

# THE MUNICIPAL WORLD

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## Calendar for April and May, 1901.

### Legal, Educational, Municipal and Other Appointments.

- APRIL 1. Clerks of counties, cities and towns, separated from counties, to make return of population to Education Department. — P. S. Act, section 69. Last day for Free Library Board to report estimates to the council.—Public Libraries Act, section 12. Last day for petitions for Tavern and Shop Licenses to be presented.—Liquor License Act, sections 11 and 31. Last day for the removal of Snow Fences erected by councils of townships, cities, towns or villages.—Snow Fences Act, section 3. From this date no person compelled to remain on Market to sell after Nine a. m.—Municipal Act, section 579, (6) R. S. O., 1897. Last day for Boards of Park management to report their estimates to the council.—Public Parks Act, section 17.
4. High Schools, second term, and Public and Separate Schools close.—H.S. Act, section 41; P. S. Act, section 89; Sep. Sch. Act, section 81.
5. Make returns of death by contagious Diseases registered during March, R. S. O., 1897, c. 44, s. 11.
- GOOD FRIDAY.
7. Last day for Treasurers of Local Municipalities to furnish County Treasurers with statement of all unpaid taxes and school rates.—Assessment Act, section 157.
8. Last day for collector to return to the Treasurer the names of persons in arrears for water rates in Municipalities.—Municipal Waterworks Act, section 22.
15. Reports on night schools due to Education Department (session 1900-1901). High Schools open (third term.) High Schools Act, section 42. Public and Separate Schools open after Easter holidays.—Public Schools Act, section 91.—Separate Schools Act, section 81 (3).
20. Last day for non resident land holders to give notice to clerk of ownership of lands to avoid assessment as lands of non-resident.—Assessment Act, section 3.
25. Last day for clerk to make up and deliver to the assessor, lists of persons requiring their names to be entered in the roll—Assessment Act, section 3.
30. Last day for completion of roll by assessor.—Assessment Act, section 56. Last day for non-residents to complain of assessment to proper Municipal Council —Assessment Act, section 86. Last day for License Commissioners to pass regulations, etc.—Liquor License Act, section 4.
- MAY 1. Last day for treasurers to furnish Bureau of Industries, on form furnished by Department statistics regarding finances of their municipalities.—Municipal Act, section 293. County treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
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# The Municipal World

PUBLISHED MONTHLY

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

K. W. MCKAY, EDITOR,

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

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THE MUNICIPAL WORLD,

Box 1321, St. Thomas, Ont.

ST. THOMAS, APRIL 1, 1901.

The council of the township of South Grimsby has passed a by-law commuting statute labor, and has also purchased a road-grader.

\* \* \*

Mr. John Machon, clerk of the township of Charlotteville, Norfolk county, Ont., died at his residence, Vittoria, on March 23rd, having held the position of township clerk for more than 40 years.

\* \* \*

His Honor, Judge Hardy, judge of the county of Brant, recently delivered his judgment unseating Alderman Bullock, of Brantford, for the reasons that (1) he is a monthly tenant, and (2) that his partner, a Mr. Eddy, as a member of the assessment board, pays the moneys received for his services as such, into the firm's coffers. Mayor Wood was also unseated on the ground that an agreement between his firm and the corporation indemnifying the city against loss through the construction of a switch into Mr. Wood's mill, made his election illegal.

### An Election Complication.

His Honor, Judge McCurry, judge of the District of Parry Sound, recently delivered judgment unseating the members of the council of the township of Chapman, elected in January last. The action was brought, at the instance of an elector, to declare the election of the reeve and two of the councillors illegal. It appears that on nomination day, two candidates were nominated for the reeveship and more candidates for councillor than were required to be elected. After the close of the nomination meeting the returning officer, on comparing the nomination papers with the requirements of the statutes, found that the full names of

several of the candidates were not written on the nomination papers, initials being used instead, and on this ground disallowed them, and declared one of the candidates for the reeveship and three of the candidates for councillor elected by acclamation. When proceedings were instituted to unseat the men declared elected, one of them disclaimed the seat and the others contested the proceedings with the above result. Matters were further complicated by the fact that, after the legal proceedings were commenced, another election was held to fill the vacant seat of the fourth councillor and also the vacancy made by the disclaimer of one of the candidates declared elected by acclamation. At this election the candidates were elected by acclamation.

We have repeatedly given it as our opinion, in these columns, that returning-officers should not take upon themselves to pass judgment on the validity, or otherwise, of papers and documents filed with them. The above is a good example of what the consequences, of their so doing, are likely to be.

An appeal was taken in the above case, and heard recently before a single judge in Toronto. The judgment of His Honor Judge McCurry was confirmed.

### COMMUNICATIONS.

CAIRO, MARCH 9, 1901.

To the Editor of the Municipal World :

DEAR SIR,—Your answer to question 150 in last issue re appointment of township engineer is proof that Justice Meredith did wrong to set the Turtle award aside re Turtle vs. Euphemia. It was contended and decided that Angus Smith Ridgetown, who made the award was not the township engineer, on the ground that the appointment of his predecessor had not been revoked by by-law, etc. But in looking over the township records since the trial, it is found that, according to the law as laid down by this justice himself, the only legally appointed engineer had died a short time before the said Angus Smith was appointed and of course, just as you say, councils do not require to revoke deceased engineer's appointment. Township solicitor urged an appeal at the time and the following is a quotation from a recent letter to the Euphemia Council. "The judgment is one that is almost unanimously regarded amongst lawyers, who have had occasion to consider it, a most extraordinary one."

By the way, this same award was previously sustained by County Judge McKenzie and it is also contended that it was he who had the judicial right to decide the case. Our council in 1897 successfully refused to pay a certain judge because he was not "Judge" as named in the Act.

SUBSCRIBER.

MARCH, 7 1901.

To the Editor of the Municipal World :

DEAR SIRS,—As a constant reader of THE MUNICIPAL WORLD since the paper started, I must say with pleasure that your paper gives more and better information to the general public than all our law books together, and is the best advisor for all municipal councillors. I had long ago in my mind that we should have a paper for Ontario, where all cattle and horses lost or found, could be advertised; a paper that has a circulation over the whole province, supported either by government or municipality. Farmers advertise in local paper but the same paper has no circulation in adjoining township, and the consequence is, that he cannot obtain his goods. If every man, who lost or found cattle or horses, would notify the clerk in his municipality and the said clerk would insert in MUNICIPAL WORLD, a man could get his horse or cattle in short time, with less expense. I am sure it would give general satisfaction in time. I was elected councillor for my township in 1865 and reeve the next year, which I held undisturbed until the law was changed in 1898, and I am county councillor since for the sixth division of my county. I was elected warden in 1876, 1889 and am warden for my county for the present year.

I would like to know how many more could show the same record.

I am yours truly,

WARDEN.

DISTRICT OF MUSKOKA,

MARCH 14, 1901.

To the Editor of the Municipal World :

DEAR SIR,—I have read in your valuable publication, the suggestion of W. D. Misener, Esq., clerk of Crowland township, and I am of the opinion that distributing the voters' lists, as Mr. Wisener has suggested, would be a very important change. Not only are the school teachers away on their vacation but so many live outside of this district, and the clerk, having no other post office address of the teachers, except the address for their school, in a great many instances the voter's lists are mailed to that address, and possibly lie at the post office until the teachers resume their school duties after the holidays. The statute compels the lists to be either delivered or otherwise registered, so that the purpose intended by the legislature, in having the lists posted on the school-house, is set aside, especially, if the lists are printed in good time. This matter has occurred to my mind occasionally, as the thirty days, in which to appeal to the judge, may have expired before the lists are posted. It would be well to have some united action of the clerks of Ontario to bring about some important change in the statute.

Yours truly,

D. C., Clerk.

Municipal Officers of Ontario.

Clerk of the Township of Longueuil.

Mr. Carriere was born in the year 1875 at Carriere's Corners, in the township of Longueuil. He is a hotel keeper, and at

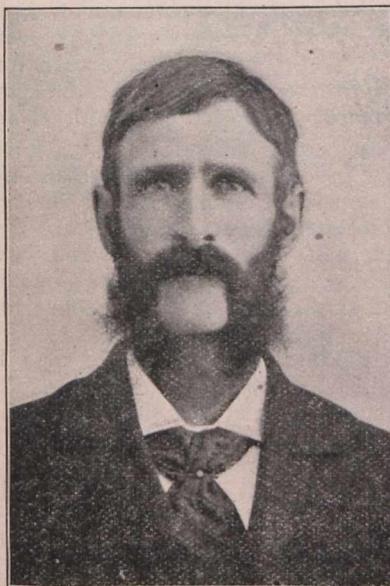


MR. ED. CARRIERE.

the same time works a farm and does an extensive business in hay and grain. He was auditor of his township for two years, and was appointed clerk in 1899.

Clerk of the Township of Lavant.

Mr. Browning was born in the township of Lavant in the year 1857. His first



MR. J. M. BROWNING.

municipal office was that of collector in 1885. He was elected councillor for the

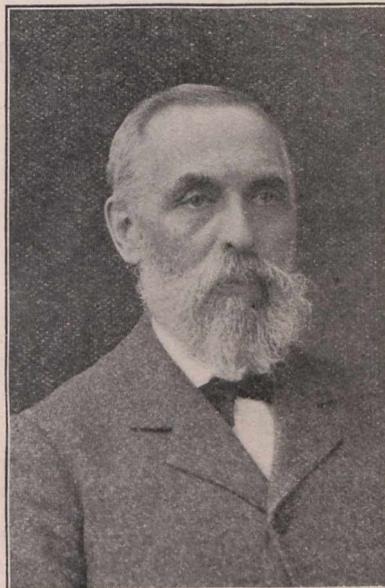
following two years, and was appointed clerk in the year 1889 and treasurer in 1898. He has been engaged in farming all his life.

Clerk of the Township of Windham.

Mr. Green was born in the township of Windham in 1842. He was educated at the public schools in his neighborhood and has always lived on a farm and followed the occupation of a farmer. He was appointed clerk in 1871, and clerk of the Third Division Court of Norfolk in 1873. He is also a commissioner for taking affidavits in H. C. J. and does a general conveyancing business.

Clerk of the Municipality of Head, Clara and Maria.

Mr Hickey was born in 1837, in the county of Leeds. Shortly afterwards he



MR. ROBERT GREEN.

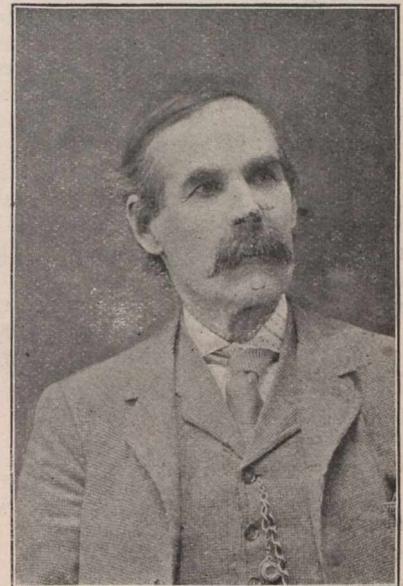
moved with his family to Bytown, now the city of Ottawa, where he was educated at a private school. He was engaged in lumbering from 1858 to 1882. He was appointed postmaster at Deux Rivieres in 1893, was councillor for Head, Clara and Maria from 1895 to 1898, and was appointed clerk of the united townships in 1900.

Clerk of the Township of Rayside.

Mr. Castonquay was born in the parish of Vaudreuil, Quebec, twenty-nine years ago. He was educated in the public schools in his native village and a commercial college in Montreal. His first business venture was clerking for his father in a general store. In 1893, after

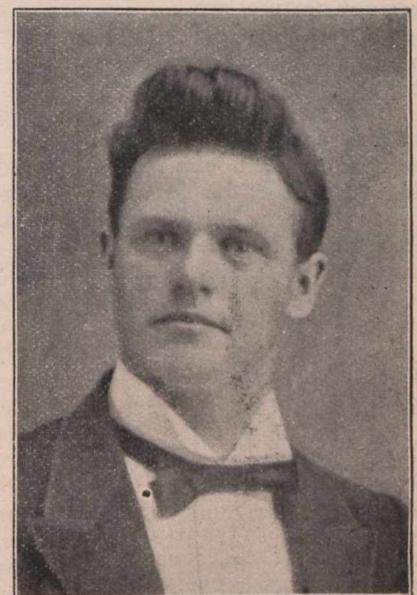
spending a year in Washington Territory, U. S., he engaged in farming in the township of Rayside. He was appointed clerk in 1899 and treasurer in 1900. He is also local agent for a number of agricultural implement firms.

People who have followed the evidence given before the Assessment Commission



MR. W. HICKEY.

at Toronto, need not wonder at the Legislature finding it difficult to make an ideal assessment law, or rather a law that will please everybody. The difficult work of legislation is to reconcile the divergent views of taxation held by different interests in the country. Everybody



MR. P. CASTONQUAY.

wants to escape taxation, and impose the burden of it on someone else.

