread a very thin layer of one inch stone, such as will aid in making a smooth surface. The stone dust or screenings ahould be harrowed into the main body of coarse stone to fill the voids, and a final light coating should be spread over the road, where it will complete a smooth surface, and be washed into the voids below. The dust of limestone has good cementing qualities that assist in binding the stones together.

It is very desirable that broken stone roads should be rolled, more so than with gravel, as gravel contains clay and earthy matter which, although it breaks up readily in spring, helps to make a hard and smooth road in summer. In the absence of a roller—and horse-rollers are now being used by a number of townships—the only thing to be done is to send a man frequently over the road, to fill the wheel tracks as they form, draw in the stone as it is forced out, and gradually get the surface into a smooth and hard condition.

There are Townships in the Province which have used gravel freely on their roads, but, in so doing, have exhausted the local supply of this metal, and they are now facing the necessity of importing by rail all the road metal for future work. This is a misfortune to which it is considered advisable to draw attention in order that gravel, wherever it remains, may be used to the best advantage.

Gravel is an excellent material for road-making, but, on roads subject to heavy travel, it is rapidly worn out, and a great drain is made on the gravel pits. To use

broken stone on the most important roads is therefore often commendable, and the results will, we are confident, be in the interest of the entire township, by saving the local supply of gravel for roads of less travel where it will give better service.

The supply of gravel can be further conserved by following closely the best rules of road-making, particularly as to drainage, the preparation of the road-bed, and subsequent attention to repairs as soon as they are needed. The general adoption of wide tires is also most desirable in saving the road metal and reducing the cost of road making, and, in a township where much has been done to improve the roads, wide tires would be found not only a benefit to the roads, but would lessen the work in hauling heavy loads.

COUNTY ROADS OF SIMCOE.

Every departure from established methods, especially in municipal affairs, is met with opposition. No reform, however meritorious, can be carried through without more or less effort. This may arise from the fact that no plan and no design can be perfect and without some weakness or defect. To criticize is always easier than to create. There are always those, lacking the ability to create, who endeavor to gain prominence by discovering defects in the plans and proposals submitted by others. And in every reform there are those who, in existing conditions, possess privileges which the proposed change would remove. For these reasons, among others, the adoption of a county road system has in every instance been a matter of more or less up-hill work and discouragement. The remarks of Mr. Kenrick in last month's issue, in this respect, correspond largely with the experience of Mr. Quinlan, chairman of Road and Bridge Committee of Simcoe County, whose report contained the last annual report of the Provincial Commissioner of Highways is as follows :

In January, 1902, the county council of Simcoe passed a by-law designating certain roads for improvement under the Act of 1901, but from opposition on the part of the councils of the local municipalities, arising in a great measure from the fear that our county council could not, or would not, spend the money to as much advantage as the local authorities would, and in part from dissatisfaction as to the roads designated, the answers returned to the council were not sufficiently numerous to enable the council to proceed.

Believing, however, that the negative answers given by some of the municipalities were caused by dissatisfaction with the roads designated, the county council in June of the same year passed another by-law, slightly different to the first as to the roads, and submitted the usual questions again, with the result that more than one-third of the municipalities expressed themselves as adverse to the system. Nothing daunted, the county council believing a county system to be in the interest of the public, determined to give the ratepayers a chance of deciding the question for themselves directly, as provided in sub-section 4 of the Act, namely, "Are you in favor of a county road system ?"

We found that a good deal of interest was taken in the subject ; arguments were presented, both pro and con, through the press, and in the end the people thoroughly grasped the situation, and at the municipal elections held in January, 1903, the majority in favor of the proposition was some 1,500. The towns and villages were overwhelmingly in favor of the system, whilst the townships, strange to say, were divided some being in favor, whilst others were as strongly opposed as the towns and villages were in favor.

The majority of the municipalities had objected to the roads designated and this difficulty was got over by reference to arbitration, as provided by the Act. The very idea of an arbitration in which a municipality is one of the parties, seems to imply a long, tedious and expensive piece of legislation, but we found no difficulty whatever worth speaking about, and the expense trifling, for in every case, the question as to which roads were to be selected was settled amicably between the local council and the county council, and the selections made by this pre-arrangement put into the form of awards, thus rendering the arbitration of a purely formal character.

Through want of consideration, however, a mistake was made in one or two cases in the selection of arbitrators, either the county council or the local municipality being unmindful of the fact that officials of the municipalities are disqualified from acting as arbitrators, and the result was in these cases that our work had to be done over again in order to avoid some person, dissatisfied with the roads selected, moving on the advice of some over-watchful and ambitious limb of the law to quash the awards. Having overcome these difficulties, and the season advancing, we were anxious to begin work, and in May work began on the roads selected. After incurring a great deal of expense in this way, we advertised our debentures—$100,000 worth—bearing 4 per cent., for sale, and receiving a number of offers, we accepted the best, and proceeded to close the deal, only to find that our difficulties were not yet over. Acting on advice, we proceeded on the assumption that section 9 of the Act warranted a county council in raising the funds without submitting the question as to the issuing of the debentures and raising the funds to the ratepayers under The Municipal Act and obtaining their assent. Any ordinary layman would of course imagine that the ratepayers having once approved of the scheme which necessarily involved the raising of the funds, it would not be necessary to submit practically the same question again to them in a different form. Had it occurred to us that this was not the plain meaning of the Act, we might, in order to avoid trouble, have submitted the necessary by-law to the ratepayers at the same time as we submitted the questions set out in sub-section 4 of section 2. The solicitors for the purchasers of the debentures raised the objection I have spoken of, and we were then in the dilemma of either stopping our work and submitting a by-law, with the possibility of its defeat, or going to the Legislature. After discussing the question with the Provincial Commissioner of Highways, who stated it was the intention of the Act that the county councils should have the power to raise the necessary funds within the limits defined by section 9, we brought the matter to the attention of the Legislature, and at the last session they put the section in question beyond doubt by adding words to show clearly the intention as interpreted already to us.

We designated in our system 434 miles, seemingly a very great amount, but comparatively small in view of our very large area. It was the size of our county and the difficulty in satisfying the different local municipalities that determined us on having so much. As it is, however, we, I think, made a mistake ; we should have selected fewer roads, a less mileage. We should have been able to push our work to a speedier conclusion with better results. We have already constructed about 128 miles of roads, at a cost of $61,602.61.

Gravel, when obtainable, we found the most economical roadmaking material, and, with the exception of some three or four miles of stone, it was the only material used, and where good gravel could be obtained, and laid on a properly graded road and well rolled after rain, the results were admirable. We determined not to purchase steam rollers, because of the number that would be required to do our work, it being considered owing to

the fact that we would have to depend on rainfall to dampen the road, without which rolling is useless, we would need so many rollers to take advantage of these times, that it would only pay us to purchase the ordinary horse rollers. These rollers have given good results. The rolling, however, must be done when the road is damp.

Including the Government grant, we purpose spending $150,000. One hundred and forty thousand dollars of this sum we have determined to spend in the townships in proportion to the equalized assessed values. The remaining $10,000 we add for the improvement of those roads generally used by more than one municipality, that is to say, for example, those leading to a market town or commercial centre and passing through one township as a main thoroughfare for the ratepayers of another township. Out of the general funds of the county we provided $5,000 for the improvement of the roads in the rural parts of the towns and incorporated villages, confining this, however, to such roads as are continuations of the roads within the general system. Our experience teaches us that these roads within the towns and villages are generally neglected, and this neglect in all cases is greatly to the disadvantage of the rural communities.

Labor being scarce and wages correspondingly high, we of course have found that the cost of roadmaking has been greater than it would have been even two years ago. On the whole, the results have been good and encouraging. Roads have been straightened, grades have been moderated, if not done away with, and, as a rule, first-class highways have been furnished, upon which heavy loads can be drawn with comparative ease, and on which it is a pleasure to drive. If the use of broad tires on wagons could be successfully enforced the evil of cutting the roads up would be sensibly diminished, if not done away with altogether.

The only objection that I have heard to the system has sprung from people whose residences are on the county roads, and to whose places the work has not yet reached. We have to begin somewhere. We began at the centres—the towns and villages—and worked outward therefrom. We were not able to finish our work, and as there are always some people to find fault, the fault-finders were usually confined to those up to whose homes the roads were not finished at the time we were compelled to desist. It speaks well for the system, however, when I can say that the criticism comes from these people who must think highly of the completed portions when they complain because the balance is not yet finished.

MACADAM STREETS.

A by-law providing for the expenditure of $6,000 on road improvement was recently passed by the ratepayers of Acton by a vote of 120 to 13, and it is intended to undertake the work at once, under the direction of the Ontario Commissioner of Highways. The specification for the work is as follows :

Location and Extent of Work.

(1) The location and approximate extent of macadam or broken stone roadway to be laid under these specifications are as follows :

On Church street from the westerly limit of Main street easterly to the Grand Trunk railway, a distance of about twenty-one hundred lineal feet ; on John street, from Church street southerly to a bridge, a distance of about three hundred and seventy-seven lineal feet ; on Mill street, from the westerly limit of Main street easterly to the Grand Trunk railway, a distance of about two thousand and sixty-five lineal feet ; the width of macadamized roadway on Church and John streets to be eighteen feet ; on Mill street, from the Grand Trunk railway to John street, a distance of about thirteen hundred and seventy-eight feet, twenty feet wide, and from the easterly limit of Main street, a distance of about six hundred and eighty-seven lineal feet, from sidewalk to sidewalk, about twenty-eight feet six inches ; the entire extent of macadam roadway, to include about ten thousand two hundred square yards, the work to be more particularly defined on the street by the engineer.

Excavation and Grading of Roadway.

(2) The space over which the roadway and curb are to be laid shall be excavated to the required depth below the elevation of the finished roadway, and graded in accordance with plans and schedule on file at the office of the clerk of the town of Acton, and forming part of these specifications. Perishable or objectionable material shall be removed to a further depth, to secure a firm foundation, if so required by the engineer. Such excess excavation shall be filled with gravel, or other material approved by the engineer, and the bottom of the sub-grade thus obtained shall be then made thoroughly firm and solid by pounding and rolling.

Removal of Excavated Earth and Rubbish.