# Engineering Department

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

## Cement-Concrete Culverts.

Culvert construction forms an important branch of highway improvement. It creates a very large expenditure, frequently absorbing a considerable proportion of the entire appropriation available for road purpose. Until recently, timber has been the only material employed, with the exception of an occasional rubble stone structure. Wood is by no means a permanent material for this class of work. It wears, warps and decays rapidly under all ordinary conditions. Rain, sunshine, frost and traffic all co-operate to shorten its life for this work. The cost of repairs in the period of its existence, frequently not more than eight years, rarely fifteen, is considerable in the aggregate, when it is considered that to merely put in a new plank may require a man's time for a half or a quarter of a day.

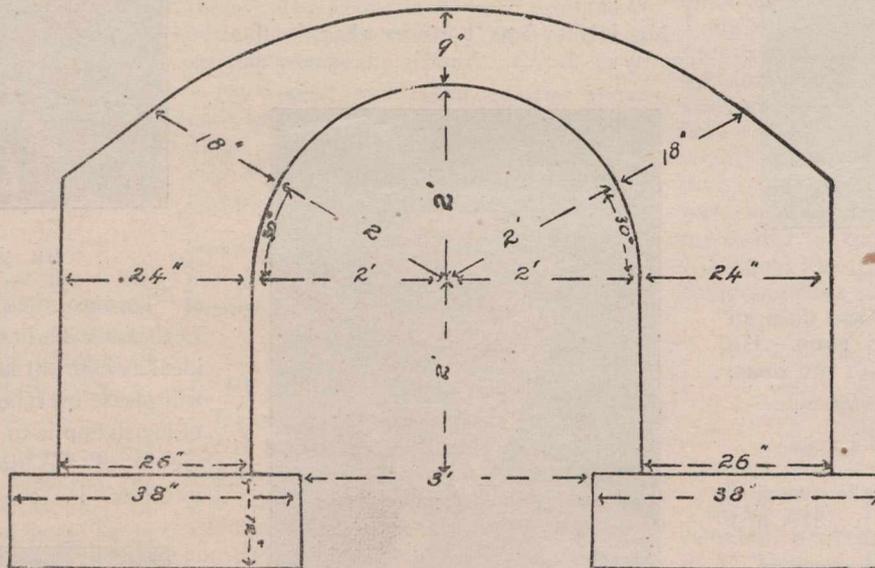
The price of timber is constantly increasing, while the quality obtainable is growing less satisfactory. Cedar, the timber generally employed, is not now to be had for a reasonable price in many localities. In the place of timber the materials being adopted are sewer pipe, concrete pipe, and stone, brick and concrete arches. These materials, from their stony texture, are evidently more durable than timber, especially in the matter of decay,

and if protected from wear by a cushion of earth above them, and if in construction the action of frost is guarded against, they may be regarded as permanent. There will be failures, no doubt, where poor workmanship or a poor quality of material is used, but these instances will become less and less with growing experience in their use. Experience, too, will lessen the cost and will gradually perfect all plans employed.

As a matter of convenience for traffic, too, these wooden culverts and sluices should be discarded. On even roads of heaviest traffic, where timber culverts are used, it is all too common to see drivers compelled to check their horses, and then bump over the corners of a wooden box drain standing above the surface of the road. The time, energy and annoyance wasted in this way alone would many times rebuild the old wooden culverts with others that would be better and more durable.

In this issue is a cross-section of a type of culvert well adapted to the use of concrete. The dimensions of arch and abutment will, of course, vary with different spans, but for the width of waterway indicated, the dimensions should produce, with good workmanship and material, an exceedingly durable culvert.

The framework within which the concrete work is erected should be of dressed lumber closely boarded up against the work as it proceeds. The centering for the arch should be well-framed, an exact semi circle. The ribs should not be farther than three feet apart. The lagging should be three inches thick, and dressed to the intrados of the arch. All the framework, centering and supports should be substantial and well constructed and should



CONCRETE CULVERT—CROSS-SECTION, SHOWING FOUR-FOOT WATERWAY.

not be removed in less than two weeks from the time of completing the concrete work. This framework is a considerable item of expense in the building of a culvert, but it can be used as often as it may be required for arches of similar span.

Where broken stone is used, the concrete should be composed of one part by measure of Portland cement, two parts by measure of sand, and four parts by measure of broken stone. It should be mixed on a floor placed close to the work, by first spreading evenly a layer of sand; upon this should be spread the proportionate quantity of cement and the 2 thoroughly mixed in a dry state. To this water should be added and the whole thoroughly mixed and brought to the consistency of a stiff mortar. The proportionate amount of stone should then be spread evenly over the mortar, and thoroughly intermixed. The concrete, when mixed as described, should be

immediately put in place and thoroughly pounded and rammed until it is perfectly and uniformly solid, moisture appearing on the surface.

If gravel is used in forming the concrete, it should be clean—that is, free from clay, turf, or other earthy material. The proportion of sand in it should, in the most suitable gravel, be in the proportion of two parts of sand to three parts of stony material. If the gravel is suitable, it should be mixed with cement in the proportion of one of cement to five of gravel. The mixing should be done on a floor near the work by first placing on the floor the desired quantity of gravel, on this should be spread the proportionate quantity of cement, and the two thoroughly intermixed dry. To this should be added a sufficient amount of clean water to make the mass, when completely moistened, of the consistency of freshly-dug earth.

If the gravel in its natural state is not clean, or if the amount of sand is insufficient, or much in excess, the gravel may be screened, and suitable sand obtained and used in the right proportion. The mixing in this case should be done in the same way as when broken stone is used. While screening and mixing uniformly in suitable proportions with good sharp sand will add to the expense of the work, it is nearly always necessary if the best results are to be obtained.

It will much lessen the cost of the work if within the body of the abutments of culverts of not less than 4-foot span, but not more than four

inches to the surface in any direction, large stones be placed by hand in layers.

These stones should be in "rack and pinion" order, and not less than two inches apart. Concrete should be carefully inserted between the stones thus placed and thoroughly packed and rammed so as to fill all voids. Concrete should cover each layer of stones to a thickness of half the depth of the stones, when another layer of stones may be placed. A facing of concrete should, at all times, be kept at least six inches higher than the rubble concrete and united with the rubble concrete so as to form a continuous and solid mass. This outer rim of concrete should precede the placing of the rubble work within, and should be placed around the interior of the casing to a height of nine inches and a thickness of six inches. It should be thoroughly pounded so that no cavities shall remain when the outside casing is removed. In no instance should the rubble concrete

extend higher than six inches or a foot below the top of the abutment, the top of the abutment to be finished with fine concrete. The rubble stone should not, under any circumstances, extend into the arch.

All cement employed in the work should be of a favorably known brand of Port land cement. It should be delivered in barrels or equally tight receptacles, and, after delivery, protected from the weather by storing in a tight building or by a suitable covering. The packages should not be laid directly on the ground, but should be placed on boards raised a few inches from it.

The stone used should be granite, quartzite, fine-grained limestone or other equally strong and durable stone, care being taken to exclude soft limestone, friable sandstone, and stone affected by the atmosphere. It should be broken into varying sizes, the largest to pass, any way, through a two inch ring. The sand used should be clean, sharp, silicious and of varying sized grain. The water used should be clean and care should be taken not to use an excessive amount. The concrete, when mixed and ready for work, to have the consistency of freshly dug earth.

Care should be taken to make the extrados of the arch a smooth, regular surface, such that moisture will not find lodgment. All framework and centring should be of dressed, well-fitted lumber, and the concrete should be perfectly rammed into place, so that all surfaces will be smooth, without cavities, when the casing is removed.

While the work is in progress, it should be so arranged that a steady supply of mixed concrete will pass from the mixing-box to the point where it is to be placed. At any time, when the work is interrupted before its completion, or at the end of the day, a wet covering should be placed over the last layer of concrete; before the work of depositing the concrete is resumed, this surface should be thoroughly flushed with water to remove any foreign material which may have gathered thereon. No concrete should be laid in wet or freezing weather.

#### Provincial Co-operation.

Good roads are essential to the full development of agriculture. In a country such as Ontario, dependent upon agriculture, this means that good roads are of very great importance to the towns and cities as well. The towns have been created by the country, and as the country prospers so will the towns progress. Good roads are not of benefit to any one class of the community; they are of universal value. This is a matter of which too narrow a view has been taken in Ontario. If we must have canals and railways, then we must have good country roads. It has been taken for granted that if the country as a whole constructed canals and sub-sidized railways, the common roads could take care of themselves.

But this has not been the case. The country roads of Ontario are in a deplorable condition, at certain seasons of the year actually impassible as avenues of trade.

From their own point of view, the farmers of Ontario are becoming keenly alive to the situation. That the roads of the province are not by any means in a satisfactory condition is well recognized. That the system of management which has prevailed is largely responsible for this is also well understood.

With them the question is not as a rule one of proving that the roads are bad, nor that the system of building and maintaining them is defective. That part of the good roads agitation has been largely accomplished. The chief task now consists in getting the people to thoroughly understand the new systems of management which are proposed in the place of the old. The more progressive citizens in every township who have studied the question of road reform are anxious for a change. The obstacle lies with the many who are not acquainted with the plan proposed, and whom, for various causes, it is difficult to reach with a fair explanation.

#### ALL SHOULD BE TAXED.

The broader aspect of the question has recently been given prominence by the decision of the Provincial government to appropriate \$1,000,000 for road improvement. This, for lack of a better name, has been termed government "aid" or "assistance." This is unfair both to the reason for the appropriation and to those who receive it. It is not a gratuity. It is a recognition of the value of good roads to every citizen of the country, and a proclamation that all should be taxed for their maintenance.

The object of the present measure is not to aid by the gratuitous distributing of money, but has for its aim a manly, a nobler purpose, and the bill shows the handiwork of a true statesman. While it aims to encourage the doing of a work which is acknowledged by all as being an important and a necessary service, its prime object is to equalize the burden of cost by levying a tax on every citizen in proportion to the benefit each derives. The unfairness and injustice of the present system of taxation for highway construction is so noticeable as to be a matter of wonderment that some step of this kind had not been, ere this, devised by government or compelled by the people.

#### WHEN TOLL-ROADS WERE OF SERVICE.

In the early history of the country, before the era of railways, when long distances had to be travelled by highway, when the people could not afford to build good roads, and when some improvement was necessary to carry on the business of the country, turn-pike companies were formed, and leading lines of highway in every part of the province were improved by them. These companies were permitted to toll or charge every individual

using the road. In this way those who used the roads paid for that road. This plan was, and is to-day, in the minds of many people, a correct system and it is a popular phrase that "those who use the roads should pay for maintaining them."

This system, through restriction, annoyance and inconvenience, is very objectionable. In addition it is very unfair in this, that the roads of the country are an indispensable public service, a benefit to every citizen, whether a direct user of the road or not, and consequently should be maintained by a universal tax. The latter method has found general acceptance in this country. In many sections the private companies have been completely dissolved and the tolls abolished. Few still remain, and would long since have disappeared were it not for their peculiar location, and the difficulty encountered in arraying an entire municipality against an isolated road. There is also an objection to providing what seems a large sum of money for an apparently dilapidated work.

The object of doing away with toll roads is to make the tax a general one, yet by dividing the work up into small areas, such as townships, making, in the older part of Ontario, 500 different sections, each to maintain the work within their own limits at their own cost, regardless of location, area, population, character of traffic, purposes for which the roads are used, etc., it makes this general tax so unfair as to discourage any extended effort to accomplish this work. It permits many of the largest users to go practically free.

#### THE INFLUENCE OF TOWNS AND CITIES.

Under the present system of free roads, municipalities, whether city, town or township, are supposed to maintain the roads within their limits. Were the traffic of a purely local nature, such a plan would be sufficient and equitable, but drawn as it is from different sections and concentrated on certain lines by various attractions, very often certain townships have to contribute as much to provide for foreign travel as for their own. It is the business of towns and cities to draw from the largest possible area, with the result that townships near these centres are unduly taxed. The larger the city, the greater the attraction and the greater the burden imposed upon the different townships in the area within which an influence is exerted upon traffic.

The smaller cities exert an influence in the particular section surrounding them, in many cases extending over a half a dozen counties. But being distributed over the province they make up an influence similar to the larger centres of population. Separated from counties, however, and without representation in county council, they are all free from any form of taxation for rural roads.

This influence is not confined to an area immediately surrounding the city, where vehicles are used entirely in response to that direct influence; but the goods, the

wares, and the products of the industries of the city are carried by rail and other means to distributing points where this influence is again exercised. In this way, large companies, whose property lies within one municipality, are taxed only in that municipality, whereas many of them have an army of agents throughout the province using every road in the different tow ships, soliciting sales and distributing goods.

#### A PROVINCIAL SYSTEM NEEDED.

In years gone by, shops and factories for doing all necessary work, were generally found within each county. In this way, a system of county taxation was all that was required to reach all. But to-day business and manufacturing is concentrated and monopolized. Large industries and private corporations do not confine their operation to their own locality but make general use of the province. If a system of toll roads were maintained, these people or their agents would be taxed wherever they went. But without a system of toll roads they go practically free, and only a provincial system of taxation can reach them.

With a provincial system, and the money fairly distributed among the municipalities, this injustice would be remedied, and the large centres drawing revenue from the whole area would be asked to return some of their profits to aid in maintaining every road over which their products are drawn. Manufacturers of agricultural implements use every road in the province in soliciting orders and distributing their goods. Wholesalers of small wares have wagons covering immense areas, often the whole province. Advertising agents, medicine agents, sewing machine, piano and organ agents, collecting agencies, pork-packers, buyers of live stock, and many others make up a large percentage of those travelling on the roads.

As a general thing the influence of towns is restricted to the county in which they are located, but the same principle of influence is exerted and the same use of roads made by the lesser place as by the larger. The same principle of taxation should, therefore, be adopted, with this difference, that the one covers the entire province, the other the county only.

#### THE INDIRECT USE OF ROADS.

The indirect use of roads arises from the fact that while the farmer uses the road to haul his produce to the market town, he goes there quite as much for the purpose of taking back with him the goods which he purchases from the merchant. If it is necessary for the farmer to drive to the town it is equally necessary for the town that the farmer should go to it. If the farmer did not come to the town, it would be necessary for the merchants to put their goods into wagons and go around the country; it would be necessary for grain merchants to provide teams and wagons to haul to the station the food supply of the world. That this

is not the case arises mainly from the fact that the farmer has horses and wagons for use on his farm which he can use on the roads. By collecting goods at central fixed points, the farmer knows where to go when he needs goods, he can get a better selection than from the itinerant merchant, and he can transact his business to better advantage. These circumstances are determined by convenience, not because the farmer needs country roads any more than does the town. If the farmer did not come to the merchant, the merchant would have to go the farmer.

The town that exerts an influence over the trade in the county attracts the people from the different sections causing those of one township to travel through another, and the trend of traffic being in the same direction imposes a heavy burden upon the township adjacent to the town. Whereas, if a county system of taxation was provided for making and maintaining the main thoroughfares, the tax would be equally levied against all the users of the road. The townships now heavily taxed would be relieved of an unfair burden, while the outlying townships would be taxed only for the use of the roads which they help to destroy.

With a county system of taxation for keeping up these main arteries, justly apportioning the cost, it would not then be difficult for each township to keep up the lateral roads of township importance only. By a provincial system a county system and a township system, every one benefitted by the roads would be reached and made to contribute a share, while the administration being more perfect, would result in better work.

#### THE UNIVERSAL TAX

Good roads at all seasons of the year facilitate trade. Easy, uninterrupted communication is at the basis of commerce. Good roads are not merely the arteries of trade, but they furnish health and strength to the country they traverse. To all, to every citizen they are a benefit; they are used directly or indirectly by all, and they should be paid for by a universal tax.

It is this principle, that of a general tax, that is at the basis of a provincial appropriation. Road construction is a great and expensive public work, in need of all the assistance to which it is entitled, and by a provincial grant only can the large towns and cities be reached. The principle of state aid or co-operation in this matter is recognized in most European countries. It is being adopted in many of the States, Massachusetts, New Jersey, Connecticut, Rhode Island, Vermont, New York, and others in this way levy a tax upon all.

The government then is only exercising its rightful function as a part of the administrative system in levying a tax against every user of the roads and for distributing the money thus collected among the different municipalities entitled to it. This function can be performed only by the provincial government and

credit should be given for the courageous exercise of it.

In states of the American Union where this plan is adopted a direct tax is imposed and collected annually. Where this is done much opposition is encountered from those now made to pay who formerly escaped this tax. If in Ontario it was necessary to resort to a direct tax the same opposition would be aroused, but, fortunately, from the natural resources of the province sufficient surplus funds have been provided to permit this appropriation and all that is asked of the people of the cities and towns is to forego their claim and allow the funds to be diverted for this work.

#### The Towns are Benefited.

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

Without the means of access, a country is valueless for production purposes. A farm of highest fertility within twenty miles of Toronto, if there were not roads by which it might be reached, would be as valueless as if situated in the heart of Africa. Distance is not measured by miles, but by rapidity and ease of travel and transportation. It naturally follows that, with the opening of the first wagon-road leading to it, the value of a farm commences, and as the road improves the value of the farm advances, other conditions remaining constant. It is true that the more the country districts become filled with population the more rapidly the improvement of roads will advance, but it is equally true that the more rapidly the roads are improved the more rapidly will population advance. The construction of the Canadian Pacific Railway has been the means of enticing population to the Canadian Northwest. The improvement of roads will have the same influence upon the less distant territory, and there is every need for greater attention to the home field for missionary effort in this respect. As the rural population increases, the wealth of our cities will increase, and it therefore points forcibly to the conclusion that one of the most potent means of improving and lengthening town streets is to provide at the distant end of the chain of transportation good country roads, for which the towns should help to pay.

## Question Drawer.

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

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

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

### A School Audit.

174—AUDITOR—The books show embezzlement and I believe the trustees are a party to it. They are doing everything in their power to get me removed from the audit. Taxes are being written off roll by two trustees in favor of the other one. The friends of trustees are in arrears. A few of us here, and non-resident tourists, keep the school supplied with funds, generally. The rate is 20 mills on an \$18,000 assessment. Trustees in 1895 had \$80 ahead and no debt.

On 15th of February, 1897, A, B and C, trustees of school section in unorganized township, borrow from D the sum of \$300, to erect a new school-house, and gave their note with interest at 6% payable in ten months. D also signs an agreement to renew note for one year longer if payment of \$68 is made at the end of ten months, if the trustees cannot pay the full amount. A motion appears in the minute-book as follows: "Moved and seconded, that the trustees be given power to borrow money.—Carried." At annual meeting in 1897, A retires and becomes secretary-treasurer; E is elected. No money is paid to D until July, 1898, when secretary-treasurer pays \$70. D verbally agrees with trustees to accept \$50 per year and interest until \$300 is paid, if trustees cannot pay before. On December 28, 1898, B retires and F is elected. No audit is made. Books now show uncollected taxes at that date (December 28, 1898) amounting to \$360, trustees and their friends in arrears. Instead of collecting, secretary-treasurer borrows \$28.52 to settle indebtedness for 1898. On May 20, 1899, trustees borrow \$100 for six months at 8% and on same day pay D \$68, last loans got without consent of ratepayers. On December 27, 1899, C retires and G is elected. An audit is refused. Books now show taxes due at above date to be \$485. I was appointed auditor by ratepayers for 1900, made a demand to audit in January, 1900, but was refused. Secretary-treasurer borrows \$495 to pay debts on December 27, 1899. On January 17, 1900, without any authority from ratepayers, trustees insure school-house for three years for \$300, pay \$6 premium and assign policy to D who holds policy. On August 22, 1900, secretary-treasurer pays D \$68. On September 1, 1900, trustees send D three new notes \$59, \$56 and \$53 payable in one, two and three years. D still holds the original note for \$300. Trustees ask no liberty from ratepayers to give these notes which overpays D. Before the last annual meeting, I appointed a time for an audit. Trustees appoint a business partner of the secretary-treasurer, who prepares a cash-book specially for me to add up, and when I wanted to compare it with assessment roll, I was not allowed to do so. I kept possession of the roll and since then I have got possession of both the original cash and minute-book and the prepared cash-book. I now find \$400 uncollected taxes. I find \$120 shortage between roll and cash-book. I find secretary-treasurer pays all money without any instructions put on record by trustees. Collector will not give me his receipts from secretary-treasurer. I find secretary-treasurer pays out \$30 and has no vouchers to show. I find false returns made by trustees. I find sums of money paid out that do not apply to school purposes.

1. Will I serve notice of action and sue C, E, F, G, secretary-treasurer and collector in one suit, for all shortage and uncollected taxes, or

can I issue my warrant and distress them all? B has left the country and G is re-elected. Trustees have taken no security from treasurer or collector.

2. Are the trustees liable for all interest with the exception of the first ten months on all moneys borrowed?

3. Can trustees stop me from going back in the roll for a proper start, when there never has been an audit made?

4. Old school property where school was taught for nearly twenty years, has not been disposed of yet. Secretary-treasurer claims it as his own, and uses it for a blacksmith shop, on the grounds that he never gave a deed for it. What process can I pursue to enforce sale? I am a ratepayer.

5. Are there any laws to apply to trustees assigning policy to D as security besides the notes?

6. Inspector has not visited school in 1900. Is he liable for neglect of duty?

7. Another ratepayer and myself mailed our affidavits to county judge on January 5, 1901, setting forth that collector and secretary-treasurer were withholding books, etc., in compliance with section 108, P. S. A., but we have not heard from him in any way. Would section 110 have good effect?

8. A number of ratepayers who are receiving benefits, by not having to pay taxes, refuse to attend for examination after having been served with a notice, on the grounds that a letter, purporting to have been received from inspector, was read at the annual meeting, setting forth that an auditor had no right to administer oaths to any one or to go back of the year that he was appointed for. Is inspector not abusing his position? What is my remedy against ratepayers refusing to attend, who claim to have paid taxes, which are not credited in cash book?

9. Trustees do not visit school house. Are they liable?

10. Does not section 314, Municipal Act, apply to school auditors?

11. Has an auditor a right to advance witness fees and mileage before he can compel one who is interested in the accounts to attend for examination, or are they compelled to attend without fees?

12. Can an auditor, who is also a ratepayer, collect from the school section, all disbursements such as travelling expenses, affidavits, hire of counsel to prosecute both civil and criminal cases, and what would be a fair remuneration for auditor's time?

13. If trustees were fined for neglect of duty, would they have to resign?

14. Would collector for unorganized school section be liable under section 144, Assessment Act, and what is the penalty?

15. Would assessor in the same section be liable, under section 17, Assessment Act, for not taking a list of children of school age and what is the penalty?

16. Assessor does not put tenants on assessment roll. Is he liable under section 251, Assessment Act, in unorganized township?

17. Is the partner of secretary-treasurer a fit person for the trustees to appoint as auditor, he knowing about a shortage in the accounts?

1. The statutes give you no authority to recover the shortage and uncollected taxes from these parties by action at law. Sub-section 2 of section 23 of the Public

Schools Act lays down the procedure to be followed, that is, the auditors or one of them should issue their or his warrant to any person named therein to enforce the collection of moneys by them awarded to be paid, etc.

2. If this interest can be shown to be school moneys lost to the school section in consequence of the neglect of duty of the trustees, they are personally responsible for the amount under section 114 of the Act. See also section 107.

3. No.

4. If these premises are no longer required for school purposes in their section they should be sold by the trustees for the best price obtainable, and the sum realized should be applied by them to purposes of school section. See sub-section 12 of section 62 of the Act. If the school section was in the use, occupation and possession of these premises for ten years or over (as appears to have been the case) the rights of the former owner (the secretary-treasurer) would be barred by the statute of limitations, whether he gave the school board a deed of the premises or not makes no difference. If the trustees refuse or neglect to discharge their duty to sell these premises they are liable to the penalty named in section 104 of the Act.

5. The trustees had no right to assign this policy to the holder of the notes, as he has no interest of any kind in the school property. The assignment would not be binding on the company issuing the policy, unless it has assented to it in writing, and we do not think it would signify its assent to an assignment of this kind. The assignment should be cancelled, and the policy re-delivered to the trustees at once, as, in case of loss by fire, the company might have grounds for refusing to pay the amount of the policy to any one.

6. No, but he is neglecting the duty imposed on him by sub-section 1 of section 83 of the Act; and on complaint made, and substantiation of the facts, is liable to dismissal, pursuant to sub-section 12 of section 82.

7. Section 110 is the one which applies and not 108.

8. We are of opinion that the Inspector should not interfere in this matter, until and unless it is referred to him under sub-section 2 of section 22 of the Act. If witnesses neglect or refuse to attend before the auditors when required to do so under sub-section 1 of section 23, there appears to be no way of enforcing such attendance, as the Act does not prescribe any means to compel their attendance.

9. Visiting the school-house is not imposed on the trustees as one of their duties under section 62 of the Act, but we think it would be necessary and advisable that they visit the school premises from time to time, in order to enable them to properly discharge the duties required of them.

10. No.

11. The Act makes no provision for

the payment of fees to witnesses, whose attendance is required by the auditors, nor for *compelling* their attendance, consequently the auditors or auditor cannot legally pay such fees and mileage.

12. An auditor has no power to incur the expenses you mention and charge them to or collect them from the school board.

13. No.

14. No. We are of the opinion that sub-section 2 of section 28 of the Act does not make section 144 of the Assessment Act applicable to a collector in a school section in districts.

15. No. Sub-section 2 of section 26 does not make section 17 of the Assessment Act applicable to an assessor in school sections in districts.

16. When returning his roll the assessor is required to attach thereto a certificate signed by him and verified upon oath or affirmation according to a form prescribed by the Assessment Act. (See schedule E to the Assessment Act.) The assessor cannot swear to the affidavit unless he has entered tenants on the roll. (See clause 3 of schedule E.) He is not however liable under section 251 of the Assessment Act.