(3) The earth taken from the excavation for the roadway is to be used in properly grading the boulevards and filling in any portion of the roadbed which is beneath the grade line on the proposed improvement ; and the surplus earth is to be teamed from one point of the street to another, as may be required in raising the boulevards where there is not sufficient earth, or in raising the elevation of lots adjacent to the street. All earth in excess of that required on the street, stones, posts, stumps, other obstacles or rubbish shall remain the property of the town, to be removed by the contractor to such point or points as the engineer may direct ; if not hauled for a distance exceeding one-half mile from the street, such removal to be without extra charge.

Levels, Stakes and Bench Marks.

(4) The grading, draining, macadamizing and all work connected herewith, shall be completed to the lines and levels given by the engineer. No stakes or bench marks placed for this purpose by the engineer shall be moved or effaced by the contractor without the permission of the engineer so to do.

Tile Drainage.

(5) The contractor is to furnish the tile and construct a four-inch field tile drain along the inside, or roadside, of the curb line on each side of the street, as shown upon the plan on file at the office of the clerk of the town of Acton. The tile are to be placed in an eight-inch trench, the bottom of the trench to be at least eighteen inches below the sub-grade of the roadway ; and the tile shall be uniformly and evenly laid, with a fall of not less than three inches in one hundred feet, to a proper outlet to be designated by the engineer. All tile used shall be of the best quality of clay, manufactured expressly for drain purposes, in lengths not less than one foot, and of uniform diameter throughout. All earth excavated in the laying of these drains shall be returned to the trench, being thoroughly rammed and pounded in layers not exceeding one foot in thickness, and rendered perfectly firm and solid, to the satisfaction of the engineer.

Boulevards to be Levelled and Trees Preserved.

(6) The boulevard between the curb line and the sidewalk is to be regularly levelled off from the grade line at the top of the sidewalk to the roadway as directed by the engineer. The boulevard between the sidewalk and the street limit is to be regularly and evenly graded by cutting down or filling in as may be required, so as to conform to

the grade of the sidewalk, except where otherwise directed by the engineer, in order to conform to the elevation of the lawns along the said street. The boulevards are to be left smooth by raking or otherwise levelling, to the satisfaction of the engineer or other person in charge of the work. The contractor in doing the work, must excavate or fill in around the trees on the said street in a careful manner, so as not to bark or injure the said trees.

Water Gullies, Manholes, Stand Pipes.

(7) Returns and off-sets, if necessary, must be made in the line of the curb around any of the water gullies on the street. The levelling of the top of the sewer gullies manholes, etc., and the building up or lowering of all waterworks' standpipes in such manner as the engineer may direct, to suit the grade and crown of the roadbed, will be done by the contractor.

Lane and Street Intersections.

(8) All intersections of private lanes are to be properly made and graded by the contractor at a gradual slope from the line of the street allowance to the bottom of the gutter, and all street intersections are to be graded to conform to the finished grade of the street.

Broken Stone Surface and Quality of Stone.

(9) The surface of the roadway over the said roads is to be covered with crushed stone to the depth of twelve inches to be regularly and perfectly spread over the whole of the roadbed to a depth to conform to the cross section shown on the drawings. The crushed stone is to be furnished by the contractor, and shall be durable limestone, granite or field stone, of such quality and broken to such dimensions as may be approved by the engineer, and authorized by the council of the town of Acton and shall be equal to the sample to be seen at the office of the clerk of the town of Acton. All stone used must be free from clay, loam or earthy material. Quarry strippings will not be accepted.

Placing Stone on the Roadway.

(10) The broken stone is to be placed on the roadway in the following manner :

(a) Flake stone of suitable dimensions is to be placed by hand over the whole of the surface of the sub-grade to a depth of six inches. Upon this shall be spread a coating of fine screenings, to be worked into the interstices of the stone, and the layer shall then be saturated with water and thoroughly rolled.

(b) Upon this shall be spread a layer of crushed stone such as will pass through a two and one-half ring, to a depth of five inches after consolidation, this to be coated with a one-inch coating of screenings, harrowed, saturated with water, and thoroughly rolled.

(c) Upon this shall be spread a sufficient quantity of crushed stone, such as will pass through a one-inch ring, to bring the roadway to the line of the finished grade, this to be coated with a one-inch layer of screenings, harrowed, thoroughly saturated and rolled.

Screenings to Fill Voids.

(11) Special care must be taken to work each coating of fine screenings down into the interstices or voids in the mass of stone beneath, by thoroughly saturating and flooding with water, by passing a harrow over the surface of the whole mass, and rolling until the engineer is satisfied that the interstices are sufficiently filled.

Manner of Rolling and Wetting Roadway.

(12) Rolling shall be commenced at the edges or curb of the road, working towards the centre, and shall be continued until the earth sub-grade and each layer is firmly set, to the satisfaction of the engineer, and ceases to further consolidate under the weight of the roller. The final rolling must be continued until the roadbed is perfectly consolidated and unyielding, to the satisfaction of the engineer. During the whole of the rolling herein speeified, a sprinkling cart is to pass immediately in front of the roller, so that at all times the surface of the road will be saturated with water.

Steam Roller Provided.

(13) A steam road roller will be provided by the contractor, together with a man to operate it, the contractor to supply the necessary fuel, oil, waste, water, and other material necessary for its proper operation.

ACETYLENE GAS PLANTS.

Acetylene gas plants for general public lighting are being operated in a number of Ontario towns—Aurora, Milverton, Oshawa, Brantford, Bolton, Maxville, Rodney and North Bay, The explosion of a number of small gas generators used for lighting individual buildings has created a prejudice against acetylene gas, which is not justifiable when manufactured on a large scale, and under constant and regular attendance. One of the principal objections to acetylene gas is that it has not yet been adapted to cooking, but recent inventions in acetylene gas stoves would indicate that this drawback may in the future be overcome,

Acetylene gas has the advantage that the pipes conveying it are always dry, will not freeze, and may therefore be laid in very shallow trenches, or even over the surface of the ground. Other advantages ol acetylene over ordinary gas are that the former is less poisonous, the cost of constructing and maintaining a plant is less, and the lights do not pollute the air to the same extent as ordinary gas. Unless operated by water-power, few electric plants in small places give an all day service, whereas gas is always available. In North Bay the price of 100 feet of acetylene gas, equal, it is estimated, to 1,000 feet of coal gas, is $1.53 net.

THE WATERWORKS OF LONDON, ENGLAND.

The most notable example of the private ownership of waterworks on record, ceased to exist on June 23, when the eight water companies supplying metropolitan London, England, transferred their works to the Metropolitan Water Board. The total price to be paid by the new board for the works has not been fully determined, owing to certain appeals by the companies from the decisions of the arbitrators to the House of Lords. The aggregate of the amounts originally claimed by the companies was $243,000,000. Some of the claims were cut more than in half, even supposing that the companies win on their appeal. Mr. William B. Bryan, chief engineer of the East London Waterworks Co., has been selected by the Metropolitan Water Board as its chief engineer. He is to be paid an equivalent of £3,750 a year, or a little more than $18,000 a year, for his services, but he will soon give up the private practice carried on while he was chief engineer of the company. Some idea of the importance of these combined works may be given by stating that nearly all the water supplied to some 5,000,000 people is filtered and all of it is pumped, while the operating expenses from June 24 to September 30, 1904, have been estimated at about $6,000,000.

The sewage disposal works of Berlin are being extended by the construction of two additional septic tanks and a storage reservoir. The contract price is $16,400. The total capacity of the disposal works when completed will be 530,000 gallons, the new tanks being 150 by 36 feet and seven feet deep.

QUESTION DRAWER

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

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

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

Assessment of Cost of Building Granolithic Walks in Police Villages.

570—S. B. M.—1. Can a township council pass a by-law for the purpose of constructing a granolithic walk in a police village under the frontage system and assess 40% only of the cost against the property to be benefited, in front of which the walk is to be built, the balance to be paid out of the general funds of the township ?

2. If the township council has the power to assess only say 40% against the lands benefited and provided in its by-law that the balance shall be paid out of the general funds of the township, can they then levy this balance on the lands in the police village only, or would the whole township have to contribute, no by-law having been passed under section 682 of the Consolidated Municipal Act, 1903 ?

3. Must not the whole amount of the cost of the walk be assessed against the lands benefited, except as to intersections of streets, corner lots, etc. ?

4. Would not the lands benefited be the lands in front of which the walk was laid, and not the police village generally ?

1. Assuming that the trustees of the police village have not been incorporated as provided in section 751 of The Consolidated Municipal Act, 1903, the council of the township has no authority to assess only forty per cent. of the cost of the work on the property to be benefited. Sub-section 1 of section 665 of the Act provides that "the special rate to be so assessed and levied (that is for the construction of any of the works mentioned in section 664 of the Act) shall be an annual rate according to the frontage thereof upon the real property *immediately benefited* by the work or improvement." Sub-section 3 of this section has no application to this particular case, neither has section 678 which applies only to cities, towns or incorporated villages.

2. Our reply to question number one renders it unnecessary to reply to this.

3. The whole of the cost of the work must be assessed against lands to be benefited, unless the council passes a by-law as to street intersections and exempted properties pursuant to section 679 of the Act.

4. Yes, if proceedings are being taken under the local improvement clauses of this Act. But there is nothing to prevent the police trustees building sidewalks wherever they think them necessary, and requesting the council to levy the cost of their so doing against all the taxable property within the limits of the police village, as provided in section 738 of the Act.

Private Parties Cannot Legally Obstruct Highways.

571—A. A. Y.—On some of the streets in this village gates have been placed by property owners thereon, and in one place a fence.

Can said property owners ever claim these streets by closing them in this way ?

Yes, if they are allowed to retain possession of them for twenty years or over. (See section 35 of chapter 133, R. S. O., 1897.)

Method of Constructing Electric Railway.

572—F. A. P.—An Electric Railway Company having a Dominion charter purchased property alongside of highway.

1. Have they the right to take earth and other material off the highway for grading and repairing said road without first obtaining permission from the council ?

2. They having done so have left the highway in a dangerous condition, the council being aware of the same and not notifying them to protect such places, if an accident should happen who would be responsible for damage done ?

3. Is there any law regulating the height which said railway company can raise their crossings above the level highway ?

4. In grading up their roadbed are they allowed to dam back or prevent the natural flow of the surface water ?

1. As we understand it, the right of way of this railway company is on lands purchased from private owners adjoining the highway, and the company has no authority to remove the soil of the highway for the purpose of grading its road, unless it has been granted permission by the council to do so.

2. The municipal corporation would be responsible in damages to any person injured by reason of the dangerous condition of the highway, and have a remedy over, for the amount of the damages recovered, against the company, as provided in section 609 of The Consolidated Municipal Act, 1903.

3. Yes. When the works are completed, the rails should not rise above or sink below the level of the highway more than one inch. (See section 185 of The Dominion Railway Act.)

4. Yes.

Requisites of Bonus By-Law.

573—C. P. B.—Herewith I enclose a copy of a by-law that was voted on and carried in our village on the 22nd inst. I also enclose an agreement that was entered into by part of the party of the first part and a few of our citizens.

1. Is the by-law legal, as the agreement has been quite misleading to the public, or are we bound to pay more than the $10,000 (ten thousand dollars) as specified in the agreement ? Also state if there is ground sufficient to quash the by-law.

I might further state that our ballots read for $15,000 (fifteen thousand dollars).

2. The by-law has been given the first and second reading. Should we give it the third for $15,000 or $10,000 ?

We do not think the by-law can legally stand. When the council found that a by-law for $15,000 could not be carried, it should have cut down the amount to $10,000, and should have submitted a by-law for that sum together with an agreement in regard to the rates to be charged and the other terms of the agreement to the ratepayers. In other words, the whole question should have been submitted to the ratepayers.

Regulation of Running at Large of Cattle—Abolishing Statute Labor.

574—H. C. G.—1. Cattle are allowed by by-law to run at large in this municipality. Has township municipal council power to pass a by-law to force owners to place bells on cattle ?

2. Has a township council power to pass a by-law to do away with commuted statute labor and instead to raise all road money in the township rate ?

1. Sub-section 2 of section 546 of The Consolidated Municipal Act, 1903, empowers township councils to pass

by-laws for restraining and REGULATING the running at large of animals, and under this provision they have authority to require cows running at large to have bells attached to them.

2. Section 101 of The Assessment Act authorizes township councils to pass by-laws entirely abolishing statute labor. If a township council passes such a by-law, the money thereafter required for road purposes will have to be raised by a general rate levied on all the taxable property in the municipality.

Building Regulations in Villages.

575—1. Has the municipal council of an incorporated village the power to pass a building by-law, stating what kind of buildings must be erected on main street in the business part of the village?

2. What is the proper way for the council to proceed to give effect to such a law?

1. Yes. See sub-section 1 of section 542 and sub-section 4 of section 541 of The Consolidated Municipal Act, 1903.

2. The by-law regulating the erection of buildings should provide for the infliction of a penalty not exceeding $50, exclusive of costs, on persons transgressing its provisions under the authority of clause (b) of sub-section 1 of section 702 of the above Act.

Composition and Election of County Councils.

576—W. R. A.—A majority of the councils of the local municipalities within this county have filed resolutions with me this year declaring that the county council should be composed of the reeves of townships and villages and the mayors of towns.

Now in what year is the by-law of the county council to be passed and submitted to the electors in pursuance of sub-section 3? And if the electors carry the by-law, then in what year will the county council first consist of the reeves, etc., after the election?

Clause (b) of sub-section 1 of section 3 of chapter 22 of The Ontario Statutes, 1904, (The Municipal Amendment Act, 1904,) provides that "the by-law shall be submitted to the electors at the time fixed by law for holding a poll at the election of the council of each local municipality for the year next preceding the year in which polling for a general election of county councillors would take place under this Act."

If the councils of a majority of the local municipalities in the county file the resolution mentioned in sub-section 1 with the county clerk, prior to the 1st October of the present year, the by-law mentioned in this sub-section cannot be submitted to the electors of the county until the municipal elections to be held in January, 1906. If this by-law is carried by the electors, the county council for the year FOLLOWING that in which the vote is taken, and thereafter shall be composed of the reeves of all townships and villages in the county, and the mayors of all towns not separated from the county for municipal purposes. (See clause (b) of sub-section 2 of section 1 of the above Act.)

Limit of Annual Tax Levy.

577—D. D.—Are we allowed to levy a special rate in excess of two cents for general purposes, for payment of our debenture instalment maturing this fall?

Yes. Sub-section 2 of section 402 of The Consolidated Municipal Act, 1904, provides that "if in a municipality the aggregate amount of the rates necessary for payment of the current annual expenses of the municipality, and of the interest and principal of the debts contracted by the municipality exceeds the said aggregate rate of two cents in the dollar on the actual value of such rateable property, the council of the municipality shall levy such further rates as may be necessary to discharge obligations incurred up to that date, but shall contract no further debts until the annual rates required to be levied within the municipality are reduced within the aggregate rate aforesaid."

Issue of Drainage Debentures by Servient Municipality.

578—F. G. J.—A ditch is petitioned for under The Municipal Drainage Act in the Township of E., and the engineer makes a survey report, etc. In the engineer's report he finds that the upper end of the ditch should cross the line just into adjoining Township of W. Only one party in the Township of W. is assessed for benefit, the remainder being assessed for injury liability only.

Will the parties assessed in the Township of W. have to make their payment all in one year, as they are only assessed $175 in all, and debentures cannot be issued of a smaller denomination than $100, or could the Township of W. pass a by-law to raise the amount in say five equal annual payments of principal and interest and pay it over to the Township of E. each year as collected, the Township of E. issuing debentures for the additional amount to be paid over from W. along with their own. This latter, if legal, would make it somewhat easier on the party in the Township of W. assessed for benefit?

Debentures to raise money for drainage purposes may be issued in sums of not less than $50 under the authority of sub-section 3 of section 19 of The Municipal Drainage Act (R. S. O., 1897, chapter 226). The Township of E. has no authority to raise the sum assessed against lands and roads in the Township of W. and include it in the amount of its debentures. The Township of W. must make provision for this, as provided in section 62 of the Act. If the Township of W. desires to pay a portion of the principal money in each year, it can issue two debentures of $50 each, payable in one and two years respectively, and one for $75, payable in three years, levying and paying interest on the principal money remaining unpaid each year, or it can make all the principal money of these debentures payable in five years, making provision for the raising of a sinking fund to meet their payment at maturity and levying and paying interest each year.

Placing of Drainage Assessments on Collector's Roll—Remedy When Portion of Drain Not Completed in Time Fixed by Award

579—D. D.—The council passes a drainage by-law and let contracts for repairing the drain, which work is to be completed by October 15th of the present year.

The debentures authorized by the by-law are to run five years from issue.

1. Will it be proper for the clerk to enter the first assessment for the drain in this year's tax roll?

2. Has the clerk authority to place a drainage assessment on the roll without a motion in council instructing him to do so?

3. Under The Ditches and Watercourses Act an award was made by the engineer, in which he fixed date for completion of the ditch in November, 1903. None of the parties affected by the award made any move toward digging the ditch, not even the man who asked for it. But now he blames the council because they did not construct that portion of the ditch awarded to the township. Would the council be liable for damages if Mr. A. entered action against them for not doing their portion of ditch awarded to the township?

1. Yes, and he should do so, otherwise there will not be money on hand, raised under the by-law to meet payment of the interest when it matures next fall, or sufficient to pay the principal at the end of the term.

2. Yes, the by-law is his authority for doing this, and a resolution of the kind mentioned is superfluous.

3. No. Section 28 of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285) provides the remedy in case of a default of this nature, and the parties interested are confined to the remedy thus provided.

Erection of Water Gate—Building of Cement Walks in Unincorporated Village.

580—W. E.—1. A. and B. are farmers and owners of two 100-acre lots alongside each other, and they divided the line fence, each one taking half. Then A., to get his land drained, forced an award drain under B.'s portion of the line fence, leaving a hole for hogs and sheep and small cattle to get through. Who is the right party to look after this drain, so that stock may not run at large? Is A. the man who forced the drain, or is it B., the man whose portion of

the line fence the drain went under, or should both parties keep this drain closed so that their stock cannot get back and forth ?

2. Has a municipal council power to pass a by-law to raise money by debenture to build granolithic walks under these conditions. There is a small village in the municipality not incorporated, and they got up a petition signed by all the property holders except two, asking the township council to pay one-half the cost of the granolithic walk and pass a by-law to raise money. Have the council power to pass such by-law under the local improvement clauses of The Consolidated Municipal Act, 1903 ?

1. It is the duty of each of these adjoining owners to so take care of his hogs, sheep, etc., as to prevent their trespassing on his neighbors' lands. If, to accomplish this, the erection of a flood or water-gate is necessary, the adjoining owners should agree on its erection at their joint expense. The erection of such a gate is not compulsory, unless the council of the township has passed a by-law under the authority of sub-section 6 of section 545 of The Consolidated Municipal Act, 1903.

2. The council of a township has no authority to pass a by-law of the kind mentioned, as section 678 of The Consolidated Municipal Act, 1903, applies only to cities, towns, and incorporated villages. The council may pass a by-law providing for the construction of these sidewalks in this locality, and for the assessing of the whole cost thereof upon the real property immediately benefited by the work or improvement according to the frontage thereof, making provision (if it sees fit) for the cost of the doing of the work opposite street intersections or exempt properties, as provided in section 679 of the Act.

Drainage Assessment May be Paid Any Time Before Issue of Debentures.

581—J. E. H.—Enclosed please find a drainage by-law which does not provide for cash payment according to chapter 226, section 54. Is council compelled to accept cash payments now, as debentures are not yet issued, three years' assessments being collected ?

It is not necessary that a drainage by-law should contain any provision to that effect to enable any owner assessed for the drainage work to take advantage of the provisions of section 54 of the Act. In the case mentioned, since the debentures have not yet been issued under the by-law, any owner assessed may now pay the balance of his assessment, if he sees fit, and the council is bound to accept such payment, and the amount of the debentures, when issued, shall be proportionately reduced.

Putting in Culvert on Highway—Property in Trees on Highway —Councillor's Fees—Additional Work on Municipal Drain.

582—F. McC.—1. A Ditches and Water Courses tile drain is awarded by township engineer. He makes no provision for overflow of wate crossing highway. Can culvert be put in to relieve party above by commissioner or councillor ?

2. Has farmer any claim on tree on highway opposite his farm ?

3. Can councillor cut tree opposite his farm, it filling up tile with roots ? The farmer objects, claiming it valuable for shade. Assuming drain to be D. and W.

4. Is councillor entitled to any fees for looking after D. & W. work ? Council has stated sum for each commissioner for doing township work.

5. A township engineer lays out a municipal tile drain, provides for a storm drain above and makes no provision crossing highway where old culvert is. Can commissioner put in sewer pipe and charge to drain ?