17. No.

Assessment of Telephone Poles and Wire on Town Line  
—"Scrap-Iron" Assessment.

175—G. A. 1. How are telephone posts and wires, which are on a county line, to be assessed? Should the assessment be divided between the townships or assessed by the township to which they are nearest?

2. Has there been any action taken by the Ontario assembly, in reference to scrap-iron decision of the judges?

Under the law, as it stands at present, no provision is made for the assessment of telephone posts and wires, erected and standing on a county line. The county line is a strip of land forming a road or highway between the adjoining municipalities belonging to, under the jurisdiction of, or located in neither of them, so that these poles and wires cannot be assessed in either of such adjoining municipalities. The assessment commissioners have reported to the government on the "scrap-iron" decisions and assessments, and a bill formulated along the lines of the report will be introduced at the present session of the legislature. If it be passed it will change the present method of assessing the property of such companies as the above, and also make provision for the assessment of such property, when located on a line between two municipalities.

Can Teacher be Secretary of School Board?

176 SCHOOL BOARD SECRETARY.—The Public Schools Act, section 62, provides for the appointment of a secretary by the Board of Trustees. Section 98 provides that a trustee can be a teacher, and *vice versa*. Can a teacher, in the employ of the board, act as the regular salaried secretary of the board?

The Public Schools Act does not contain anything prohibiting a teacher from acting as secretary for the board of trustees.

Duty of Township Clerk as to Copies of Assessment Roll.

177—R. W. M.—Is it not the duty of the clerk of municipality to make two copies of assessment roll after court of revision revises the original copy, one for himself and one copy for county clerk?

The clerk is not required to make a copy of the assessment roll for himself. The original roll as finally revised and corrected which remains in his custody is all that he requires. By section 83 of the Assessment Act, the clerk is required to transmit a certified copy of the assessment roll, as finally revised and corrected to the clerk of the county, within ninety days under penalty, unless the council of his county has passed a by-law pursuant to section 83a of the Act (enacted by section 7 of the Assessment Amendment Act, 1899) permitting the clerks of the local municipalities, instead of transmitting a copy of the roll, to transmit a summarized statement of the contents of the roll as set forth in the section. Notwithstanding the passing of such a by-law, the clerks of local municipalities are required to transmit a copy of the roll to the clerk of the county in every third year, and whenever in other years they are required to do so, by the county judge or resolution of the county council.

Limit of Borrowing Powers of Villages.

178—G. S.—Would you kindly let me know what the limit of a village corporation is to borrow money on debenture for purposes of improvement? I cannot find any section that states.

If you mean improvements instituted and carried out under the authority of the local improvement sections of the Municipal Act, (section 664 and following sections), the cost of which is assessed proportionately against the lands benefited, the statutes impose no limit to the corporation's borrowing powers. If the improvements are general, to be paid out of the general funds of the municipality, the corporation can borrow only such sum as will not necessitate its levying annually for the repayment thereof, together with all other rates, except school rates and local improvement rates, more than an aggregate rate of 2 cents on the dollar on the actual value. (See sub-section 1 of section 402 of the Municipal Act.)

A School Audit.

179—AUDITOR.—1. Does sub-section 2 of section 23, Public Schools Act, give an auditor the right to issue a warrant to distrain the goods and chattels of a ratepayer, who is in arrears for the years 1896, 1898 and 1900, whom the collector has favored, or are those years lost to the school section, it being in a township which has no municipal council?

2. In section 7, sub-section 1 of chapter 228, R. S. O., 1897, does the word "auditor" on page 2861, in the sixth line, refer to the Provincial Municipal Auditor or the auditor appointed by the ratepayers of a school section?

3. Can the secretary-treasurer of a school board rightfully refuse a ratepayer, who is also the auditor, to examine the deed of the school property when it is reported registered against the wrong lot, and can the secretary-treasurer rightfully refuse a ratepayer to examine the trustees' minute-book, who wished to take a

copy of a resolution therein and what would be the penalty for refusing?

1. No.

2. The Provincial Municipal Auditor.

3. No, if he demands such examination in his capacity as auditor. The penalty for refusal on the part of the secretary-treasurer is \$20. See section 110 of the Public Schools Act. The secretary-treasurer is under no legal obligation, statutory or otherwise, to show the minute-book or deed of the school property, to any ratepayer, who sees fit to ask him to do so.

Payment of Arrears of Taxes in Districts—Qualification of Voters.

180—I. F.—1. Does section 53 of chapter 225, R. S. O., 1897, imply or direct that taxes in default shall be paid to the treasurer of the local municipality, and that the clerk's notice, under section 147 of the Assessment Act, shall direct the payment of said arrears of taxes to the treasurer of his own municipality (Rainy River District)?

2. At our last municipal election a taxpayer presented himself for the purpose of obtaining a ballot, having arrived at majority subsequent to the revision of the assessment roll. His name had, by error of the judge, been placed in part 3 instead of part 1 of Voters' List at the holding of Voters' List Court, which was informal, a list only of names having been furnished the judge, which were entitled to be placed on revised Voters' List. The returning officer declined to give applicant a ballot. A candidate insisted. Returning officer having read W. A. Clark's Instructions to Deputy-Returning Officers, on page 188 of THE MUNICIPAL WORLD, 1900, felt that clause 3 of instructions ruled the applicant out, but at the time could only turn up section 18 of chapter 225, clause 1, whereupon he administered the affidavit of a freeholder and delivered a ballot, writing voter's name on back. Should a ballot have been given this man?

3. Another taxpayer presented himself, name not on Voters' List at all, having arrived at majority subsequent to revision of Voters' List and six weeks prior to election. Returning officer again objected to giving a ballot until a candidate demanded a ballot, whereon affidavit was administered, ballot marked and given voter, who then voted; subsequently returning officer produced Clark's Instructions to Deputy-Returning Officers, clause 3. Was this man entitled to a ballot?

4. Does section 21 of chapter 225 exclude these men from voting?

5. May a municipal council, in unorganized districts, pass a by-law under section 161 of the Assessment Act?

6. Is section 18 of chapter 225 merely to instruct clerks in compiling Voters' List, or is it to define who shall be tendered a ballot at the election? If the latter, what need is there of a Voters' List or Voters' List Court?

1. The treasurer of the local municipality is the proper person to receive payment of arrears of taxes under the provisions of the section you mention. The notice to be given by the clerk, under section 147 of the Assessment Act, should not direct or require the payment of taxes to anyone. It should simply state the fact that the person mentioned in the notice is in arrear, and the amount of such arrears.

2. The persons entitled to vote at every election in a township in an unorganized district are those mentioned in section 18 of chapter 225, R. S. O., 1897, and who are in the proper part of the Voters' List to be used at the election. We are of opinion that this person should not have received a ballot, because his name did

not appear "in the revised assessment roll for the municipality upon which the Voters' List used at the election was based." Neither did his name appear in the proper part of the Voters' List. The instructions to deputy-returning officers to which you refer, apply to municipalities in districts, subject to the alterations rendered necessary by the provisions of chapter 225, R. S. O., 1897. See section 21 of the Act. The deputy returning officer had no authority to write the voter's name on the ballot.

3. This person had no right to receive a ballot or vote, as he was not on the Voters' list at all.

4. Yes.

5. Yes.

6. This section is for the guidance of clerks in the preparation of the Voters' Lists in their respective municipalities in districts, showing them what persons are qualified to be entered on the list as municipal voters. Only those who are entered in the proper part of the Voters' List to be used at an election have the right to receive a ballot and vote.

Petition for Drainage Works.

181—F. G. J.—I have given you an outline of a proposed ditch. Last fall a petition was circulated to have what I have marked as the "main drain" put through, but there were scarcely enough signers to the petition. Those in favor of the ditch then went to the clerk and got him to fill out a new petition, including lots 10, 11 and 12 in concession 3. All the owners in concession 3, on the "branch drain," signed the new petition, together with those who had signed the old one. Now those who are opposed to the ditch claim that the promoters of the ditch should not have included the branch.

1. Is there anything wrong about including a branch in this way, in order to get the ditch through?

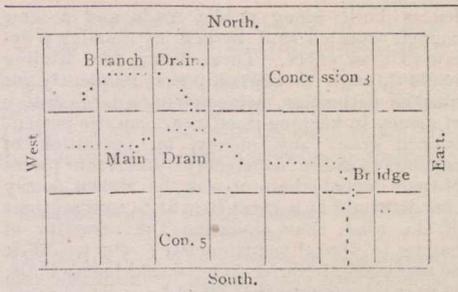
2. Can the opponents of the ditch get up a counter petition, including another branch, and thus hinder the ditch?

3. Just below the bridge, in the road between concessions 4 and 5, the original stream bends back into a small portion of the west half of lot 7 in the 5th, less than a quarter of an acre being affected, but it is valuable as a watering place. Would it be legal to straighten the creek below the bridge, and convey water on to the west half of lot 7 in a pipe or in some other way? If this is legal, would the owner of west half of lot 7 have a right to his name on the petition?

4. Mr. S. dies leaving property (100 acres of land) to be divided equally among his six grandchildren at the death of the mother of said children. A deed of trust is held by two executors, one of whom has since died. The mother and two of her sons are rated upon the last revised assessment roll as joint owners of the property. All the children are of age. One of the sons, whose name is on the roll, has lately sold his share to his brother. In the event of the ditch passing through this farm and no names on the petition, how many names will be counted against the petition for such property? Who would have the right to sign the petition for such property? Section 3, sub-section 1, of The Municipal Drainage Act says "Upon the petition of the majority in number, etc., etc., the council may procure an engineer or Ontario land surveyor to make an examination of the area, etc."

5. Are the council obliged to procure an engineer to make a survey if they do not wish such survey made?

6. Can the council instruct the reeve to sign the petition before the meeting to consider the report of the engineer?



1 and 2. Sub-section 1 of section 3 of chapter 226, R. S. O., 1897, provides that "upon the petition of the majority in number of the resident and non-resident persons (exclusive of farmers' sons not actual owners) as shown by the last revised assessment roll to be the owners of the lands to be benefitted in any described area within any township, etc., to the municipal council thereof for the draining of the area described in the petition by means of drainage work, that is to say the construction of a drain or DRAINS, etc, the council may procure an engineer, etc." The engineer, on his examination of the described area, may find that, in order to carry out the drainage works petitioned for, it will be necessary to construct one or more drains, or a drain with one or more branches, and this he has the legal right to do. It was held in the case of Robertson vs. The Township of N. Easthope that a petition of land owners, under the Drainage Act, for the construction of drainage works must include a majority of all the persons found by the engineer to be benefited by the proposed works, and not merely a majority of the persons mentioned in the petition itself as being benefited. Consequently if the petition presented to the council is signed by a majority of the persons to be benefited in the area described by the construction of the drain or its branches or any of them, the council may procure an engineer, etc., and, if by the engineer's report the petition appears to have been signed by a majority of all persons found by him to be benefited, the council may pass the necessary by-law for the carrying out of the drainage works.

3. In case the engineer, instructed by the council to examine and report on the drainage scheme, considers it necessary to straighten the stream in the locality in order to effectually carry out such scheme, he may so report to the council, and this portion of the work may be completed in accordance with the report. The owner of the west-half of lot 7 might be entitled to compensation for the diversion of this stream. The council can legally settle any claim he may have in this way by piping the water to his land. If the engineer reports that this party will be benefited by the construction of the drainage works, he would be a proper signatory to the petition.

4. According to the dicta of Mr. Justice Osler (Justices Moss and Lister concurring) in the case of township of Warwick vs. Township of Brooke, recently

heard by the Court of Appeal, it would appear the mother and sons rated on the last revised assessment roll, as joint owners of the premises, are the proper persons to sign the petition. The learned judge in the course of his judgment says: "the legislature must have meant to give some effect to the assessment roll, by referring thereto in successive Acts from R. S. O., 1877, hitherto in uniform phraseology different from that which had been used in earlier Acts on the same subject. It is not unreasonable to hold that the legislature meant what it said, for opportunities of dealing with the question of ownership are afforded on appeals to the Court of Appeal and to the county judge. The section takes the roll as finally revised and gives effect to it, and it is *conclusive* for the purpose of conferring jurisdiction upon a council to entertain a petition."

5. No. (See sub-section 1 of section 3 of the Act), but the council cannot dispense with the services of an engineer and pass a by-law for the construction of a drain.

6. No. See section 17 of the Act.

Dog-Tax.

182—F. D. M.—1. Have there been any changes in the law in regard to taxes on dogs, since the R. S. of Ontario, 1897, were issued?

2. If not, is it necessary to pass a by-law annually on the petition of twenty-five rate-payers, or does by-law passed, say, ten years ago, exempt dogs from being taxed, until such a by-law is repealed?

3. I enclose a true copy of a by-law passed in this municipality in the year 1891. There have been no dog-taxes levied since. Has the municipal council been acting legally, exempting dogs from taxes ever since the passing of this by-law?

BY-LAW NO. 480.

By-law of the municipal council of the township of A.