1. There can be no legal objection to the construction of this culvert as suggested. If, however, it is not required for the purpose of draining the highway, but only for the accommodation of a private owner, the commissioner or councillor should take no action in the matter.

2 and 3. Sub-section 2 of section 574 of The Consolidated Municipal Act, 1903, authorizes the councils of townships to pass by-laws for causing any tree planted or growing on a public highway under its control to be removed, if and when such removal is deemed necessary *for any purpose of public improvement*, subject to the conditions mentioned in clauses (a) and (b) of this sub-section, but in the case mentioned the removal of the tree does not appear to be required for any purpose of public improvement, so the above sub-section does not apply. Sub-section 4 of section 2 of chapter 243, R. S. O., 1897, provides that "every growing tree, shrub or sapling whatsoever planted or left standing on either side of any highway, for the purposes of shade or ornament, shall be deemed to be the property of the owner of the land adjacent to the highway and nearest to such tree, shrub or sapling." In the case of Douglas v. Fox (31 C.P. 140) it was held that under the Act then in force (which was substantially the same as that above quoted) the owner of land adjoining a township highway had such a special property in the shade and ornamental trees growing on the highway opposite to his land (though not planted by him) that he might maintain an action against a wrong-doer for cutting and removing them, and was not restricted to recovering the penalty given by section 5 (now section 6) of the Act.

4. The only D. and W. work that a councillor should supervise is that in which his council is immediately interested, and for doing this he is entitled to receive the same fees as for superintending the doing of any other township work.

5. No. The council or its commissioner has no authority to do any work on this drain that is not authorized by the award or the engineer's report.

Collection of Taxes by Action at Law.

583—A. I. R.—In our Township we have some $350 back taxes. Very little of these have run the three years required to allow us to sell the property. We are badly in need of money and have to borrow some. Do you consider it advisable for us, situated as we are, unorganized, to sue for these taxes ? What is our proper procedure if we should sue to enforce payment and still keep the municipality free from expenses ? In short, what is the best course for us to adopt to get the taxes at once.

We are of the opinion that the municipality is not in a position to recover these taxes by ordinary action at law. Section 143 of The Assessment Act provides that "if the taxes payable by any person cannot be recovered in any special manner provided by this Act, they may be recovered with interest and costs, as a debt due to the local municipality, etc." The special methods provided by the Act for the collection of taxes have not been exhausted until the lands in arrears have been offered for sale under the Act. If the lands have been so offered, and the taxes not realized, and all other special methods provided by the Act have been tried and failed, the municipality can proceed to recover the amount by ordinary action at law.

Payment of Costs of Committal of Insane Person—Council Should Appoint Collector.

584—SUBSCRIBER.—1. A person becomes insane and a complaint is lodged with a magistrate by two persons that they were not safe while the insane person was at large. The magistrate issued a summons and sent a constable to take the person in charge and place him in the lock-up till he could be examined by physicians. The doctor first called in was also reeve of the township. The insane person was committed to the asylum, the reeve acting in his professional character and not as reeve. The friends of the insane person asked the reeve if corporation would put up the expenses of the committal and give them a chance to raise the money later. The corporation did so, and when the friends were presented with the account afterwards, they refused to pay. Can the corporation collect this account from the parties ?

2. A council appointed the treasurer receiver of taxes, adding a percentage to the taxes remaining unpaid at a certain date. They did not appoint a collector. Quite an amount of taxes still remain unpaid. No defaulter's list has been made out. The roll has not been returned as required, there being no collector. Can the

council of this year instruct the clerk to enter the unpaid taxes and percentages as arrears of taxes on this year's collector's roll? It was last year that no collector was appointed.

1. The friends of this insane person were apparently financially able to pay the expenses of his examination and committal to the asylum, and the municipality had no authority to pay them. Municipalities should pay accounts of this kind only when the parties liable are in destitute circumstances. (See section 11 of chapter 317, R. S. O., 1897.) It is not clear whether the friends of the lunatic agreed to repay the council or not. If they did, we are of the opinion that they are bound to pay it back. On the other hand, if they did not, the payment by the council must be regarded as a voluntary payment and cannot be recovered.

2. The state of affairs mentioned is the natural consequence of attempts, on the part of municipal councils, to make laws for themselves. We have repeatedly stated in these columns that councils have no authority to dispense with the services of a collector. The council has no power to instruct its clerk to enter taxes for 1903 remaining unpaid on the collector's roll for 1904, nor has the clerk any authority to make such entry. Since the collector's roll for 1903 has not yet been returned, the council should appoint some competent person as collector to realize the amounts still unpaid on this roll, and when he has got in all he can, he should return the roll to the treasurer in the regular way.

Payment of Teacher's Salary—Trustee Cannot Contract with the Board—Formation of School Sections—Reeve's Qualification—Liability for Perjury.

585.—J. B. L.—In our School Section No. 3, our teacher was hired for $20 per month for six months and took sick and wanted her two months pay and she was two weeks sick in those two months and wanted pay for same, because she got another teacher to put in the balance of her time.

1. Can she collect those two weeks pay when she was not hired by the year.

2. In the same school section the trustees let a job of cleaning the school grounds and one of the trustees worked on the job for the man that took the job, for $3 per day with team. Does this disqualify him?

3. Our township council formed a new school section last year in the month of July or August. Is it legally formed, there was no parts of it in any school section before?

4. The Township of W. has not been formed into school sections yet and a by-law was presented at a council meeting in May, to form it into school sections and it was lost, 2 for and 3 against. One of the councillors is a roadmaster or pathmaster; does the by-law stand legal, and can this councillor be unseated and what course should be taken to unseat him?

5. Our reeve used profane language; can he be disqualified and what steps should be taken?

6. A lawsuit has gone on over the same defeated by-law and one defendant swore that there were no cross roads in the township and there are. What action can be taken against this man and what way to proceed?

1. This teacher appears to have taught for the six months for which she was engaged, either herself or through the medium of a substitute agreeable to the trustees, and we are of opinion that she is entitled to be paid for the two weeks during which she was ill. (See sub-sections 4 and 5 of section 81 of The Public Schools Act, 1901.)

2. Yes. See section 105 of the Act.

3. We do not see that any legal objection can be urged against this by-law. Since no part of the territory out of which the new section was formed was, at the time of the passing of the by-law, in any existing section, section 41 of the Act has no application.

4. The fact that one of the councillors was a pathmaster at the time the by-law was passed does not affect its legality, nor can the councillor be unseated under the circumstances.

5. The use of profane language is not a ground for the disqualification of the reeve or other member of a township council.

6. If this witness wilfully swore to what was false, he can be proceeded against and punished for having committed perjury.

Legality of Resolution of Council.

586—A. B. C.—At a meeting of the council at which the mayor was absent, a resolution was passed, entering into an agreement with a party to bring electric power to the town, and, when agreement was presented to the mayor next day, he refused to sign it unless a time claim was added, which he did, saying five years. This agreement was not to the liking of the electric party and a special meeting was called. The mayor asked first to have resolution passed to confirm his action, which was done, but placing time at three years. The electric party still object and one of the aldermen moved a resolution which the council was satisfied with, also electric party, but the mayor would only take it as a notice of motion, which was agreed to and stood as such till regular meeting in September. The alderman at this meeting, then moved the resolution of which notice had been given, and was informed by the mayor that the agreement had been signed on basis of previous resolution with three years claim added.

1. Is the agreement legal since no notice had been given to change first resolution by adding time change, and at same time refusing to allow second motion to be put, except as notice of motion of it?

The council appears to have thus far only passed a resolution confirming the signature of the agreement by the mayor, with the alteration of the time limit from five to three years. Until this resolution is rescinded, it will stand, and we do not see that any legal objection can be taken to the agreement on that account. If the mayor refuses to put a motion, the members of the council may move one of themselves into the chair, who may perform this duty.

Liability for Injury to Horse.

587.—W. B.—A horse broke out of its owner's field, went about two miles, was injured by getting in a ditch that was constructed under the Muncipal Drainage Act on the concession road.

We have a by-law which says all animals running at large do so at owner's risk.

Is township liable for damages to horse?

No.

Township Council Can Appoint Constable and Pay Fees.

588—H. M. R.—Can a township municipality appoint a salaried constable?

This township being located in one of the Territorial Districts of Ontario, section 37 of chapter 225, R. S. O., 1897, is applicable. This section provides that "the council shall have the power to appoint one or more constables within the municipality, whose duty it shall be to enforce and maintain law and order, and who shall perform all duties appertaining to constables, and the said council shall have power from time to time to remove the same for misconduct in office, and shall also regulate the fees to be paid said constables."

Status of Councillor under Contract with his Council.

589—H. R. S.—I am one of the councilors of the Town of K. and have taken a contract to extend water main. Now I wanted to resign my seat at the board but the Council would not listen to it, it would put them to the cost of a new election. They claim that if no one made any objection, it would not matter. If, by my still holding my seat, could the contract be broken or would it mean the chance of being unseated or whether there is any penalty to the above proceeding?

This councillor has, by taking this contract, become disqualified as a member of the council of the town, under section 80 of The Consolidated Municipal Act, 1903. Section 208 of the Act makes provision for the taking of proceedings to unseat him. Section 83 of the Act provides that "in case a member of the council of any municipality, either in his own name or in the name of another, and either alone or jointly with another enters into a

contract of any kind, or makes a purchase or sale in which the municipality is a party interested, the CONTRACT, purchase or sale *shall be held void in any action thereon against the municipality.*"

Assessment of Personalty— Party Assessed not Personally Responsible for Statute Labor.

590 -H. J. E·—A certain merchant would not allow his store goods to be assessed, claiming that the amount he owed on the goods was greater than the value of the goods. Consequently the building only was assessed. But at the Court of Revision the goods were assessed at the value of $300.00.

The goods would be the remainder of the stock which was put in before navigation closed or before the 1st of December, 1903, as scarcely any more then are put in until navigation opens or after the 31st of April, 1904.

1. Had the court power to assess the goods ?

2. What action should they have taken ?

J. has his farm leased and he is put down on the assessment roll as owner.

3. Is he liable to one day statute labor or not.

1 and 2. If an appeal to the Court of Revision was filed in accordance with the provisions of sub-section 3 of section 71 of The Assessment Act, and, on the hearing of the appeal on the evidence adduced before it, the court is of opinion that the actual cash value of these goods is $300 more than that part of their value which is equal to the just debts owed on account of such property, it is justified in assessing the merchant for that sum. (See sub-section 24 of section 7 of the Act.)

3. We assume that J. is assessed as owner of this property jointly with his tenant. If this is so, the statute labor should be calculated on the value of the property, according to the scale in vogue in the municipality, and neither J. nor his tenant is under any legal obligation to perform any additional statute labor.

Compulsory Weighing of Coal on Public Scales.

591.—D. E. M.—1. Has our town council the right to compel coal dealers to have coal, sold by them to the citizens, weighed on the town scales ?

2. And if so, does the law fix any fee for so weighing and what steps would council require to take to inforce the law.

1. We are of opinion that the councils of towns have power to pass by-laws requiring all coal dealers to have all coal sold by them weighed on the town scales. Sub-section 9 of section 580 of The Consolidated Municipal Act, 1903, provides that councils of towns may pass by-laws "for regulating the measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, COAL and other fuel." This authority involves the power to enact that any of these commodities shall be weighed on the public weigh scales.

2. The by-law may fix a reasonable fee for the weighing of coal, and may provide for the infliction of a penalty of not more than $50, exclusive of costs, on persons guilty of transgressing its provisions. (See section 702 of the Act.)

Requisites of Collector's Bond—Payment of Tile Drainage Rebate.

592—T.W.W.—1. In appointing collector is it necessary to state that collector shall furnish bonds and should it state the amount of bond to be given ?

2. The Government of Ontario has sent a rebate to the Township of W. on tile drainage debentures to be paid to the owners of lands in 1896, which received money for the purpose of constructing tile drains, the lands having changed hands and several claim the right to the rebate. Who is entitled to receive the rebate, the present owner, that has not paid any of the money, or the owners that paid the debentures ?

1. Yes.

2. In the absence of any special appropriations of the moneys refunded, the person or persons or any of them who made the payments on account of these debentures is or are entitled to receive the rebate.

Effect of Absence of Councillor on Business of Council.

593—G. B.—Kindly let me know if an absence of three or four months of one of the councillors from our regular meetings affects, in any way, business transacted during his absence ? Four councillors and Reeve is our complete board.

The absence of this councillor does not affect the legality of the business transacted by the council while he is away. If this councillor has been absent from the meetings of the council for three months or over without having been authorized to so absent himself by a resolution of the council entered on its minutes, the latter part of section 207 of The Consolidated Municipal Act, 1903, renders it the duty of the council to declare his seat vacant, and to order a new election.

Preparation of Voters' List for Voters on Money By-Law.

594.—J. C. S.—A vote is to be taken on a by-law granting a loan to a manufacturing industry. Secs. 348-9 Con. Mun. Act, 1903, say that the clerk must make a voters' list of all persons *appearing* by the then revised assessment roll to be entitled to vote. Sec. 353, in defining who may vote, says : "Who, at the time of tender of vote, etc.—and who is, at the time of the tender, a freeholder, etc."

1. Must the clerk, in making out the Voters' List, follow the last revised assessment roll in all cases or may he leave off names of those whom he knows, at the time the vote is taken, are not freeholders, but are rated as freeholders on the roll.

2. If these must be on the voters' list, and will not take the oath that they are freeholders or wife freeholders and consequently cannot vote, in reckoning the ⅔ or 3/5 of all the ratepayers who *are entitled to vote* in order to render it valid, must these be counted as entitled to vote ?

3. If they should not be counted, when should they be struck off ?

4. A man is in reality owner of a property of sufficient value to entitle him to vote, but is not rated as such on the roll, should his name be put on the voters' list ?

1. The clerk in making out this voters' list must be guided by the last revised assessment roll, as to what names he should put on or leave off the list, and the name of any person who appears by that assessment roll to be qualified to vote on the by-law must be entered on the voters' list. Recourse cannot be had to the actual knowledge of the clerk to keep names off or place them on the voters' list.

2. Yes. Sub-section 1 of section 366a of The Consolidated Municipal Act, 1903, requires the clerk, under the circumstances therein mentioned to "further certify whether or not, *as far as shown by the voters' list and assessment roll*, such majority APPEARS to be two-thirds of all the ratepayers who are entitled to vote on the by-law, etc.

3. It will be open to any elector, who makes application for a scrutiny under the provisions of section 369 of the Act, or who takes proceedings to quash the by-law, on the ground that it has not been carried by the requisite majority, to show that the voters' list used at the election contained, and that the last revised assessment roll of the municipality shows, the names of persons who, as a matter of fact, were not qualified to vote on the by-law.

4. No.

Time for Passing Resolution for Change in Composition of County Council.

595.—V. S.—I notice your answer to question 543 in the September WORLD and, according to it, the earliest time in which change in formation of county council could be made effective would be the year 1907, and in order to get the change then, the resolution of the township council would have to be passed in the current month of September and the by-law voted on next municipal election.

1. Could not the resolution by the municipal councils (to effect the change in 1907) be passed in September, 1905, and the by-law voted on at the municipal election next following ?

2. Statutes 1904, page 94, last line and following lines, "in any year preceding a year in which a general election of county councillors, etc."

Does this necessarily mean in any year immediately preceding a year in which, etc. ?

It would seem to me that next year would do as well as this without straining the statutes.

1. Resolution of local municipal councils, on which it is proposed to base a change in the composition of the council in 1907, must be filed with the county clerk on or before the 1st day of October of the present year.

2. Yes. We gave this matter very careful consideration in framing our reply to question number 543 in our issue for September of the present year, and it is a correct interpretation of the provisions of the section under review. Next year will not be a year preceding a year in which a general election of county councillors will take place, but will be a year next preceding a year preceding a year in which a general election of county councillors will take place.

Time for Submission of By-Law Repealing Local Option By-Law—Date of Coming into Force of Dominion Railway Act, 1903.

596—T. C. McC.—A local option by-law was voted on at municipal election, 1898, carried, and came in force May, 1898. On January 6th, 1902, a by-law to repeal this local option by-law was voted upon and lost.

1. Will it be legal to submit another, repealing by-law to be voted upon at the coming municipal election, January, 1905, or will the full term of three years not be up until January 6th, 1905 ? See R. S. O., chapter 245, section 141, clause 2.

2. Can you tell me when The Dominion Railway Act came in force ? Was it in force 24th of October, 1903 ?

1. The latter part of sub-section 2 of section 141 of The Liquor License Act provides that "if any such repealing by-law (upon being submitted to the electors) is not so approved, no other repealing by-law shall be submitted for the like approval within the FULL TERM of three years thereafter." The full term of three years from the date of the last submission of a repealing by-law will not expire until the 6th January next, and no such by-law can again be submitted to the electors until after that date.

2. The Dominion Railway Act of 1903 came into force on the 14th February, 1904. The Proclamation of the Governor-General, bringing it into force, issued and published pursuant to section 311 of the Act, bears date the 19th day of January, 1904.

Method of Raising Money for Building Walks in Police Village.

597—G. A.—I send with this a copy of a by-law passed by the police trustees of the village of H. As you will see by the by-law this village is partly in the Township of K. and partly in the Township of A. The by-law was also carried by a large majority of the parties interested.

1. Is this by-law valid ?

2. If valid, how shall the part to be raised by frontage tax be apportioned ?

3. What is the duty of the township clerk after receiving certified copy of by-law and certificate of returning officer that it was carried ?

4. What is the duty of the township council ?

1. We assume that the board of trustees of this police village has not become incorporated pursuant to the provisions of section 751 of The Consolidated Municipal Act, 1903, and that the submission of this by-law to the electors was in compliance with section 744a of the Act. If this is the case, we do not think the by-law is valid, as it makes provision for the levy of part of the cost of the work on the frontage tax system, and the police trustees have no power to pass a by-law of this kind unless incorporated as above. It should provide for the levy of the cost of the work on all the rateable property within the limits of the police village only ; this amount to be levied by the two townships interested in the proportions fixed by the assessors, as provided in section 739a of the Act. We may add that if the board of trustees becomes incorporated under the provisions of section 751 of the Act, it may pass by-laws for the construction of sidewalks under the local improvement clauses of The Consolidated Municipal Act 1903 (sections 664 and following sections of the Act) and such by-laws need not be submitted to the vote of the electors of the police village.

2. Our reply to question number one renders it unnecessary to reply to this.

3 and 4. We do not think that either the township clerk or council has any duty to perform so far as this by-law is concerned.

Opening Street in Unincorporated Village.

598—K.—R. is an unincorporated village in the Township of B., laid out according to a plan regularly prepared under the "Registration of Titles (Ontario) Act," and registered in November, 1869, by the owner of the land, who is still living, but who is incapacitated by reason of his great age, and unable to transact business. The population of the village is nearly 600 and is growing. The streets laid down on this plan appear to have been dedicated to the public use without the reservation of any rights in the soil and freehold of the land of the said streets, at least nothing of record can be found reserving such rights. The streets so laid out have, with a single exception, been opened to public use for many years. The exception, known as S. street, has been opened for half its length, from M. street to M. street, for several years, but the other half, from M. street to a travelled road, is fenced in as a part of the field of the original owner. Abutting on this unopened part of S. street on the north side is a tier of lots, all of which have been sold by the original owner, and described in the deed by the sub-division numbers and located on S. street on the north side. The land on the south side not being sub-divided, is not a part of the village plan. The owner of these lots and others have petitioned the municipal council to open S. street.

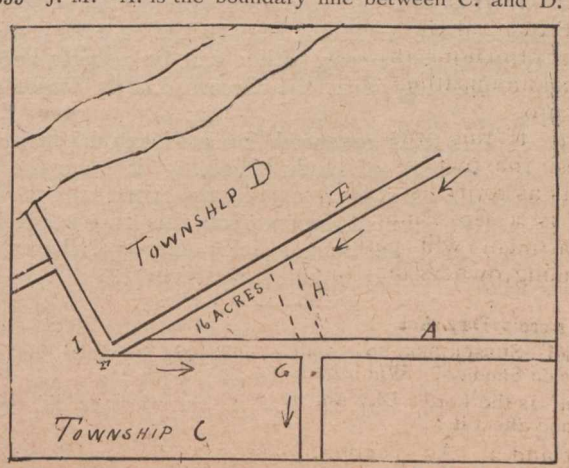
1. Is there any question as to the right of the municipality to take this land for a public street ?