WHEREAS, by the Statutes of Ontario, of 1890, chapter 62, section 2, township councils are authorized to pass by laws that taxes shall not be levied on dogs.

AND WHEREAS, twenty-five have petitioned that said tax be not levied on dogs. Be it enacted, and it is hereby enacted, that the said tax or any part of it shall not be levied in the municipality of the township of A.

Passed and signed in council this 18th day of May, 1891.

Clerk.

Reeve.

1. No.

2. No. When a by-law has been passed pursuant to section 2 of chapter 171, R. S. O., 1897, it will remain in force until repealed by by-law of the council.

3. Yes.

Permit to Carry Revolver.

183—SUBSCRIBER.—Is it necessary, under by-law or statute law, to have magistrate's certificate to carry a revolver? Please give me chapter and page of Act and all particulars.

Yes, unless the person carrying the revolver is a justice or public officer; or a soldier, sailor or volunteer in His Majesty's service on duty; or a constable or other peace officer. See section 105 of the Criminal Code of Canada.

## Assessment of Wood Land.

184—J. D. C. N.—Is it legal to assess wood land for \$2 per acre when the government sells it at 50 cents per acre in free grant territory? The government sells at 50 cents per acre for overplus of homestead grant, but when selling in block they charge \$1 per acre. The councilmen think the \$2 per acre valuation is not too high.

Section 40 of 226, R. S. O., 1897, provides that the council of every municipality in any of the said districts shall, as soon as convenient after their first meeting, appoint an assessor or assessors, who shall enter upon a roll provided for the purpose, amongst other particulars, the names of all freeholders and householders in the municipality, stating the amount of the *real* and personal property owned by such persons respectively, and the *actual value thereof*. The council has nothing whatever to do with the assessment and should not interfere with the assessor appointed in the discharge of his duties. A competent man should be procured to act as assessor, and he should perform his duties under the Act according to the best of his judgment and ability.

## Public School Trustee Can be Member of Council.

185—W. S.—Can a public school trustee be a member of the municipal council?

Yes.

## Municipality Not Liable.

186—D. C.—I drives his cattle to watering-place on public road, said road being in good repair and sixty-six feet wide, said watering-place being at side of fence on south side and is a natural spring and about eight inches deep and has been in use for over forty years. One of his cattle slips in head first and gets drowned. No complaint has ever been made about it, to any one, that it interferes with the road. Is the municipality liable for the loss of his cow? He drives one mile to this watering-place.

The municipality is not liable for the loss.

## Liable for Statute Labor.

187—W. R.—Thank you for your answer to question re paying statute labor. How do you coincide your answer "yes" with subsection 2 of section 30, chapter 224, page 2734 (Assessment Act), vol. 2, R. S. O., 1892? Although the above refers to islands, the point, I own, is, to all intents and purposes, an island, as I can only get to it by water, and I only use the cottage upon it for about two months in the year. Does the above subsection 2 of section 30 refer to my two acres, as explained above?

An island is well known to be "land surrounded with water." According to the diagram accompanying your question No. 109 your two acres might be considered a small peninsula, but it certain is not an island. The sub-section you refer to has no application whatever to your case. If you are *not satisfied* with our view of the law, you had better appeal in the usual way and let us know the result, and, if the judge decide that you are right, we shall publish the decision in the WORLD for the benefit of our subscribers.

## Municipal Aid in Construction of Snow Fences.

188—J. R.—The municipal council of this township, some years ago, passed a by-law giving a bonus of 20 cents per rod for wire

fences built along public roads and a later council repealed said by-law by passing a by-law to that effect. There being two leading roads through the township that frequently get blocked with snow, necessitating a large outlay of money in keeping them clear, can the present council grant any money, by resolution of council, to aid in construction of certain pieces of road fence, where it can be shown clearly that it would be a great benefit to said sections of the road, thus obviating the necessity of having to shovel continuously? Or would it be necessary, in order to have said fences built, to pass a by-law to that effect?

Section 1 of chapter 240, R. S. O., 1897, gives councils of townships power to require owners or occupiers of land bordering upon any public highway to take down, alter or remove any fence found to cause an accumulation of snow or drift so as to impede or obstruct the travel on the public highway, etc., and where such power is exercised, they shall make such *compensation* to the owners or occupants for the taking down, alteration or removal of such fence, and for the *construction* of some other description of fence approved of by the council, in lieu of the one so required to be taken down, altered or removed, as may be eventually agreed upon. If the council and owners or occupants cannot agree in the matter of compensation, the question is to be decided by arbitration under the provisions of the Municipal Act. A by-law should be passed by the council, and, if it and the owner cannot agree as to the amount of compensation to be paid, the amount must be settled by arbitration.

## A Disputed School Site.

189—AN OLD SUBSCRIBER.—A dispute has arisen in school section No. 5 in respect of the building of a new school-house. Some two years ago, it was decided to build a new school-house in the above-named school section. A dispute arose as to where it should be built. The trustees and a minority of the ratepayers were in favor of building on the old site; the majority of the ratepayers were in favor of changing and building half a concession from the old site. The matter was finally submitted to arbitration, each party choosing a man, the public school inspector being the third person. These gentlemen appointed a day, and met at the school-house in said section, the ratepayers having had due notice of the time and place of meeting. They had a correct map of the section before them and evidence produced by both parties, why the school-house should or should not be moved from the present site. After deliberating on the matter for some time, they adjourned to the house of one of the trustees who had not been present at the meeting, on account of having his shoulder broken a few days before and was not able to attend the meeting. There the arbitration was finished and the award published, the finding of which was that the new school-house should be built upon the old site and that this arbitration shall be binding for five years from the publication of the award. Before the arbitration took place, one of the trustees, the secretary-treasurer, changed his mind and took sides with the parties wanting the change of school site, thereby causing a very unsatisfactory state of affairs in the trustee board as they could not work agreeably together in the matter and nothing has since been done in the way of building. The trustee board has now changed and there is only one member of the board that was on it when the trouble first commenced and they are all agreed to build on a new site, as are a small majority of the ratepayers. They have commenced the matter

again, called a meeting of the ratepayers to sanction the new site, went through the form and have done so. They then called another meeting of the ratepayers and passed a resolution empowering the trustees to raise money off the section by debentures for the purpose of purchasing a new site and building a new school thereon. The ratepayers of that part of the section, who did not want the change, did not vote at these meetings nor did they take any part in them only to protest at their proceedings, they are simply abiding by the terms of the award of arbitration. The trustees came before the township council at its meeting on February 4, 1901, and demanded that the council pass a by-law and issue debentures to raise the necessary amount for the purpose herein named. There was also presented a petition, signed by twenty-four ratepayers of the section, praying the council not to pass any such by-law as the matter had been finally settled by arbitration two years ago and that the same was binding for five years from that time. The council did not pass the by-law but left it over until next meeting of council so as to have time to enquire into the matter. At the next meeting of council, on March 4th, the award of the arbitrators was placed on the table as evidence that there could have been no legal special meeting called by the trustees for the above mentioned purpose.

The following questions are respectfully submitted:

1. Is this contention good and such as the council would be justified in refusing to pass the by-law until the trustees could show to the council that the award of arbitration had been set aside or was illegal?

2. In case the trustees issued a mandamus to force the council to pass the by-law, would the question as to the validity of the award come up? Or would the trustees first have to prove the award illegal before they could take action against the council?

1 and 2. Under the circumstances of this case we are of the opinion that the council should not comply with the demand of the trustees. It appears that at a meeting of the ratepayers a majority of them and the trustees differed in regard to the school site and arbitrators were appointed who made their award in favor of retaining the old site. This award, under the latter part of section 31 of the Public Schools Act, is binding upon all parties for at least five years. The present trustees are ignoring the award and asking the council to issue debentures under section 70 for the purpose of raising money to build a school-house, not upon the old site, but upon a new site, and if the trustees apply to the court for a mandamus to compel the council to issue debentures, we do not think the court will grant it because the trustees would have no right to use the money for the purpose of building a school-house upon the new site even if the council raised it.

## Early Closing By-Law.

190—J. J.—I. Has the council of a local municipality power to pass a by-law closing all general shops in the municipality at seven o'clock in the evening, without first receiving a petition from shop-keepers?

2. If so, is it usual to do so?

1. The council of a local municipality may pass a by-law of this kind, pursuant to power conferred on them by sub-section 2 of section 44, chapter 257, R. S. O., 1897.

No. It is customary to leave this to the option of the merchants themselves.

**Powers of Trustees of Police Village as to Expenditures and Their Liabilities.**

191—A. McL.—1. Have the police village trustees power to expend the money which they receive in lieu of the general local township rate, in laying sidewalks, or must it be spent exclusively in the improvement of roads for public travel?

2. Are the police village trustees liable for defective roads and sidewalks when they pass by-laws in order to raise more money than the general township rate for to lay sidewalks and improving of streets?

1. The trustees of a police village can devote such portion of the money as they may deem necessary or advisable to the laying of sidewalks within the limits of the village. See section 741 of the Municipal Act.

2. No.

**Division of Statute Labor.**

192—J. R.—A owns two lots, on which the assessment calls for three days' road-work. B owns two lots, on which the assessment calls for three days' road-work. Only B is in two road beats, which gives him three days more. The council appointed two pathmasters last year, which threw B into two beats when he was only in one before. Can council collect extra three days from B? A owns a farm that is assessed for \$600, which calls for five days' road-work. B owns three farms, which are in three road beats, and he is assessed for \$500, which would give him less than A only by being in the three beats, he has three days more. Is it legal for the council to collect extra road-work in these cases?

No. The fact that a man's lands are situated in more road-divisions than one does not justify or empower the council to charge against it more statute labor than its assessed value would warrant according to the ratio of statute labor in vogue in your municipality. If the municipal council so orders, this statute labor can be divided amongst the different road-divisions in which the lands are situated. If the council does not otherwise order, "every resident shall have the right to perform his whole statute labor in the labor division in which his residence is situated."

**Status of Member of Council Sued by Council.**

193—J. S. B.—In 1900, A was member of the municipal council and was road commissioner for ward four. The council instructed him to expend \$30 in improving the road at lot 7, concession 10. He let the contract and when finished gave an order on the treasurer for the amount, which the treasurer paid. At a subsequent meeting of council, he moved that an order issue in favor of contractor for work done at lot 7, concession 10. The order was made out and having been signed by the reeve, was handed to the commissioner, was presented to treasurer, who claims he paid the money on it. Therefore the money seems to have been paid twice for the same work and the council finds it necessary to sue the commissioner (who is also a member of this year's council) for the refund of that money.

1. Will the fact of one of the members of council being sued and having to stand a lawsuit disqualify that member, while the suit is pending?

2. If A persists in sitting and voting in council, what steps should council take to prevent him?

3. In case A should win the suit, would he still be disqualified as a member of council?

1. No.

2. Since being sued by the council does not disqualify "A" or vacate his seat,

he has the right to sit and vote in council.

3. No. To avoid difficulties, the council should regulate the payment of accounts by by-law authorizing the treasurer when to pay. The clerk should sign all orders whether issued by commissioner or council.

**Road Commissioner Can be Collector—Indigent's Medical Account.**

194—J. R.—1. The council of this municipality would like to appoint the road commissioner collector. Can it legally be done?

2. An inmate of the House of Industry made his way to the village a short time ago, and went direct to the medical health officer, who treated him without authority from this board. The old man doubtless needed a doctor but the disease did not belong to the infectious or contagious class. Can the medical health officer, in such a case, collect his fee from the council?

1. Yes.

2. No.

**Payments by Treasurer—15th December Statement—Auditor's Report—Charges for Preparing Statement—Account of Government Grant for Schools—Appropriation for Roads, etc.**

195—J. H. P.—1. Is it legal for a treasurer to pay a note or interest on a note after it becomes due, without some authority from the council?

2. Should the financial statement issued in December contain only such orders as were issued during that year or all orders issued and all orders of the previous year (1899) paid in 1900?

3. Should auditors report verbally to the council or in writing regarding any illegal actions, mistakes, etc.?

4. Can the reeve, treasurer and clerk legally charge \$10 for preparing an ordinary abstract financial statement?

5. Are municipal treasurers required to give any account of the government grant to schools forwarded by the county treasurer? If so, where should it appear?

6. Is it legal for the new council of 1901 to vote appropriating \$500 for roads and bridges at the first session, that amount not being available, unless it be taken from money raised in 1900 to pay notes owing by the township?

1. No. Assuming that the making of the note is authorized by by-law of council to borrow, these payments should be authorized by lawful by-law or resolution of council. See section 290 of the Municipal Act.

2. The financial statement prepared under sub-section 6 of section 304 of the Municipal Act should comprise ALL the treasurer's payments from the 15th of December, 1899, to 15th of December, 1900.

3. The auditors should report in writing to the council on all matters investigated by them in discharging the duties of their office. See sub-section 2 of section 304 of the Municipal Act.

4. No. The preparation of this statement is a duty, incidental to their respective offices, imposed on the councils and their officials by sub-section 6 of section 304, and no provision is made for a payment being made to any of them for doing the work.

5. An account of receipts and expenditure on account of government school grants, should be entered and kept in his books, but as to school monies a municipal treasurer shall be considered sub-treasurer of county treasurer. See sec. 75 of Public Schools Act. This account should also appear in the December statement and

annual audit of the books and accounts of your municipality.

6 Yes. It is necessary that roads and bridges should be kept in repair, and a portion of the funds of the township should be set apart for this purpose. This sum should not, however, be taken out of moneys raised in 1900 to pay outstanding notes, but, if it is not on hand to the credit of the general fund, it can be borrowed by the council of the municipality under the authority of section 435 of the Municipal Act, pending the collection of the taxes for year then current.

**Rights and Liabilities of Gas Companies on Highways.**

196—GAS—1. Can the council of a township legally lease the roads or road allowances of the municipality to a company for the purpose of boring for natural gas?

2. If they can, can I prevent the company from boring in front of my farm? All the roads in the gas belt are well travelled highways and the plant will occupy half or more of the width. The noise and escaping steam will be a source of danger to all parties driving past. The company are willing to give a bond to become responsible for all damages caused by or on account of their operations.

3. If a gas company lays their mains along a highway without leave from the council, what redress have individuals whose teams are frightened by the escaping or burning gas?

1 and 2. The council of any township or county has power to sell or lease by public auction or otherwise, the right to take minerals found upon or under any roads over which the township or county has jurisdiction, taking the proceedings and precaution provided by section 657 of the Municipal Act. In the case of Ontario Natural Gas Co. vs. Gosfield, 18 O. R. 627, the court holds that natural gas is a mineral.

3. The company will be liable for any damages which it may occasion to persons using the highway for public travel.

**Should Township Councillors Take Oath of Allegiance?**

197—R. K. J.—Oath of allegiance necessary for municipal officers. In your answer 129, did you overlook chapter 16, R. S. O., 1897, section 3, in which it is distinctly stated that the oath (the form of which is therein given) is to be taken by "any mayor or other officers or member of any corporation," within the province equally with any civic officer?

The section referred to does not require township councillors to make any oath of allegiance by reason of the death of Queen Victoria. It simply provides the form of oath to be taken when, by some act of parliament or proclamation, certain officers are required to take an oath of allegiance.

**Member of Committee Not Member of County Council.**

198—LEAMINGTON—The county council appointed a building committee of three to erect house of industry. C, one of the committee, was defeated at the election in January. The council at January session continued C as member of building committee and made him member of committee to purchase furniture and furnish building. They also made him inspector for house of industry. Was the action of the council legal? If so, is there any precedent for such an unusual move?

C not being a member of the council had no right to act as a member of the committee of the council. The council

might, however, appoint him to look after the work to see that it was properly done if it thought his services would be of value owing to his experience and knowledge of the kind of work to be done. It was quite competent for the council to appoint him inspector of the House of Industry.

#### Private Roads.

**199**—A. B. C.—A built a dock in lake twenty or twenty-five years ago? He opened road over his property from highway to dock. He closed road two or three years ago by fencing across it but road has been used since by parties who needed to use it. I own a fishery on lake shore and this road is the only available road to it. Has the municipality or public any right in said road? Can I use it?

No.

#### Stopping Up of Original Road Allowance.

**200**—L. W. F.—Have municipal councils power to close up and dispose of road allowances, where road crosses over bogs and hills, where it would be impossible to make a road fit for travel? Also give what information you can in regard to closing and disposing of road allowances.

Your municipality being a township, sub section 2 of section 660 of the Municipal Act gives your council power to pass by-laws for closing, stopping up and selling these road allowances, observing first the provisions of sections 632 of the Act. Before, however, a by-law of this kind can have any force, it must be approved by the judge of the district court of your district (Manitoulin). You should also see that your by-law does not transgress the provisions of section 629 of the Municipal Act.

#### Suing for Taxes.

**201**—C. I. H.—Can the municipal council of the township of H sue and collect taxes from any party owning property in said township but living in another part of the district of Algoma, and there is nothing on the property in said township that the collector could distrain for?

This party is a non-resident ratepayer, and assuming that he requested his name to be placed on the assessment roll, of your municipality, the lands should first, in due course, be offered for sale to realize the amount of the taxes. If it cannot be realized in this way, the municipality can then sue the party liable pursuant to action 142 of the Assessment Act. An action cannot be brought for the taxes until all the special remedies provided by the Assessment Act for their recovery are exhausted.

#### Township Treasurer's Security.

**202**—C.—A, B and C are township treasurer's securities, under bond. A sells out and leaves the country. If B or C notifies reeve another must take A's place, would this relieve B or C if new security is not produced?

No.

#### Clerk's Salary.

**203**—E. N.—The clerk of our municipality was dismissed and I was appointed in his place, but in the resolution appointing me there was no mention of the amount of salary and no seal of the corporation attached to this resolution.

Can I be entitled to the amount paid the ex-clerk at the time of his retirement?

A resolution of the council was insufficient for your appointment. A by-law should have been passed. See section 325 of the Municipal Act, the latter part of which provides that the powers of the council shall be exercised by by-law, when not otherwise authorized or provided for.

#### Liability for Arrears of Taxes.

**204**—J. W.—Our collector for the year 1898 did not complete his duties by the 8th day of April, 1899, consequently the township treasurer did not transmit to the district treasurer the statement of uncollected taxes until May or June. A buys a lot from B shortly after the 8th of April, and requests the district treasurer to furnish him with the amount of the arrears of taxes against said lot. The district treasurer notified A that the arrears of taxes against said lot were a certain sum, said sum being the taxes of 1897 only. The statement of uncollected taxes for 1898 reached the district treasurer after this statement to A, and is charged against said lot. A now claims that he is not liable for the taxes of 1898, as he should have received a statement of the full amount of arrears against the lot from the district treasurer so he could have deducted it from the purchase money of said lot.

We are of the opinion that the lot in question is subject to the taxes for 1898, assuming that there were no chattels which the collector could seize to realize them.

#### Township's Borrowing Powers.

**205**—A. D. A.—We have, in our township, the Clergy Reserve Fund account and also a Special School Fund account, the funds of which I presume should not be applied to the general expense account of the township, but have been used to a certain extent. Now then, the question I ask is this: Instead of borrowing money from a bank to pay general expenses, etc., or accounts for roads and bridges, or instead of the council using parts of principal and interest of the two above funds for same purpose, would it be legal and proper and wise for the council to enact a by-law, giving itself power to borrow monies from either of the above-mentioned funds and to pay a certain rate of interest thereon to pay the expenses, etc., of the township? Would it be more advisable to do the latter than to go on as formerly and use monies without a by-law authorizing same?

The Clergy Reserve Fund must be dealt with in the manner provided by section 423 of the Municipal Act. See section 2 of chap. 34, R. S. O., 1897. You do not say what the source of the Special School Fund is but we think it can probably be dealt with in the manner provided by either section 423 or 424 of the Municipal Act. There is no authority for borrowing from either of these funds in the way suggested or to use them for other purposes.

#### Hiring of Conveyance for Small-Pox Patient.

**206**—P. F.—Can the health officer of a town compel a person, engaged in the livery business in the place, to rent him a horse and vehicle for the purpose of conveying a small-pox patient to the pest-house? This question is put on the presumption that the town does not own a patrol wagon, an ambulance or any such vehicle, that would be in control of the town authorities and also on the presumption that none of the persons engaged in such livery business would willingly rent the conveyance

to the health officer on the ground that it would injure his business.

No.

#### Assessor's Duties.

**207**—L. A.—We are in trouble in regard to our assessor. At the January meeting we appointed a new man as assessor. He accepted the office and went to the clerk and was sworn in and afterwards wished to resign. The reeve accepted his resignation. Majority of council went to old assessor and authorized him to go on and do assessing (did not think it necessary to call a special meeting of council to appoint and have him sworn in office) but appointed him and the clerk swore him in office at the regular February meeting of council, some three weeks after. Now what I want to know, is the assessing that he (the old assessor) did before the regular February meeting of council, legal or valid or would you recommend that he do all the assessing before the February regular meeting over again? He was assessing three or four weeks before duly appointed.

A majority of the council had no power to authorize the old assessor to go on and assess property. Until he was not only appointed by the council at a regular or special meeting but had also taken the oath required by section 312 of the Municipal Act, he has no right to enter upon his duties. If the requirements of the Municipal Act have been complied with, the work which he has done since then is regular and, so far as the work which he did before the February meeting is concerned, we do not think it is necessary to go over the ground again or to rewrite all the entries which he made. He can utilize what he has done and, if any person is dissatisfied with the assessment, he has his remedy by way of appeal. Suppose it had been the case of a collector instead of an assessor and the collector had collected some taxes, he certainly could keep the money collected by him and would not have to pay it back and recollect it.

#### Statute Labor Defaulter—Removal of Fences on Roads.

**208**—A. H. B.—1. When a man is not called out to perform his roadwork by the pathmaster and it has been returned by the pathmaster undone, and the clerk has charged it against the ratepayer on the collector's roll, can the municipality compel said ratepayer to pay the roadwork?

2. If they cannot collect off ratepayer, can they collect the same off pathmaster?

3. When a ratepayer has his fence on the road allowance and has been given six months' notice from the pathmaster in the beat where said fence is on, and does not comply with the notice, can he be compelled to move the fence?

4. Is the pathmaster's notice sufficient to make him remove the said fence?

1. We do not think the statute labor can be returned against this man's land because there never was any demand made upon him to do the work, and therefore there could be no default on his part. See section 110 of the Assessment Act.

2. In the absence of a by-law regulating the appointment and duties of pathmasters and providing penalties for neglect of such duties, we do not think that the municipality has any remedy against the pathmaster.

3. Yes.

4. Yes.

Assessment Appeal—Duty of Assessor—County Grant to Volunteers—Dwelling for Gaoler, etc.

209—M. L.—1. If a ratepayer considers the assessment of a township four or five dollars too high, above the value he thinks it, is he justified in appealing against the assessment of the whole township?

2. Is it the actual value or the price that could be realized if sold by a solvent owner, the value an assessor should give a property?

3. Is it legal for a county council to give grants to supplement the pay of volunteers?

4. If so to what extent?

5. Is a municipality (county) required to furnish a dwelling for the gaoler, matron and turnkeys, or just for the gaoler and his family?

1. No.

2. Section 28 of the Assessment Act provides that "real and personal property shall be estimated (for assessment purposes) at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor."

3. Yes. See sub-section 7 of section 591 of the Municipal Act.

4. To such extent as the council may deem just and reasonable, the above sub section imposes no limit.

5. Section 506 of the Municipal Act makes it the duty of the county council to provide proper offices, etc., for all officers connected with the courts, and section 178 of chapter 51, R. S. O., 1897, declares that sheriffs, deputy sheriffs, gaolers, constables and other peace officers are officers of the courts. The county council is required to provide dwellings for the gaoler and matron and apartments for the turnkey, who is required to sleep in the gaol nights, by the rules and regulations in force for the government of common gaols. See also chap. 321, R. S. O., 1897.

Assessment of Timber and Portable Mill—Of Married Woman.

210—W. N.—1. A, who is not a ratepayer of this municipality, bought a cut of timber on some lots in the municipality, and employs B, who is also a non-ratepayer, and who owns a portable saw mill, to cut it into lumber. Can either or both of them be assessed—say, A for the lumber and B for the mill?

2. Can a woman's property be assessed to her husband or son, with the owner's consent?

1. Both these classes of personal property are assessable, in the manner provided by section 28 of the Assessment Act, to their respective owners, unless in each case the actual cash value does not exceed \$100, in which latter case the property is exempted from assessment by sub-section 25 of section 7 of the Act.

2. No. The wife should be assessed as owner and the husband as occupant. See section 19 of the Assessment Act.

Cattle By-Law.

211—CLERK.—Our township is considering the passing of a by-law allowing cattle to run at large in the township. A good many here are of the opinion that this by-law will allow people to turn out their cattle and have no more thought about them whether they destroy their neighbors crops or not, so long as the cattle are off their property.

1. Providing that a person owns property and it is not well-fenced on the back of the clearing, where it is bush, will this by-law allow of the cattle running at will and destroying any crops that may be there?

2. Can the owner of said lands impound such cattle in defiance of such by-law being passed?

3. Will the by-law compel every person to

put up good substantial fences along the high-ways to protect their crops so that cattle can go where they like and the owner of them have no thought whether their cattle destroys their neighbor's crops or not?

1. No.

2. Yes, if found trespassing on his premises.

3. No.

Description of Lands on Assessment Roll.

212—F. W. S.—1. Is it legally necessary to describe a parcel of land on the assessment roll by the assessor, as patented or unpatented, to make the title legal in the event of its being sold for arrears of taxes?

2. Is it necessary to pass a by-law for the payment of an O. L. S. for the surveying of a piece of new road upon Indian reserve, there being no by-law for the hiring of said O. L. S. and no by-law for the expending of money upon roads as yet for the present year, that this order could be issued under?