2. Will the procedure differ from that required to open a Government allowance for road ?

1 and 2. The council of the municipality cannot be compelled to open up the unopened portion of S. street, and since it does not appear to be required for the convenience of the general public it should not do so. The opening of this portion of the street is apparently petitioned for by private owners for their special accommodation. This is a question between the present owners of the lots and their vendor, and the council should remain passive in the matter, and let them settle it between them. The purchasers should have seen that the vendor furnished them with a way to and from their lots at the time of the purchase. In any event there is a general principle of law that gives the purchasers a right of way over the lands of their vendor to and from these lots. In utilizing this right of way the owners of these lots must occasion as little inconvenience and damage as possible to the owner of the lands over which it is exercised.

Closing and Sale of Town Line—Opening New Road—Searching for and Taking Gravel in Adjoining Municipality.

599—J. M.—A. is the boundary line between C. and D. town-



ships. E. is a road in D. A large number of those using this road are desirous of closing part of A. from F. to G. and opening a new road through to H. The lands adjacent to all these roads are owned by one man and he has allowed people to cross his fields, but now proposes to shut up the way. The road from F. to G. is not graded and at the point I. is right on the face of a hill, the bank of the river J. The natural course of travel is with the arrows. The owner of land offers roadway allowance at H. in lieu of roadway F. to G.

1. What is the proper course for those interested to take ?

2. In addition to the townships affected does a change require the sanction of the County Council ?

3. Can one township municipality relegate to another township municipality the right to take gravel from a pit in the township to which they have access without the consent of the owner of the pit?

1. Under section 622 of The Con. Municipal Act, 1903 the Townships C. and D. have joint jurisdiction over this town line. The councils of these townships may respectively pass by-laws for the closing and sale to the owner of the adjoining lands of the portion from F. to G. after having strictly observed the preliminary proceedings mentioned in section 632 of the Act, if they think it in the public interest to do so, and can accomplish it without transgressing the provisions of section 629 of the Act. The council of Township D. may, if it deems it necessary in the public interest, open and establish the road H. by by-law passed pursuant to section 637, after having observed the preliminary proceedings mentioned in Section 632. The latter by-law must be registered, as required by section 633 of the Act.

2. Although sub-section 2 of section 660 of the Act, applies only to the stopping up and sale of original allowances for road *within the municipality*, we think it would be a wise precaution on the part of each of the townships interested to have its by-law confirmed by by-law of the county council of the county in which the municipalities are located, as required by clause (b) of this sub-section.

3. Sub-section 10 of section 640 of The Consolidated Municipal Act, 1903, empowers councils of townships to pass by-laws for searching for and taking gravel within the limits of an adjoining municipality with the consent of the council of such adjoining municipality (by resolution expressed) subject to the provisions of clauses (a), (b) and (c) of this sub-section.

Rights of the Public as to Reservations Around Lakes.

600—S. A. F.—Would you explain succinctly and clearly :

1. The powers and privileges municipal councils have over the 66 feet around the Muskoka Lakes ?

2. Powers the Provincial Government has ?

3. Rights and privileges of the owner of the land behind this 66 feet ?

1. If this 66 feet was reserved in the original surveys for the purposes of a public highway the powers and privileges of the municipal councils within whose jurisdiction it lies, in regard thereto, are the same as in the case of any other public highway.

2. If this 66 feet was reserved for the purposes of the Provincial Government, its jurisdiction over it and the object of making the reservation can be ascertained best by communicating with the Crown Lands Department, Toronto.

3. If this was reserved for ordinary highway purposes, the owners of lands adjoining it have the same rights as to its user, etc., as of any other highway, and if it is a Government reservation the documents in the Department will perhaps specify any privileges such adjoining owners may have in regard to it.

The Lord's Day Act.

601—SUBSCRIBER.—1. Can a merchant be fined for selling goods on Sunday ? Will it be under the by-law ?

2. Is the Lord's Day Act, R. S. O., in force, or did appeal to England affect it ?

1 and 2. As a consequence of the decision of the Judicial Committee of the Privy Council of England in the Lord's Day case, the Dominion Government has decided to submit to the Supreme Court of Canada, before further legislating on the subject, practically the whole question of the respective jurisdictions of the Dominion and Provincial Parliaments over Sunday labor. In view of the unsettled state of the law on this question, we deem it best to defer our answer to these enquiries until the Supreme Court has handed down its decision.

Closing Old Road and Opening New—Fixing Line of Highway.

602—P. S.—About 25 years ago a colonization road was built by the Provincial Government through then unoccupied Government land. The road crosses lots Nos. 5 and 6, in the 14th concession of this township, as shown on the enclosed plan. Said lots Nos. 5 and 6 were afterwards occupied by a squatter, who transferred his claim to another party, who in turn sold his claim to E. W., who got located for the lots under The Free Grants and Homesteads Act, and after performing the settlement duties got the patent for them. There is an original road allowance between lots 5 and 6, which is impassable, and also not needed for public use, as the colonization road referred to is used instead, and E. W. has been occupying part of it and is supposed to have some of his buildings on it. Neither E. W. nor his predecessors ever made a claim for indemnity for the land used for the colonization road. Lots Nos. 7 and 8, in the 14th concession, have also become occupied by W. Mc. and as the road allowance in front of those lots is also impassable, an amicable agreement was entered into between the municipal council and E. W. by which E. W. was to get the deed for the unused road allowance running between his two lots, in lieu of which he was to give the council a deed for a strip of land 66 feet wide for a public road leading from the colonization road to the south-east corner of lot No. 7. The legal consideration to be mentioned in each deed was to be $10, though no money was actually passed either way, as the land so exchanged was to be considered the real consideration. The deeds were exchanged in 1901 and the strip of land for the new road site was fenced off by E. W. Some public work was done on it, and it was used and travelled over by W. Mc. After the road had been used some time objections were made to it by A. D., who occupies lot 6, in the 13th concession, and who claims that the strip of land on which the road is built is taken from and belongs to the north end of his lot instead of the south end of E. W.'s lot. He forbid W. Mc. to travel over the road, notified the council that he would close the road, as he believed it to be on his land, and blocked up the road by felling trees into it. His land is located as a free grant to another person, and he has acquired the locatee's claim to it. There are no stakes or other surveyor's marks to show where the rear ends of E. W. and A. D. meet, and I suppose that a Provincial Land Surveyor will have to be engaged to locate the road on its proper site. As there is no surveyor residing within 40 miles of this municipality, the cost of getting one will be considerable. Will you kindly advise us :

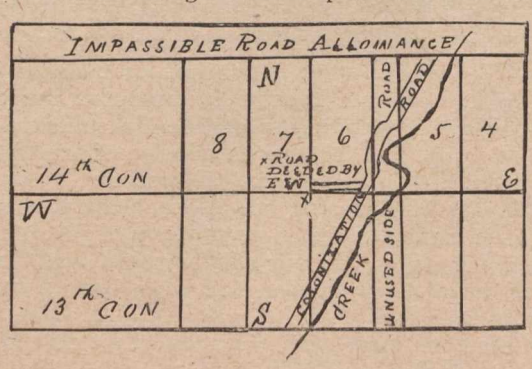
1. What remains to be done to establish and locate the road legally ?

2. Who should bear the cost of the survey ? Should E. W. ascertain the boundaries of the parcel of land granted by him or is it the council's business ?

3. Should A. D. pay part of the cost, and how could he be made to do so ?

4. Are the deeds exchanged between the council and E. W. legal and valid, or could they be voided for insufficient consideration ?

5. Had A. D. the right to block up the road when he did ?



1, 2, 3, 4 and 5. There does not appear to have been any by-law passed by the council at any time, pursuant to section 637 of The Consolidated Municipal Act, 1903

after the preliminary proceedings prescribed by section 632 had been observed for the closing of part of the original road allowance and its sale to E. W. and for the opening of the road from the colonization road to the boundary of lot 7, nor does the latter road appear to have been ever assumed by the municipality as a public highway. The council is not bound to open up the road through E. W.'s land simply to accommodate the owner of lot 7, and should not take any steps in that direction unless the convenience of the public demands it. This seems to resolve itself into a dispute between E. W. and A. D. as to the location of the line between them, and the council should remain passive, and allow the private owners to fight the matter out amongst them.

Assessment of Cattle, etc.

603—CLERK—Should personal property that is exempt from taxation such as cattle, horses, etc., be placed on the assessment roll?

No, except in columns 22, 23, 24 and 25 for statistical purposes.

Councillor Cannot be Also Clerk of the Municipality.

604—W. M.—A clerk of a municipality resigns his office to take effect on the 1st November, 1904. Will it be necessary for a member of the council to resign his seat in order to get the appointment of clerk in his place. Can he hold both seats until the end of the year?

The member of the council who is to be appointed clerk must resign his office of councillor before his appointment can be legally made. He cannot be a councillor of the municipality and act as its clerk at the same time.

Procedure to be Taken by Opponent of By-Law Closing Highway.

605—R. M.—We would like to receive your advice concerning the closing of a road, the circumstances being: Owner of the lot through which the road passes wishes to close said road, having no traffic of any account, and only a matter of 30 rods difference to go around, necessary steps, advertising, notice, etc., have been taken, township council having passed necessary by-law to the effect that the road can be closed. What can an opponent do if owner closes the road?

Assuming that the by-law was properly framed and passed by the council after the formalities required by section 632 of The Consolidated Municipal Act, 1903, had been strictly observed, and that the by-law provides for the sale or transfer of the road to the owner of the land (and as to this we can give no opinion, not having seen the by-law, notices, etc.,) this owner can close up and take possession of the road, as he sees fit. If any owner is opposed to the closing and sale of the road and is of opinion that the by-law has not been legally passed, his proper course is to apply to the courts to have the by-law quashed.

Assessor Need Not be Present at Selection of Jurors or Court of Revision of Voters' List.

606—A. J. M.—Our assessor has moved from this Province. Will it be necessary for the council to appoint a successor for the purposes of The Jurors' Act and The Voters' List Act?

No. Although section 17 of The Jurors' Act (R. S. O., 1897, chapter 61,) provides that the reeve, clerk, and assessor or assessors of a township municipality shall be EX-OFFICIO the first selectors of jurors for the township, it is not absolutely necessary that they should all participate in the annual selection. Sub-section 1 of section 28 of the Act provides that the selectors of jurors shall make a report in duplicate of their selection, under their hands and seals, or *under the hands and seals of such of them as perform the duty, etc.* It is not necessary that the assessor should attend the court for the revision of the voters' list, unless the presiding Judge orders him to do so, for the purpose of giving evidence as to the assessment roll, etc. A person appointed in the place of the absent assessor could not give the evidence that the assessor who made the roll would be able to give, if present.

Promulgation of Money By-Law.

607—I. B.—Will you kindly say if it is necessary to promulgate a by-law of a municipality which has just been approved of by the ratepayers and is for the purpose of raising $16,000 for permanent improvements, as per section 375 and subsequent sections of The Consolidated Municipal Act of 1903, or is it sufficient to register the by-law as required by section 399 of the said Act?

Our municipality recently submitted a by-law to raise by way of debentures the sum of $16,000 for the purpose of building cement walks and macadam roads. The by-law was duly advertised and voted on and was approved by the ratepayers, and last night was given the third reading. Our solicitor is of opinion that it is not necessary to promulgate the by-law as required by sections 375 and 376 of The Consolidated Municipal Act of 1903, by publishing the by-law three times in a newspaper with the form of notice attached calling attention to parties who may be desirous of taking proceedings to quash the by-law, but that the law will be substantially complied with if the by-law is registered in the Registry Office as per the provisions of section 399 of said Act.

We agree with the opinion the solicitor has expressed on this question. It is not necessary that a by-law of this kind should be promulgated in pursuance of the provisions of section 375 of The Consolidated Municipal Act, 1903. It should be registered as provided in section 396 of the Act, but since it has been submitted to the ratepayers the notice of its passing and registration mentioned in sub-section 2 of section 397 need not be published. (See sub-section 1 of section 397).

Liability for Fine—Service of Notice Under Voters' Lists Act—Assessment of Separate School Supporter.

608—F. J. G.—1. Last winter A. was going to mill with 22 bags of grain. When he got within 50 rods of the mill the road became impassable. The miller B., seeing him in a fix, came to his aid and together they took down C.'s fence, C. coming out and forbidding them. They then drove through C.'s field to the mill. C. then had A. and B. up before a magistrate and fined $1.00 and costs amounting to about $1.00 each, for trespass. B. appealed and the case came before Judge H., who quashed the decision of the magistrate. Can A. now collect the amount of his fine and costs from the township, whose duty it was to have kept the road open? If not, can he collect it from C., A. not having appealed against the decision of the magistrate?

2. In revising the voters' list before the County Judge the following is posted up in the clerk's office: Name of party complaining, John M. Smith; names of persons in respect of whom complaint is made, Henry Jones, John Weir and Jacob Joslin; grounds of complaint alleged, omitted from list as M. F., omitted from list as M. F. and T., omitted from list as M. F. and owner, respectively. Is it the duty of the township clerk to serve a clerk's notice to party complaining on John M. Smith, also on Henry Jones, John Weir and Jacob Joslin, or is it sufficient to serve the notice on John M. Smith only, it then being his duty to take what steps he thinks necessary to have the other names placed on the list. Kindly give the statute that applies.

3. A Roman Catholic buys a farm in S. S. No. 6, Township of E., adjoining a city in which is situated a separate school. What steps should he take in order to be taxed as a separate school supporter in the city?

4. Is there any way the ratepayers of S. S. No. 6 could prevent the land being assessed for the separate school?

1. A. cannot collect the amount of this fine and the costs either from the council or C. He voluntarily paid them, and did not appeal from the decision of the magistrate, in which event the conviction would have undoubtedly been quashed, and he would have been freed from the liability.

2. It is the duty of the township clerk to see that the notice (Form 11, appended to The Voters' Lists Act, R. S. O., 1897, chapter 7,) is served on the party complaining as to errors or omissions in the voters' list (John M. Smith) and that the notice (Form 12, appended to the Act) is served on each person in respect of whom com

plaint has been made. Sub-section 3 of section 17 of The Voters' List Act provides that "the proceedings thereafter (that is, after the filing of he complaints mentioned in sub-section 1) by the CLERK, Judge, and the parties respectively, and the respective powers and duties of the Judge, CLERK, and other persons, shall be the same, or as nearly as may be the same, as in the case of an appeal from the Court of Revision." Sub-section 4 of section 75 of The Assessment Act provides that "the clerk shall give notice to all persons appealed against in the same manner as is provided for giving notice on a complaint under section 71 of this Act." Sub-section 9 of section 71 of the Act provides that "the clerk shall prepare a notice in the form following for each person with respect to whom a complaint has been made, etc." Forms 11 and 12 appended to the Voters' Lists Act are substituted for the form set out in sub-section 9 of section 71 of The Assessment Act.

2. Sub-section 1 of section 42 of The Separate Schools Act (R. S. O., 1897, chapter 294,) provides that "every person paying rates, etc., who, by himself or his agent, on or before the 1st day of March in any year, gives to the clerk of the municipality notice in writing that he is a Roman Catholic and supporter of a separate school in the municipality, or *in a municipality contiguous thereto*, shall be exempted, etc." The city is contiguous to the township municipality, and if this owner gives the notice mentioned in the above sub-section, he thereafter becomes a supporter of the separate school in the city and is exempted from the payment of school rates in the township.

4. Not so long as it remains in the possession of a Roman Catholic as owner or tenant, who desires to devote his taxes to the support of the separate school.

Construction and Payment of Cost of Cement Sidewalks.

609—COUNCILLOR.—1. Town council has constructed on two streets intersecting each other cement sidewalks. The inner edge of the walk is about three feet from the buildings along these streets. Who should pay the cost of filling in with cement the space between the sidewalk as constructed and the buildings ?

2. Who should pay the cost of that portion of the sidewalk at the intersection ot the streets ?

1. If the owners of premises adjoining these streets desire the space between the sidewalks and their buildings filled in with cement, they will have to pay the cost of the work themselves, as the municipal council is not bound to do the work.

2. Assuming that these walks were constructed under the local improvement clauses of The Consolidated Municipal Act, 1903, (section 664 and following sections) the lands fronting on the side of the streets on which the walks are constructed will have to bear this expense, unless the council has passed a by-law under the authority of section 679 of the Act providing for the payment of the cost of this work out of the general funds of the municipality.

Cost of Construction and Maintenance of Bridges Over Drains.

610—I. J.—In your reply to question 255, volume 13, No. 4, of THE MUNICIPAL WORLD you say "These bridges must thereafter be kept in repair by the municipality, and the cost of such repairs paid out of its general funds. (See sub-section 1 of section 9 of The Municipal Drainage Act, R. S. O., 1897, chapter 226.)" This subsection is before me as I write. I need not quote it. What I wish to know is, how do you make out from that sub-section that it is the duty of municipalities to pay for the repair of highway bridges over drains out of its general funds ? It is of great importance to this municipality to know whether maintenance and repair of highway bridges over drains is to be charged to the general funds or whether the cost of maintenance and repair is to be divided between the municipality and the drainage work, the same as the cost of the original construction, as directed by section 9 (1) of The Drainage Act.

Section 9 of The Municipal Drainage Act (R. S. O., 1897, chapter 226,) makes provision for the payment of the cost of the construction and maintenance of three classes of bridges over drains, namely : (1) those over a drain wholly on a highway, (2) those crossing a drain from the highway to the lands of private owners, and (3) those crossing a drain, and located wholly on the lands of private owners. As to the first-class, sub-section 1 provides that the engineer shall in his assessment apportion their cost between the drainage work and the municipality or municipalities having jurisdiction over the highway, as to him may seem just. The cost of the future maintenance and keeping in repair of these bridges should be paid and borne by such municipality or municipalities, and the drainage work in the same proportion as is originally fixed by the engineer. As to the second class sub-section 2 provides that the engineer shall include the cost of their construction or enlargement in his assessment for the construction of the drainage work, and they shall, for the purpose of construction and MAINTENANCE, *be deemed part of the* drainage work. As to the third class, sub-section 3 provides that the engineer shall fix the value of the construction or enlargement thereof to be paid to the respective owners entitled thereto, but the land assessed for the drainage work shall not, nor shall any municipal corporation be liable for keeping such bridges in repair. It may be observed as to the last mentioned bridges that they must be maintained and kept in repair by the owners on whose lands they are located.

The portion of our published answer to question No. 255 (1903) quoted should read "these bridges must thereafter be kept in repair by the municipality, and the other owners assessed for the construction of the drainage work, according to the assessment of the engineer or surveyor in his report and assessment for the original construction of such drainage work. (See clause (a) of section 68 of the Act.)

Compulsory Support of Separate Schools.

611—J. E. H.—A, B and C are Roman Catholics living in the Township of S. and sending their children to R. C. separate school in Township of H. D, E and F are R. C. trustees, who organized a new separate school in S., but did not secure A, B and C as supporters, as they gave the required notices to withdraw from separate school in H. and assess them to public school in S., which was done. They are in no way supporters then of R. C. separate school in S. D, E and F claim they can force them to help to pay for new school, and therefore sent in amounts to be levied on them for debentures. Can A, B and C be compelled in any way to pay such sums, and if so, where is the authority ? If not, where will D, E and F look for their deficiency of debenture money ? They have not tried to collect for running expenses ? This new school is nearer A, B and C than the one in H. Will that make any difference ?

As we understand the statement of the facts A, B and C formerly paid their taxes in support of and sent their children to the separate school in the Township of H., that they have given the notices mentioned in section 47 of The Separate Schools Act (R. S. O., 1897, chapter 294,) and are now supporters of the public school in the Township of S. If this is the case, the separate school trustees cannot compel A, B and C to apply their taxes towards the payment of any separate school rates. These trustees will have to look to those who, under the provisions of the law, are supporters of this separate school, to make up the amount they expected to collect from A, B and C. The location of the new school does not, under the circumstances, in any way affect the liability of A, B and C. In answering this we are assuming that the rate on the security of which the debentures were issued was not imposed until after the ratepayers had withdrawn from the separate school. See sub-section (2) of section 47 of chapter 294, R. S. O., 1897.

Legal Department

J. M. GLENN, K.C., LL.B. Of Osgoode Hall, Barrister-at-Law

EMERSON v. MELANCTHON SCHOOL TRUSTEES.

Duty of School Trustees to Keep School House Lighted and Heated—Liability to Teacher for Illness Contracted Owing to Neglect of this Duty.