Re my first question, see Chancellor Boyd's decision in the tax deed suit in the chancery division of the high court, held in Walkerton in either 1887 or 1888 and was appealed to Toronto. The plaintiff was P. A. Scott and I was defendant. I lost the case on account of lot being assessed and sold as unpatented when it had been patented. And as some members of our council misconstrue this part of the Assessment Act, I would like for the future benefit of this municipality to put them aright.

1. No. Section 23 of the Assessment Act requires the assessor to enter on his roll and assess at its actual value the interest of a locatee in unpatented lands, but does not, in terms, render it necessary that he should state or show on his roll whether such lands are patented or not. We have examined the case you refer to. The point you mention was not considered, nor did it form any part of the reasons for the decision therein given. The judgment was delivered against the defendant for the reason that the county treasurer had not complied with the provisions of section 177 (sub-section 1) of chapter 224, R. S. O., 1897, (formerly section 164 of chapter 193, R. S. O., 1887) which required him to state in his advertisement of sale whether the lands offered for sale were patented or not. By reason of the omission of the county treasurer, of this particular, it was held that the sale had not been fairly conducted, and should be set aside.

2. No. A resolution of your council is sufficient for the purpose.

Assessment of Bitches.

213—D. A. S.—Should a bitch, that is splayed, be taxed the same as other bitches which have power to draw dogs away from home into mischief perhaps?

Yes.

Snow Fences.

214—J. R.—Perhaps in my question No. 188 I did not state clearly and fully what I wished answered in regard to grant to parties building wire fences. Our council here are agreed to make a grant of, say 20 cents a rod to one or two parties living alongside the gravel road, where at present a rail fence stands. By having a wire fence erected it would obviate the necessity of expending a large amount of money which it now costs annually to keep the road clear of snow. The council are quite ready to make the grant and the party is also willing to accept the amount so offered but the

question is cannot the council, by resolution, legally make the grant without passing a by-law in the matter?

The agreement with the owners and the payments to them of the amount of the grant for building wire fences instead of those now in use, are authorized by section 1 of chapter 240, R. S. O., 1897, and your council should pass a by-law pursuant to sub-section 5 of section 545 of the Municipal Act, making provision for the payments, and embodying the terms of the arrangement as to the building of the fences. The payments authorized by the by-law may then be made to the parties entitled to receive the amounts by orders on the treasurer issued pursuant to resolutions of council.

Refusal of Reeve to Sign Order.

215—C. I. H.—If a municipal council passes a resolution to pay a certain bill and it carries unanimously and the clerk makes out the order for same and signs it, can the reeve refuse to sign said order, and if he does refuse what steps should the council take to have said order paid?

There is no way of compelling the reeve to sign the order. If he persist in his refusal to do so, the members of the council should elect a temporary presiding officer or chairman, who can sign the order.

Remuneration of Councillors—Dog-Tax By-Law.

216—P. B. R.—1. In what legal way can reeve and councillors of an incorporated village derive remuneration for their services?

2. We are about passing a by-law for the collection of the dog-tax by the use of dog-tags.

(a) Where can we find any special instructions in regard to framing such a by-law?

(b) Who is the proper person to hold and sell the tags?

(c) In case any person refused to buy a tag for his dog, what recourse should the council take to enforce the same?

1. Councillors of a village are not legally entitled to any pay for their services nor can they vote themselves such, either as councillors or as commissioners. Section 280 of the Municipal Act makes provision for the remuneration of the head of the village council (reeve) and section 538, sub-section 1, authorizes the councils of counties and townships to pass by laws for paying members of such councils only.

2. (a) The provisions of by laws of this kind vary according to the needs and requirements of particular localities. We would suggest that you communicate with one or more of the following in whose municipalities dog-tag by-laws are in force and they will give you the information you require: J. H. Duncan, town clerk, Collingwood; B. F. Matthews, village clerk, Fort Erie; Rendol Snell, village clerk, Marmora; A. H. Kilman, township clerk, Ridgeway; Wm. Spence, township clerk, Manchester.

(b) The usual and proper way of disposing of dog-tags is to supply them to your assessor when starting his work, who will furnish them to owners of dogs on receipt of the amount of the tax imposed.

(c) The penalty for the refusal to buy a tag and pay the dog-tax should be fixed by your by-law.

**School Secretary Should Deliver up Papers—Clerk Should Record Yeas and Nays—Dog Tax—Qualification of Councillor—Right to Cut Shade Trees.**

**217**—J. G. A.—1. A was the retiring trustee in 1899 and also secretary-treasurer during his term of office. In 1900, he was appointed secretary-treasurer for the new board of school trustees. In 1901, his services were dispensed with; he was dismissed. He refuses to hand over to his successor all books, papers and correspondence he received as school trustee or as secretary and treasurer for the board. What proceedings can be taken to compel him to hand over all the books, papers and correspondence?

2. Was it lawful for the trustees to pay him for handing over books, papers and correspondence of the school section?

3. Should a clerk of a township record the yeas and nays when a vote is taken on a motion, some voting for and some against it.

4. Is dog-tax in force by statute or does it require a by-law to put it in force.

5. Can a council by motion repeal a by-law or any portion of it?

6. A was assessor and B was collector for the year 1900, having been appointed by by-law. At the last meeting of the council their resignations were accepted by resolution of the council. Could they be lawful candidates for the position of councillors for the year 1901, nomination being held in 1900?

7. Can an owner of land cut timber and shade trees on the public highway opposite his own land? If not, what is the penalty for doing so?

Section 108 of the Public Schools Act provides that "No secretary-treasurer appointed by the school trustees of any school section, and no person having been such secretary-treasurer, and no trustee or other person, who may have in his possession, any books, papers, chattels, or monies, which come into his possession as such secretary-treasurer, trustee, or otherwise, shall wrongfully withhold or neglect or refuse to deliver up, or account for and pay over the same or any part thereof to the person, and in the manner directed by the school corporation then in office, or by other competent authority." A secretary-treasurer, or former secretary-treasurer, is punishable in manner mentioned in section 109 if he transgresses the provisions of section 108.

2. No. It is his duty to do so.

3. Yes. Sub-section 2 of section 19 of the Municipal Amendment Act, 1899.

4. Dog-tax is in force by statute. See section 1 of chapter 271, R. S. O., 1897.

5. No. It must be done by by-law.

6. If A and B had fully completed their duties as assessor and collector respectively for the year 1900, and had been paid their salaries in full by the council, and the council had received and accepted their resignations prior to nomination day, they were legally qualified as councillors for 1901.

7. No. See sub section 2 (b) of section 574 of the Municipal Act. In the absence of a by-law fixing a penalty it is not clear that there is any remedy except by action for damages. Section 6 of chapter 243, R. S. O., 1897, provides a penalty for destroying trees, *planted and growing* on the highway, but it is doubtful whether that section applies to trees of natural growth.

**Assessment of Hotel Property.**

**218**—RATEPAYER.—I am writing you for information regarding the assessment of hotel property. Our local assessor and myself have not the same views on the subject. Should the property be assessed for what it would sell for to-day or what it would sell for if the license were taken away? The difference in these two views amounts to considerable in our local hotel property. I claim that the assessor has nothing to do with the license whatever. We have four hotels in the village. A few weeks ago one of them sold for \$8,500. It is assessed this year for \$4,500. Were it in the market this same hotel would be sought for by a dozen applicants in twenty-four hours, at a rental of \$800 to \$1,000, paying all license and taxes. The rental of the smallest hotel here is \$400, paying license, taxes and improvements, and the assessment on it is less than \$2,500. We have private residences in the villages assessed for about the same that would not rent for \$150 per year, and a farm in the corporation assessed for \$4,500 that would not rent for more than \$200. I think hotel-keepers receive more benefits from a village than any other business firm or private individual, as they are allowed the privilege of leaving their rigs on streets near their stables. I think their property should be assessed for its selling value, irrespective of license, as it is time enough for the assessor to change the assessed value when the license is taken away. Would you kindly give a ruling in your next issue, which of these two systems of assessment is correct?

Sub section 1 of section 28 of the Assessment Act provides, that "real and personal property shall be estimated at their actual cash value, as they would be appraised, in payment of a just debt from a solvent debtor." The assessor should proceed in accordance with the provisions of this sub section, and exercise his best judgment in placing a value on the property for assessment purposes. In case any ratepayer considers such value too low he can appeal against the assessment to the court of revision and afterwards to the county judge, pursuant to the provisions of section 71 and following sections of the Act. We may say that the selling value of hotel property is a good test of what it should be assessed for, and we do not agree with the assessor's view that it should be valued at such an amount as he thinks it would be worth without a license.

**Prohibiting of Cattle Running at Large in Unincorporated Village.**

**219**—ENQUIRER.—Has a township council power to pass a by-law prohibiting cattle from running at large in an unincorporated village plot only and at same time allowing cattle to run at large all around said village from farmers? If said farmers' cattle strayed into said village during prohibitory hours, could they be impounded legally?

There may be special circumstances warranting the passing, by your township council, of a by-law, confined to that portion of the municipality comprising the unincorporated village, but, as a rule, the powers vested in municipal corporations should, as far as possible, be exercised by by-laws, general in their nature and impartial in their operation. If these special circumstances exist in the case you put, the council can pass the by-law, and when it is passed, cattle found running at large within the limits defined in the by-law may be impounded.

**Dog-Tax By-Law—Councillor Can be Secretary of Board of School Trustees.**

**220**—R. B. W.—In 1899, our council abolished the dog-tax complying with a largely signed petition to that effect. This year a new council in power gave instructions for their assessor to assess all dogs. They purpose to pass a by-law and levy a rate of \$1 and \$2 on the same, in the future. People are objecting on the grounds that had they known a dog-tax was to be imposed, they would not have had a dog or dogs.

1. Is it legal to assess a dog when there is no by-law in force at the time?

2. Has the council power to levy a rate less than \$1.00 when about 40% would cover all damages?

3. If a council passes a by-law contrary to the Municipal Act, is it binding?

4. Can a councillor hold the office of secretary of Board of School Trustees?

By virtue of sections 1 and 3 of chapter 271, R. S. O., 1897, it is the duty of the assessors to assess dogs if no by-law has been passed pursuant to section 2 of the Act. If your council passed a by-law in 1899, dispensing with the levy of this dog-tax, the assessor would have no right to assess dogs while that by-law remained in force and instructions from the council to the assessors to do so would have no weight.

1. If there is no by-law in force at all, the assessor must assess dogs under the above act, but you state that a by-law was passed in 1899 dispensing with the levy of a dog-tax, and you don't say that that by-law has been repealed, and if it has not been repealed there is no authority to levy a dog tax under chapter 271.

2. The tax under chapter 271 is fixed and the council has no power to reduce it though it may dispense with it altogether.

3. No.

4. Yes.

**A Drain Contract—Opening a New Road—Non-Resident Tenants.**

**221**—R. M.—1. A, township commissioner, let a drain contract to B, a lady contractor in another county, who instructs A that she appoints C, her husband, her agent, and for A to pay all money coming to her on said contract to C. The contract was drawn up to B, her heirs, executors and administrators. Before the contract is finished, B dies. To whom will A pay the money, part of the work being still undone?

2. Whose duty is it to find out the heirs, etc., of B? Does it rest with A or have the heirs to notify him who has to complete said work?

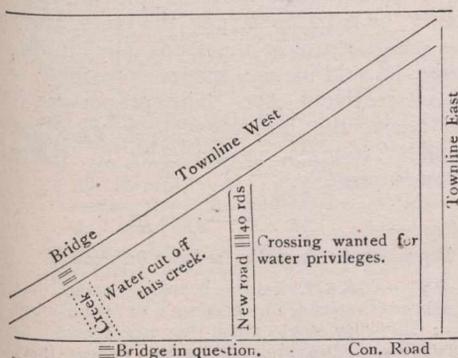
3. As B has a family of children, some under age, and very likely left no will, would A be safe in paying C if he goes on and completes the work?

4. Has a municipal council power to expropriate land for a road in this case? In a gone in the township, one of the concession roads, just before it strikes the township, crosses a creek, over which at present is a bridge. The road has been travelled for years. Said bridge is now out of repair and will have to be rebuilt this summer. By crossing forty rods of land this expensive bridge could be done away with. The owner of said land will sell but wants \$400 for the acre required for the road and wants the council to pay him that amount and bind them to furnish him an underground covered concrete crossing so that his cattle can get to water, said new road cutting off the water supply on his farm.

5. Can the council force the owner to sell said land required for the new road, if they cannot agree otherwise?

6. Is not the council exceeding its power in the matter if it agrees to put in an underground crossing for his cattle to get to spring creek cut off by said new road, at an indefinite cost?

7. How ought a clerk, in making out his voters' list, place the following names? A, B and C are residents of another municipality but have land in this township rented for pasture. They do not work the land. One of the members of the council says the statutes has it that before they appear as municipal voters, they (the tenants) must be actual residents of this municipality to be entitled to vote or to appear as municipal voters. Now the county judges both hold that they are legally entitled to appear on the list as municipal voters. Would like your opinion in the matter.



1. C does not appear to have been a party to this contract, and we are, therefore, of the opinion that A should pay these moneys to the personal representatives of B, that is, her executor or administrator.

2. A should ascertain who is the executor or administrator of B's estate, and notify him to see to the completion of the work.

3. Not unless C can show that he has legal authority to receive the money, as the duly-appointed personal representative of B, or has such authority from the personal representative of B.

4 and 5. The council can pass by-laws for stopping up the old road and opening the new one, pursuant to section 637 of the Municipal Act, after having first taken the proceedings mentioned in section 632 of the Act. The owner of the land taken for the new road is entitled to compensation under section 437 of the Act, and if he and the council cannot agree as to the amount, the question must be determined by arbitration under the Act.

6. No. See sub-section 5 of section 637 of the Act.

7. We are of the opinion that these tenants should be entered in part 2 of your voters' list, but unless they have resided within the municipality for one month next before the election, if objected to, they cannot take the oath of a tenant (see section 113 of the Act), and cannot vote.

**Amending By-Law—By-Law Preventing Cattle Running at Large—Council's Rules of Order.**

222—T. W. S.—1. Can you legally amend a by-law or must the by-law be rescinded and a new one executed?

2. Can a municipal council of incorporated village pass a by-law prohibiting cattle, pig, sheep and horses from running at large within the corporation limits, without submitting a by-law to be voted on by the people?

3. (a) If a council of an incorporated village has a rule, but not laid down either by resolution or by-law, that all accounts before being paid must be certified to by the person ordering the work done or the goods causing the account and an account is presented not certified to which is laid over for certification, can the person who presents the account, providing he goes so far as to sue said account, collect the costs that would be incurred by such action?

(b) Would the council's rule "of certification of all accounts before being paid" be a line of defence sufficient to offset costs of action?

(c) Would a council require a resolution or by-law, one or both to govern and carry out effectually the payment of accounts?

(d) What in your opinion is the proper procedure to be taken by council in the payment of accounts, seeing that an endless amount of trouble could be caused by persons holding accounts which should be presented to the retiring councillors and presenting them to the newly formed council?

1. A by-law can be legally amended.  
2. Yes. See sub-section 2 of section 546 of the Municipal Act.

3. (a) If the rule you mention has not been established either by law or resolution of the council it is simply a nullity, and binding on no one. If the council has no valid defence to the account as presented, it should pay it. If the party entitled to the money sues the council and succeeds in his action against them, the council will have to pay such costs as the law allows to the plaintiff. We may also say, that even if the council had passed a resolution, that all accounts must be certified by a certain official before being paid, it would not be binding upon a contractor with the municipality unless it was part of the contract with such contractor that his claim or account should be so certified before being paid.

(b) No.

(c) Rules of order or procedure in conducting the business of the council, should be adopted by by-law of the council. Non-compliance with such rules, on the part of a councillor would not, however, deprive a person entitled to pay for services performed for the council, of his right to collect and receive his money, unless the council takes the precaution to make such rule or resolution part of the contract with such person.

(d) We do not know what method of procedure could be adopted by a council to prevent the occurrences you mention. Notwithstanding any rule the council might establish to regulate the presentation of these accounts, if they be just and correct, they would have to be paid whether presented by the person entitled to the money, to the old or the new council.

**Clerk's Salary**

223—E. N.—The resolution appointing me clerk gives it the form and effect of a by-law by having the corporate seal attached thereto. The question is: No mention of salary having been inserted in the by-law, can I collect the same salary as the ex-clerk was getting at the time of his dismissal or can I get anything?

The by-law, fixing the amount of the salary of the ex-clerk, has nothing to do with the remuneration you are to receive,

but, as you appear to have been legally appointed clerk, you are entitled to receive what your services are reasonably worth, and, if you and the council cannot agree, the amount will have to be fixed by a court or jury if you insist upon being paid.

**Assessor's Duties**

224—R. F.—A township council duly appointed an assessor. He made a declaration of office and took the books. Afterward he backed out and handed the books and his written resignation to the reeve. Said reeve, without authority from the council in session, instructed another man (the assessor for 1900) to go ahead and assess. He went over half the township before the resignation of the duly appointed assessor was accepted by the council in session and before making a declaration of office.

1. If said work is not valid, could the matter be made strictly correct without going over the ground again?

2. If no further assessment is made on that part of the township referred to before the end of April of this year, is said part exempt from taxes this year or could an additional assessment be levied next year?

3. Is the voters' list compiled from the work done by the man previous to his appointment valid? Could it be used correctly at the next provincial election?

4. What is the safest way out of the difficulty?

1. See answer to question No. 207 in this issue.

2. If the course suggested in our answer to question No. 1 is followed, this part of the municipality will not be exempt from taxation. In any event, an additional assessment could not be levied again next year.

3. Yes, in view of the above. See also section 72 of the Assessment Act as to the finality of the assessment roll.

4. Our answers to Nos. 2 and 3 render it unnecessary to reply to this question.

**Council's Obligation to Carry out Contract.**

225—S. J.—Last year's council let job of filling watercourse last December. Contractor was to fill ditch with brush and stone in December, which he did. He was to put on more brush and cover ditch with dirt in spring. Price of job \$30. This year's council decided that last year's council made a mistake in closing said watercourse and has opened it. Should present council pay contractor the amount he took the job at in full or would it be legal to give contractor good pay for the amount of work he did and notify him not to do any more work at said ditch?

If there was no by-law, we do not think the council is liable for more than the value of the work done, if it notify the contractor not to do any more work.

**By-Law to Raise Money for Extending Water and Electric Light Systems.**

226—C. M. T.—In case where the council of a town municipality want to extend the water and electric light systems of the town, and where the power-plant in power-station is altogether inadequate to light the town and do the pumping for the town is it absolutely necessary for the council to submit the by-law authorizing the issue of the necessary debentures to the ratepayers in accordance with the provisions of the Municipal Act? If not, kindly quote chapter and sections under which to proceed.

If the cost of the proposed extension of your water and electric light system is

not to be paid within the year current at the time of the incurring of the expenditure (which we presume to be the case, since your municipality proposes issuing debentures to raise the money to meet it), the by-law providing for the issue of the debentures will have to be submitted to the duly qualified electors of your municipality, and have their assent before it can be finally passed by the council. See sub section 1 of section 389, section 386 and sub section 4 of section 384 of the Municipal Act.

#### Compensation for Trees Planted.

**227** R. M. B.—Some thirty-five years ago, I planted sixteen poplar trees in front of my farm, on what is now the road, but at the time of planting, in the fence corners ten rods apart by the worm fence measure, there being then a jog of two rods at blind line, which by recent survey was straightened, leaving the trees some thirteen or fourteen feet on road allowance. The land being swampy the roots made the road-bed firm and took up moisture. Besides they are a thing of beauty and above fifty feet high and admired by all travellers. I brought them from \_\_\_\_\_ county, paying freight on them and guarded them from destruction. They are planted on north side of sideroad running east and west. Some few years ago I sold ten acres off south-east corner with a frontage of forty rods and running back the same depth. I want to know if I can prevent the trees being cut down in front of said ten acres, I yet having twenty acres in the rear. The owners, on pretense of them doing him damage but really for greed of the firewood they contain, asked the council at last meeting for permission to cut them down. Have I first claim on those trees? I think I have so read in your journal some time back. If I cannot prevent the cutting should I be compensated for my labor and for the deformity it will cause in said front? If so, how should I go about recovering same?

Sub-section 4 of section 2 of chapter 243, R. S. O., 1897, declares that every growing tree, shrub or sapling whatsoever, planted or left standing on either side of any highway for the purpose of shade or ornament shall be deemed to be the property of the owner of the land adjacent to the highway and nearest such tree, shrub or sapling. It, therefore, follows that as you are not now the owner of the land nearest to the trees referred to, you are not in a position to complain if those trees are cut down.

#### Illegal Act of Councillor—Damages for Sheep Killed.

**228**—B. D.—Our council advertised to receive tenders for township roads and refused to accept the tender for one station tender being too high. Appointed A and B, members of the council, a committee to purchase the cedar for said station. A awarded the tender to himself in his son's name at the price refused by the council for the tender. A got D, a member of said council to inspect the cedar and D reported it all right at regular meeting of council. B objected to this contract. At the order of business for reading and receiving reports, A's bill was not presented for payment at this time as it would not be in order to present his bill. But D reported the cedar inspected and all right. The council refused to accept this contract of A's, and awarded the contract to E, who filled the contract with A's cedar.

1. Did B object to this contract at the proper time, or should B let A get pay for cedar to

make him liable? Section 83, Municipal Act.

2. Could A be unseated for this offence?

3. When council advertise to receive tenders for contracts and do not reserve the right to accept any tender, are they compelled to let it by tender?

4. A has sheep killed by dogs, damages not claimed within thirty days. Does he forfeit the right to collect the damages from the township?

1 and 2. As we understand this matter, the contract was finally let by the council to E, who purchased from A (a member of the council) the cedar necessary to enable him to perform his contract. This act on A's part would disqualify him as a member of the council, under the provisions of sub section 1 of section 80 of the Municipal Act, which provides that no person having a contract for the supply of goods or materials to a contractor for work for which the corporation pays, or is liable, directly or indirectly, to pay, shall be qualified to be a member of the council of any municipal corporation. Proceedings may be taken to unseat A under the provisions of section 208 of the Act.

3. No.

4. No. A has three months, after the killing of his sheep, within which to make his claim for compensation. See section 18 of chapter 271, R. S. O., 1897.

#### A Municipal Agreement for Sale of Land.

**229**—E. B.—Our council sold a mill site and twenty acres of land and \$20 was paid down and three years from date to pay balance in instalments and interest, with privilege of paying it off at any time within the three years. He was to have erected a saw or shingle mill on the premises within twelve months, and, when asked for his payment, as it fell due on the first of the year, as owner, he said the reeve said before witnesses that it made no difference; or as much as to say he would not be interfered with on that account. But, as it was, if he went on and built his mill according to agreement, they would not be hard on him. Now can the council cancel this agreement, and what course would we have to pursue in the matter? I enclose copy of agreement.

The agreement furnished by you is one of sale of twenty-one acres of land to one for \$400, payable in instalments on the days mentioned therein. The only remedy which your council has, is to bring an action for recovering the overdue instalment, and to have it declared that the municipality has a lien on the lands for the unpaid purchase money and for sale of the land to satisfy the lien. The agreement does not provide, that in the event of default in the payment of any instalment the other instalment shall thereupon become due, nor does it provide that time shall be the essence of the agreement, and that in case of default the agreement shall become null and void, as is usual in the case of agreement for the sale of lands, and therefore we do not see how the corporation can, as a matter of legal right, take possession and rent the land.

#### Assessment of Saw and Shingle Mill.

**230**—G. W.—Two brothers, A and B, leased five acres of almost worthless, land about centre of a lot, from C for a term of years and

built a saw and shingle mill. Assessor assessed A and B as tenants with C as owner, entering it on the roll as real property (or value of it in real property column). Three or four months after assessment was made, the mill was burned with all the stock belonging to A and B. A and B skipped out. C would not pay taxes as the mill was the part to value, was returned by tax collector in defaulters list to county treasurer, and is now in the list to be sold for taxes. As there are several mills in the township in just the same position of that one, assessor would like to know how to properly enter them on the roll. Should the land be valued as real property and the mill as personal, or how, so as to avoid such difficulties as the above?

C having been assessed for the property, he is liable to pay the taxes, and if he does not do so the lands may, in due time, be sold in the manner provided by the Assessment Act. The proper way is to assess the buildings along with the land. There is no authority to assess them separately.

#### Expenditure for Necessities for House Quarantined.

**231**—T. S.—1. Large boarding house has been quarantined on account of small-pox. Can the proprietor compel the municipality to pay for board of inmates during quarantine? If municipality pay board bill, can L. B. of H. collect from boarders if able to pay same?

2. Is the treasurer of a township bound to pay orders of L. B. of H., without the sanction of council, when there are no monies to credit of Board in funds of municipality?

1. Section 93 of the Public Health Act, chapter 248, R. S. O., 1897, provides that, "In case any person coming from abroad or residing in any municipality within the province, is infected, or lately before has been infected with or exposed to any of the said diseases (amongst which is small-pox) the health officers or local board of health of the municipality where such person may be, may make effective provision in the manner which to them seems best for the public safety, by removing such person to a separate house, or by otherwise isolating him, if it can be done without danger to his health, and by providing nurses and other assistance and necessaries for him at his *own cost and charge*, or at the cost of his parents or other person or persons liable for his support, if able to pay the same, or otherwise at the cost and charge of the municipality."

If the boarders and the boarding-house keeper are in a position to pay for what they need during the time they are quarantined or isolated, they must do so, and the municipality or local board of health cannot be held responsible for so doing.

2. Yes. Section 57 of the Act provides that, "the treasurer of the municipality SHALL forthwith, upon demand, pay out of *any moneys* of the municipality in his hands, the amount of ANY ORDER given by the members of the local board or any two of them, for services performed under their direction by virtue of this Act."

The alderman seeking re-election thus addresses the electors: "Vote, you absent-minded beggars, vote, vote, vote."