Judgment in action tried without a jury at Orangeville. Action by Emma Emerson, a public school teacher, employed in December, 1901, by defendants, the board of public school trustees of school section No. 4 of the Township of Melancthon, in the County of Dufferin, as a teacher at their school for the year beginning 6th January, 1902, to recover $2,500 damages for injuries caused to her by the alleged neglect by defendants of their duty to appoint a person to attend to the heating of the school room. Plaintiff became seriously ill, and charged that the illness was caused by the cold and dampness of the school room in January, 1902. Plaintiff relied upon section 17, sub-section 2, of The Public Schools Act, which provides that "it shall be the duty of the board of trustees at its first meeting to examine the school house . . . and to make suitable provision for lighting fires and keeping the school house and premises in a cleanly and sanitary condition by appointing some person for that purpose," and upon section 9 of The Public School Regulations, which requires the trustees "to employ a caretaker, whose duty it shall be to sweep the floors daily and wash them at least quarterly, and to make fires one hour before the opening of school from 1st November until 1st May in each year." Held, that plaintiff herself had a duty cast upon her by sub-section 7 of section 80 of the Act, to give assiduous attention to the health and comfort of the pupils, and to the cleanliness, temperature and ventilation of the school rooms, but she made no complaint to anyone of the temperature of this school room, and as she had undertaken with the trustees to provide a boy to light the fires, she had for the time absolved them, as between herself and them, from any responsibility by accepting the standing custom of making the arrangement herself, and she might waive the performance of the duty by the trustees so far as she herself was concerned: Brown's Legal Maxims, 7th ed., pp. 531, et seq. Her complaint must, therefore, be limited to the consequences, if any, following from the alleged damp condition of the school room on 6th January, arising from its having been scrubbed on the 28th December. There is very little positive evidence that any dampness remained on the 6th January, and that little rests upon plaintiff's unsupported statements. There was, however, no connection upon which a verdict in her favor could be founded between the chill of which she complained on the morning of the 6th January and the illness which came on the 9th January. In the interval she had appeared to others to be perfectly well, and she had made no complaint of any kind either as to the temperature of the school house or as to any feeling of illness. There were during these three or four days several other sources from which her illness in the then condition of her health might have proceeded. The weather was cold, she wore no India rubbers, or overshoes; she walked backwards and forwards each day in deep snow; she complained of cold, if not wet, feet; she was out driving on Monday morning and Monday night, and she spent an hour or more on Monday evening in a cold church. Any one or more of these might have caused the chill from which she suffered, and it is not to be believed that a chill, sufficient to cause so severe an illness, happening on Monday morning, and hardly noticed by plaintiff herself at the time, could have remained dormant in her system till the following Thursday. The defendants, however, had disregarded their statutory duty to employ a caretaker and to have fires lighted an hour before the opening of school—a duty owed to the teacher, the pupils and their parents—and have probably narrowly escaped being made liable to heavy damages by neglecting it. Action dismissed without costs.

CLIPSHAM v. TOWN OF ORILLIA.

Construction of Drain Authorized by Statute—Liability of Defendants for Flooding Lands.

Judgment in action by plaintiff, the owner of a farm at the head of Sparrow Lake, an expansion of the River Severn, for damages for the flooding of his lands for three months of each of the years 1900, 1901 and 1902. Defendants, owners of the land situate at a point below plaintiff's farm, following the course of the Severn, in order to obtain water power for the supply of electric light, constructed upon their lands, and extended across the river, one or more dams, and plaintiff contends that the flow of the River Severn was thereby obstructed—the waters thus forced back overflowing and flooding his land. By statute 62 Vic., chapter 64, defendants were authorized to erect all plant necessary for generating, supplying and transmitting electric power at and from a certain water power and privileges on the Ragged Rapids, in the River Severn. Defendants contracted for the erection and installation of an electrical power transmission plant, in accordance with specifications, to the satisfaction and under the direction and supervision of defendants' consulting engineer, and clerk of works. Clause 8 of the general conditions reads, in part, thus: "The contractor only is to be responsible for the methods employed in construction; the engineer may approve of same only in so far as to facilitate the proper construction." The general specifications (p. A) also provide: "The dam to be . . . capable of delivering over its crest or through weirs the flood discharge of the river, without materially raising the lake level at the head of the rapids above the ordinary level for equal floods before the construction of the dam." Defendants contend, inter alia, that the dam having been constructed and maintained under the authority given to them by above mentioned statute they are not liable for any damage resulting from its construction or maintenance. The trial Judge finds that the fact of the flooding of the plaintiff's lands in the years 1900 and 1901 was caused by a temporary dam erected by the contractor at the head of Ragged Rapids and that the damage so caused to plaintiff amounted in 1900 to $25, and in 1901 to $55. The trial Judge also finds that the damage caused to plaintiff by flooding in 1902 amounted to $75. The greater extent of the flooding in 1902 is not attributed by plaintiff to the action of the permanent dam, which was substantially

completed in March, 1902, but he contends that this permanent dam was responsible for the flood's duration for an additional week in that year. Held, that plaintiff has failed to prove that the permanent dam was a factor either in causing or prolonging the flooding of his lands in 1902, the trial Judge finds that defendants have established that the temporary dam was built and maintained by the contractor for the purpose of making the Severn River navigable from Sparrow Lake down to Ragged Rapids, in order to enable him to bring in his supplies and materials more cheaply and more expeditiously, and could serve no other purpose, and that the temporary dam's proximity to the main dam was merely accidental. Held, further, that the temporary dam cannot be regarded as part of the undertaking itself, which the municipality obtained statutory authority to construct. It was not part of that which the contractor was employed to erect. For these reasons the trial Judge holds that plaintiff has failed to establish any liability of defendants for the injuries which plaintiff sustained in 1900 and 1901. As to the year 1902, however, the trial Judge holds that the situation was entirely changed, and that the defendants, and they alone, are responsible for the maintenance of the temporary dam in that year. Held, further, that if the temporary dam when it passed from the possession of the contractor into that of the defendants, did not so change its character as to become part of the works which the statute authorized and empowered them to construct, even if the temporary dam should be held to be part of the undertaking authorized by the statute, its maintenance would only be lawful if without injury to others. Held, that, for the foregoing reasons judgment should be entered for plaintiff for $75 for damages sustained in the year 1902. Prior to its transfer to High Court, plaintiff to be entitled to costs of this action upon the District Court tariff. Subsequent to such transfer, having regard to all the circumstances, especially to the fact that upon the determination of the questions involved in this action the rights of a number of other parties depend, plaintiff to have his general costs on the High Court scale, except the costs incurred in his unsuccessful attempt to prove that the main dam caused or contributed to the injuries in respect of which this action was brought. Saunders v. Toronto (1899), 26 A.R. 276; Penny v. Wimbledon (1899), 2 Q.B. 72; (1898), 2 Q.B. 212; London v. Truman (1885), 11 A.C. 45; Hammersmith v. Brand (1868), 1 L.R., 4 H.R. 171; C. P. R. Co. v. Ray; (1902) A.C., 535, 545, and Managers of Metropolitan Asylums v. Hill (1881), 6 A.C., 203, referred to.

WIGLE v. TOWNSHIP OF GOSFIELD SOUTH.

Appeal From Judgment of Referee—Compensation for Injury to Land by Water—Limitation of Action for Damages—Injunction.

Judgment on appeals by defendants, the corporation of the Township of Gosfield South and the corporation of the Township of Gosfield North from the judgment of the drainage referee, awarding plaintiffs compensation for injurious affection of lands by the diversion of water by a drain. Held, that the damages awarded are such as are to be borne jointly by defendants. At the time when the drainage works were constructed there was no power in the municipality to provide for compensation to the owners for injuries of the nature complained of, but that has now been provided for by 2 Edw. VII., chapter 32. The damages are not to be put on the basis of lands taken, in which case there would be compensation once for all, but the injury is in its nature recurrent, and such as that successive actions or claims for the damages sustained from time to time may be brought. As to the limitation, the case is governed by section 93, as introduced into The Drainage Act by Edw. VII., chapter 30, section 4, inasmuch as the proceeding is to be deemed as taken on 10th September, 1901, when Gosfield North became answerable in these proceedings by submitting to the service upon them and appearing to defend, and the claim can only extend to injury or damage suffered within two years next before that date. The award of damages made by the referee cannot stand, for it is made upon evidence of injuries sustained during more than six years preceding the inquiry. No attempt was made to distinguish the damages which occurred in the last two years, and it is impossible to do so upon the evidence as it is. The matter to be referred back to the referee. No costs to any party of either of the appeals. It would not be proper to award an injunction against the continuance of the drain, and the facts do not support a present claim for any other injunction. The parties ought to make an adjustment without the intervention of the referee.

BIGGART v. TOWN OF CLINTON.

Injury from Defective Sidewalk—Failure to Give Notice of Accident—Lack of Reasonable Excuse.

Judgment in action tried without a jury at Goderich. Action to recover damages for injuries sustained by falling on the sidewalk on Victoria street, owing, it is alleged, to the negligence of defendants in permitting the sidewalk to become in a defective and dangerous condition. No notice of the accident was given to defendants until the 5th of July, 1902. One excuse offered by the plaintiff for not giving notice in time was that until she consulted her solicitor on the 5th of July, she was not aware that any notice was necessary. The other excuse was that when her son had fallen some time before and was injured she had gone to the council and had got nothing, and she did not "feel like" going to the council again. Held, that there was no reasonable excuse, within 3 Edw. VII., chapter 18, section 130, sub-section 5, for not giving the notice. No notoriety was given to the accident which happened to plaintiff, and the defendants had no knowledge of it. Action dismissed, but without costs.

BURYING GROUND CANNOT BE LEGALLY SOLD FOR TAXES.

An action was recently brought by Col. W. W. White of Guelph to recover damages for trespass to part of lot 65 on the west side of Edward street, Arthur. The plaintiff purchased the lot for taxes. The defendant has taken gravel from it at the instance of the trustees of St. Andrews church, Arthur. Gravel was valued at about $80.00

The church trustees were also parties defending the case. They counter claimed, asking that the plaintiff's deed be set aside on the ground that it was void. One of the principal objections to the plaintiff's tax deed was, that the land was a burying ground formerly attached to the Free Church, in Arthur, and could not therefore be assessed or sold for taxes.

County Judge Chadwick delivered judgment holding that the land was a burying ground and deciding that such it was exempt from taxation and that the tax sale was void He, therefore, set aside the tax deed and directed judgment to be entered for the defendant and for the church trustees dismissing the plaintiff's action with costs to be paid by the plaintiff both to the defendant Connery and to the church trustees.

The electors of Seaforth recently carried by a majority of three a by-law authorizing the issuing of debentures to the amount of $19,000 for the purpose of purchasing the electric lighting plant in that town.